

IFP GENDER CLUSTER

COUNTRY CASE STUDY: BURUNDI

# GENDER, PEACE AND SECURITY:

The Challenges Facing Transitional Justice  
Processes in Burundi

Concilie Nibigira and Helen Scanlon

August 2010



INITIATIVE FOR PEACEBUILDING



THIS INITIATIVE IS FUNDED  
BY THE EUROPEAN UNION

## ABOUT IFP

The Initiative for Peacebuilding (IfP) is a consortium led by International Alert and funded by the European Commission. IfP draws together the complementary geographic and thematic expertise of 10 civil society organisations (and their networks) with offices across the EU and in conflict-affected countries. Its aim is to develop and harness international knowledge and expertise in the field of conflict prevention and peacebuilding to ensure that all stakeholders, including EU institutions, can access strong independent analysis in order to facilitate better informed and more evidence-based policy decisions.

This document has been produced with the financial assistance of the EU. The contents of this document are the sole responsibility of IfP/ICTJ and can under no circumstances be regarded as reflecting the position of the EU. To learn more, visit <http://www.initiativeforpeacebuilding.eu>.

## ABOUT ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. For more information, visit [www.ictj.org](http://www.ictj.org).

Cover image: © IRIN

© Initiative for Peacebuilding 2010

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

GENDER, PEACE AND SECURITY:  
The Challenges Facing Transitional Justice  
Processes in Burundi

## AUTHOR PROFILES

### **Concilie Nibigira**

Concilie Nibigira is an independent analyst who has worked extensively in the field of gender, peace and security in Burundi.

### **Helen Scanlon**

Dr Helen Scanlon is the Director of the International Center for Transitional Justice's (ICTJ) gender programme.

## ACKNOWLEDGEMENTS

The authors would like to thank the many women and men in Burundi who shared their thoughts and experiences for this report. Important comments on early drafts were provided by Helen Scanlon and Kelli Muddell from ICTJ's gender justice programme as well as by ICTJ's Burundi programme head, Olivier Kambala. The authors also thank the Initiative for Peacebuilding (IfP) and the European Commission for their generous support.

# CONTENTS

Acronyms	6
Executive Summary	7
Introduction	9
Methodology	11
Historical Context	12
Transitional Justice in Burundi: Stakes and Challenges	15
Truth-seeking	18
Prosecutions	19
Security Sector Reform	19
Reparations	20
Conclusion	21
Recommendations	22
Appendix	23

## ACRONYMS

<b>AC Génocide</b>	Action Contre le Génocide (Action Against Genocide)
<b>AFRABU</b>	Association des Femmes Rapatriées du Burundi (Association for Repatriated Women in Burundi)
<b>BPOA</b>	Burundi Plan of Action
<b>CEDAC</b>	Centre d'Encadrement des Anciens Combattants (Training centre for development of ex-combatants)
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CENAP</b>	Centre d'Alerte et de Prévention des Conflits (Centre for Alert and Conflict Prevention)
<b>CNDD-FDD</b>	Conseil National pour la Défense de la Démocratie-Front pour la Défense de la Démocratie (National Council for the Defense of Democracy)
<b>DDR</b>	Disarmament, Demobilisation and Reintegration
<b>DSC</b>	Defence and Security Corps
<b>FDN</b>	Force de Défense Nationale (National Defence Force)
<b>FNL</b>	Front National pour la Libération (National Forces of Liberation)
<b>IDPs</b>	Internally Displaced Persons
<b>IPU</b>	Inter-Parliamentary Union
<b>NGO</b>	Non-governmental organisation
<b>NTRC</b>	National Truth and Reconciliation Commission
<b>OAU</b>	Organisation of African Unity
<b>PNG</b>	Politique Nationale Genre (National Gender Policy)
<b>SC</b>	Special Chamber
<b>SGBV</b>	Sexual and Gender-based Violence
<b>SSR</b>	Security sector (or system) reform
<b>TRC</b>	Truth and Reconciliation Commission
<b>UNSCR</b>	United Nations Security Council Resolution

## EXECUTIVE SUMMARY

Burundi's past has been replete with mass human rights violations during which women have been particularly affected. Struggles over land and power resulted in a series of ethnic conflicts since Burundi achieved independence from Belgium in 1962, manifesting in widespread fighting in 1965, 1972, 1988, and, most recently, between 1993 and 2005. The assassination of president Melchior Ndadaye in October 1993 provoked Burundi's most recent and bloody 12-year conflict. These events have had a profound impact on the lives of Burundian women who, in addition to being subject to sexual-based violations, were also victims of internal displacement and subject to economic deprivation. Despite these challenges, women in Burundi have been visible actors in attempts to protect human rights, denounce perpetrators and promote transitional justice. Further, Burundi's most recent political transition has presented a unique opportunity to increase women's access to justice and provide recognition for the harms committed against them through transitional justice initiatives.

A series of UN-led peace agreements aimed to resolve Burundi's conflict, culminating in the creation of a transitional government in 2003. Following elections in 2005, a government was formed by the *Conseil National pour la Défense de la Démocratie-Front pour la Défense de la Démocratie* (CNDD-FDD) under President Pierre Nkurunziza, a former rebel leader. The new government was bound by the Arusha Peace Accords signed in 2000 which had recommended the creation of both a Truth and Reconciliation Commission (TRC) as well as an International Judicial Commission of Inquiry to hold accountable those guilty of crimes against humanity and to assist in Burundi's transition. The Arusha Accords specifically noted the need for the inclusion of women in the transitional justice mechanisms identified and also made special provision for the protection of widows and female-headed households. The 2005 UN mission's report, popularly known as the Kalomoh Report, also called for the establishment of dual transitional justice mechanisms, composed of both a truth commission and a special chamber to try those bearing greatest responsibility for acts of genocide, war crimes or crimes against humanity. This was reinforced by UNSCR 1606 of 2005, which called on the UN Secretary-General to begin negotiations with the Burundian government to take the process forward. After protracted negotiations in November 2007, the government and the UN agreed on the creation, composition and mandate of a tripartite steering committee for "National Consultations on the Establishment of Transitional Justice Mechanisms for Burundi".

While women in Burundi continue to face numerous social, cultural and legal challenges to their access to justice, there is also considerable support for mechanisms to bring about accountability for past violations. This report's findings are based on the testimonies and views of women regarding their transitional justice priorities. Those interviewed suggested that measures need to be put in place to ensure a gender-sensitive approach by any future truth commission or special chamber. Concerns abound over how to ensure that gender-based violence is treated sensitively and that outreach efforts are still required to encourage women to become effectively involved.

The main recommendations to the EU member states and the European Delegation are as follows.

**Truth-seeking process:** Given the breadth and diversity of gender-based crimes committed during Burundi's conflict, women have the right to know the truth about the gross human rights violations committed against them. Many women are prepared to share their experiences of human rights abuse, provided that their security and anonymity is protected. However, concerns exist over how the stigma associated with rape and sexual violence will be addressed and how the needs of traumatised individuals will be met during any truth-seeking process.

**Criminal prosecutions:** Since women were affected by violence but have also been subject to intimidation over pursuing accountability, there remain sharp divisions as to which type of legal mechanisms are best suited in the current environment. During interviews, two contrasting views were prevalent: those women who called for forgiveness, in line with the sentiment promoted by the authorities; and those women who insisted on the need for prosecutions despite the threats directed towards them and witnesses. Particular calls came for prosecution of perpetrators who infected victims with HIV as a result of sexual violence.

**Institutional reform:** Many women claimed to be unaware of reforms in the army and police and decried the fact that they still had to live with demobilised people who continue to terrorise and rape in the community. They suggest further reforms so that women's needs are better met, including reform of the legal system to ensure more sensitivity to gender-based crimes.

**Reparations:** Funding of practical reparations, such as the provision of care for the physical and mental health of victims and educational support to tertiary level for orphans, are of greatest value. Women interviewed noted the need to ensure reparations for those families caring for children born of rape, forced pregnancy and forced prostitution; to ensure compensation for women for the destruction of family property; as well as to provide mechanisms to tackle the feminisation of poverty as a result of the conflict.

**Memory:** Monuments commemorating key sites of Burundi's conflict have already been erected at a variety of locations. For example, in Gitega a genocide memorial has been erected on the site where up to 75 Tutsi high school students were abducted from school, locked in a gas station and burnt alive in 1993. For some women, these types of memorials are valued places of mourning and healing, but for others they hold little worth. These differences stem from the lack of information about the rationale for these memorials, and questions have arisen due to their ethnic undertones. Nonetheless, there are many views as to the types of monuments that need to be built in order to satisfy the victims and survivors of the conflict, and women's organisations need to be consulted.

**Amnesty:** In light of the serious violations of women's rights and the fact that UNSCR 1325 on Women Peace and Security emphasises in Article 11 that '*all forms of sexual and other violence against women and girls should be excluded from amnesty*', Burundi's transitional justice processes should allow no immunity for sexual-based violations.

## INTRODUCTION

Burundi is a small resource-poor landlocked country in the Great Lakes Region with an estimated population of 8.7 million of which 52.9 percent are women. The economy is predominantly agricultural with more than 90 percent of the population dependent on subsistence agriculture. Its population consists of four ethnic groups – the Bahutu, the Batutsi, the Baganwa and the Batwa – who share the same language and traditions. Historically, the nation was led by a monarchy which governed along with the informal justice system *abashingatahe*. Burundi was under German colonial rule from 1890 until the First World War, when it was transferred to a Belgian-controlled UN mandate. The Belgian colonial administration governed through indirect rule until independence in 1962.

Following a failed coup and the assassination of Burundi's first democratically elected president Melchior Ndadaye in October 1993, the country was plunged into a violent civil war, the most recent in a cycle of conflicts that have plagued the country since independence. During the most recent conflict between 1993 and 2005 over 300,000 people died, which constituted over 2.5 percent of its small population. The conflict has resulted in one of the worst population displacement crises in the world as well as widespread patterns of human rights abuses. It is estimated that more than 800,000 Burundians lost their homes; of these 250,000 were internally displaced, and up to 575,000 individuals (14 percent of the population among which 80 percent were women and children) were forced by the government into official "regroupment" camps, ostensibly to protect them from the conflict.<sup>1</sup> As a result, Burundi is faced with a difficult legacy of serious violations of human rights.

The conflict has particularly affected women who were not only killed, injured and displaced but were also subject to gender-based abuses such as sexual slavery, incest and rape. While there is no accurate documentation of sexual violence during the conflict, Daley (2007) has noted that there is a strong correlation between areas of intense military activity and high incidences of sexual violence.<sup>2</sup> Amnesty International claimed that rape was used during Burundi's conflict as 'a strategy of war to terrorise, degrade and humiliate'. According to a study by Human Rights Watch, Tutsi women were subject to physical mutilation in which combatants 'cut off their breasts, punctured the vagina with spears, arrows and pointed sticks or cut off or disfigured body parts that looked particularly Tutsi such as long fingers or thin noses'. In the case of Hutu women, numerous pregnant women were disembowelled and others' sexual organs were mutilated.<sup>3</sup> The Arusha Agreement of 2000 noted the importance of the resettlement of Internally Displaced Persons (IDPs) and refugees, the majority of whom are women and children. There have been considerable challenges to this process not least due to the absence of women's access to property rights. There are also residual problems created by the high rates of Sexual and Gender-based Violence (SGBV) in the IDPs camps where many women were raped or forced into marriage at very young ages.

In order to achieve sustainable peace, women require justice for the crimes they have endured and any reconciliation efforts must address gender-based crimes. Until this is done, women will continue to suffer on multiple fronts as past violations are compounded by current social injustice and economic insecurity. Many regard Burundi's political transition as an opportunity to increase women's access to justice, to claim public space and bring about fundamental reform.

1 For more details, see, P. Daley (2007). *Gender and genocide in Burundi: The search for spaces of peace in the Great Lake Region*. Jacana: Johannesburg, p.122.

2 Ibid., p.125.

3 Ibid., pp.126–7.

Negotiations to end the conflict were launched in 1998 in Arusha, Tanzania and involved 19 internal and external political and military groups including the government of Burundi, the National Assembly, 14 political parties and three rebel movements. The negotiations were initially led by former president of Tanzania, Julius Nyerere, and, after his death in October 1999, former South African president, Nelson Mandela, took over. Both the CNDD-FDD and the *Front National pour la Libération* (FNL) were absent from the signing but agreed to ceasefires in 2003 and 2008, respectively. A transitional government was created in 2003 and in 2005 a new parliament was elected in which the CNDD-FDD obtained the majority of seats. Parliament elected Pierre Nkurunziza of the CNDD-FDD as president and a new government was created with constitutionally determined power-sharing between Hutu (60 percent) and Tutsi (40 percent) members.

The 2000 Arusha Peace Accords suggested the creation of both a Truth and Reconciliation Commission (TRC), which would examine ethnically based violence between 1962 and 2003, as well as a special tribunal to prosecute those guilty of crimes against humanity, in order to assist Burundi's transition. The call for these mechanisms was reinforced through the Kalomoh Report and UNSCR 1606 of 2005, both of which cited the necessity for a TRC and special tribunal in Burundi to address violence during the conflict. Ongoing discussions between the Burundian government and the UN have been problematic since then, largely due to disagreement over the proposed sequence of these processes. This has resulted in impunity for crimes committed during the conflict, including the widespread use of rape as a weapon of war. The Arusha Accords specifically noted the need for the inclusion of women in any future transitional justice mechanisms and also made special provision for the protection of widows and female-headed households. However, this protection has yet to be realised.

In November 2007 Burundi's government and the UN agreed on a process to pursue popular consultations about transitional justice to be led by a steering committee. This was to be composed of two representatives from the government, two from the UN and two from civil society and began operation in July 2009 funded by the UN Peacebuilding Fund. Gender representation was set at 50 percent and, although initially all the deputies elected were women, all representatives were awarded equal status after protests by women's organisations. In response to the recommendations of the Arusha Agreement, Burundian women began to organise and develop advocacy strategies. Their intention was to inform the government about the need to involve the women in the unfolding transitional justice processes to enable a more gender-sensitive revelation about the truth about Burundi's past.

Nonetheless, Burundi's current peace is fragile due to number of factors. These include widespread impunity for mass human rights violations; limited access to the judicial system by citizens; extensive land disputes due to the return of an estimated 400,000 refugees; poorly planned and poorly managed processes of Disarmament, Demobilisation and Reintegration (DDR); continued insecurity due to residual weapons among the population; and public distrust over the integrity of government institutions.<sup>4</sup>

This study is based on the information obtained from a series of focus groups as well as other data provided by representatives of women's organisations. Its aim is to document some of the views of Burundian women about how best to pursue accountability for the country's painful gendered past as well as to ascertain their justice priorities. Views about the key pillars of transitional justice – truth-seeking, prosecutions, security sector reform (SSR), reparations and memorialisation – were solicited. This report captures the recommendations made to incorporate the specific needs of women during the process of pursuing gender justice in Burundi.

---

4 According to the UN High Commissioner for Refugees, an estimated 389,000 Burundians returned from Tanzania alone between 2002 and 2007.

## METHODOLOGY

This report is the result of a qualitative analysis of information collated in Burundi in 2009. The study supported by the Initiative for Peacebuilding (IfP) set out to gather gender concerns over the proposed transitional justice mechanisms in Burundi. Nine focus groups were conducted across the country among 203 women and 52 men. Further interviews were conducted in 18 municipalities across the nine provinces most affected by various crises. Interviews were also conducted with civil society and gender activists, including an official of the Office of the High Commission for Human Rights. A survey prepared in French for leaders of civil society organisations and another one in the national language served as a discussion guide for focus groups. Questionnaires covered a number of broad themes including:

- What period should be taken into account in future transitional justice mechanisms;
- What truths about Burundi's past need to be revealed;
- What should be the priorities for prosecutions;
- What form should reparations take;
- What measures are needed to reform institutions;
- What are the gender-specific needs of transitional justice initiatives; and
- What are women's perceptions on reconciliation?

This information was supplemented by secondary data obtained from both local and international studies on Burundi's conflict and justice needs.

# HISTORICAL CONTEXT

## FIGHTING FOR PEACE

Burundian women have been active participants in public life since independence was achieved in July 1962. As noted earlier, women were severely affected during the numerous conflicts and this has had long-term implications for their social and economic realities. Nonetheless, women have actively organised in civil society, including organising in the IDPs and regroupment camps. As a result of their campaigning, women's organisations managed to be represented at the Arusha negotiations, albeit as observers. During the initial negotiations between the government and the rebel movements, there was no female participation. This led women to organise networks across the country with a focus on the involvement of female ex-combatants. Although much focus has been placed on women as victims, information from the demobilisation process revealed that 3.5 percent of rebel combatants were women, including 8 percent among the former rebel-group-turned-ruling party, the CNDD-FDD. An All-Party Burundi Women's Peace Conference was held for four days in July 2000 in Arusha alongside the peace talks and brought together women from the 19 negotiating parties, observers, refugees and internally displaced women. As a result of the conference, 50 women met with the former South African president, Nelson Mandela, to present their recommendations for inclusion in the Burundi peace negotiations. Recommendations made included the need for the establishment of mechanisms to punish and end war crimes such as rape and sexual violence, guarantees for women's rights to property, land and inheritance, measures to ensure women's security and safe return, and guarantees that girls have the same rights as boys to all levels of education. Ultimately, more than half of the recommendations were met in the Arusha Peace Agreement, which recognised the need to promote women and increase their role in the peacebuilding process. In recognition of Burundian women's role in peacebuilding, 10 women were nominated for a Nobel Peace Prize in 2005.

Until recently, women have not been visible actors in political life despite achieving the right to vote in 1960 and the creation of a Ministry for the Advancement of Women in 1983. According to the 2001 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) country study of Burundi, only 2.6 percent of political posts were held by women in 1990.<sup>5</sup> This increased to 5 percent following the 1993 elections, and for a brief period between July 1993 and February 1994 Burundi had its first female prime minister. The 2000 Arusha Accords specified the need for women's greater involvement in politics and the 2005 constitution, which was ratified by popular referendum, established a 30 percent quota for women's representation in government, parliament and the senate. As a result, following the 2005 democratic elections women made up 36 out of 118 parliamentarians, some 30.5 percent, and comprised 7 of the 20 ministers, including the second vice president. In 2005 the speaker of the National Assembly was a woman and the two vice presidents of the Senate were also women. According to the Geneva-based Inter-Parliamentary Union (IPU), in 2009 Burundi ranked number 22 on its list of 187 countries listed by the national percentage of women in parliament.<sup>6</sup> Due to the quota system, it is expected that women will continue to be visible in public life and women are campaigning to change the constitution in order to increase the percentage of women from 30 percent to 50 percent in all sectors.

Despite these political advancements, women remain the most affected by poverty in a country currently in the 171th position out of 175 countries according to the UN Human Development Index. Although Article 17 of Burundi's constitution establishes equality of men and women before the law, discriminatory laws remain on the statute books. For example, in the Code of the Person and the Family, Article 88 specifies a different minimum marriage age for women to that for men and Article 122 identifies the man as head of the household. The Penal

5 CEDAW/C/BDI/1 (2001). Available at <http://www.un.org/womenwatch/daw/cedaw/cedaw24/cedawcbdi1.pdf>.

6 IPU. 'Women in national parliaments: Situation as of 31 December 2009'. Available at <http://www.ipu.org/wmn-e/classif.htm>.

Code is also full of anomalies such as discrimination over adultery. Furthermore, women continue to have limited access to resources and income in the formal sector and the conflict greatly impaired access to education and healthcare. The conflict has also led to an increase in levels of sexual violence, and women are disproportionately affected by HIV and AIDS. The current prevalence ratio is 13 percent for women as compared to just 6.8 percent for men in urban areas.<sup>7</sup>

### Box 1. Landmarks in the Struggle of Women for Peace in Burundi

- 1958-62:** Burundian women were active participants in the fight for independence from Belgium colonial rule. Independence was acquired on 1st July 1962.
- 1962-72:** Burundian women's previous role in the struggle for independence is ignored by the new government after a crisis of succession between political leaders.
- 1972:** Union of Burundi women formed. They became the pioneer for women's organisations and other early women's activism to promote women's rights in politics and society.
- 1975:** The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is passed.
- 1983:** Creation of the Ministry for the Advancement of Women under Micombero.
- 1995:** Fourth World Conference on Women in Beijing. It was attended by a large delegation of Burundian women who developed the Burundi Plan of Action (BPOA). This led women to get observer status to the Arusha talks.
- 1997:** Burundi ratifies CEDAW.
- 2000:** Signing of the Agreement for Peace and Reconciliation in Burundi in Arusha, Tanzania.
- 2000:** Adoption by the Security Council of Resolution 1325 on "Women, Peace and Security" that formally recognises the importance of women's rights and their role in the field of peace and security.
- 2000-05:** Burundian women's organisations mobilise, inform and educate women on the principles of conflict resolution and their rights to elect and be elected.
- 2003:** The National Gender Policy (PNG) is adopted by the government of Burundi.
- 2005:** PNG is included in the National Constitution and Burundian women mobilise women for the 2005 elections.
- 2006-08:** Burundi's international partners publish guidelines on conflict, peace and development cooperation and the UN has adopted strategies for Burundi's reconstruction and economic recovery of communities. These guidelines state that women should have the same opportunities as men to participate in forums and activities promoting and consolidating peace. The UN and the Burundian government have selected 19 projects expected to contribute to the consolidation of peace through four priority areas: good governance, justice and the rule of law, peace and security and community rehabilitation.

<sup>7</sup> UN Burundi Country Report, 'Burundi and women's political participation – The role of ONUB'. Available at <http://www.un.org/africa/osaa/reports/Burundi%20and%20Women's%20Political%20Participation.pdf>.

In order to address some of the gender-based human rights concerns facing Burundi, women's organisations make it clear that national consultations on transitional justice must ensure *'the involvement of girls and women ... especially those who have been traumatised, raped, abducted, forced into prostitution who have had or not children and / or have been affected by HIV/AIDS, and ex-combatants'*.

Achievements have been made on ensuring gender equity in the composition of the Joint Tripartite Steering Committee (with representatives of government, the UN and civil society) for national consultations, as well as gender balance in the preparatory training for national consultations.

### Box 2. Objectives, Stages and Forms of the National Consultation in Burundi

**Overall objective:** To involve the people of Burundi in the process of national reconciliation in Burundi in collecting their views on the modalities of setting up transitional justice mechanisms.

**Specific objectives:**

- 1) To create an environment contributing to appropriate mechanisms for transitional justice and popular participation in the reconciliation process;
- 2) To consult with the entire Burundian population in all the provinces in order to collect their views on arrangements for putting in place mechanisms for transitional justice; and
- 3) To ensure that the views of the people of Burundi on the process of establishing mechanisms for transitional justice are contained in a widely circulated report.

**Key phases:**

- 1) The *pre-consultation* meetings which were held in two pilot provinces with 320 people chosen in 4 communes; and
- 2) *National consultations* in all provinces.

**Forms of consultations:**

- 1) *Individual interviews* with 782 persons at 46 per province;
- 2) *Focus groups* of 1428 people with an average of 80 per province;
- 3) *Community meetings* totalling 2482 people, an average of 146 per province; and
- 4) *Meetings and television broadcasts* that will affect 100 people.

## TRANSITIONAL JUSTICE IN BURUNDI: STAKES AND CHALLENGES

Burundi has encountered a series of obstacles in its attempt to pursue accountability for violations committed during its conflicts. The 2000 Arusha Peace Accords suggested the creation of both a TRC, which would examine ethnically based violence between 1962 and 2003, as well as a special tribunal to prosecute those guilty of crimes against humanity, in order to assist Burundi's transition. The call for these mechanisms was reinforced through the Kalomoh Report and UN Security Council Resolution (UNSCR) 1606 of 2005, both of which cited the necessity for a Truth and Reconciliation Commission and special tribunal in Burundi to address violence during the conflict.

In November 2007 Burundi's government and the UN agreed on a process to pursue popular consultations about transitional justice to be led by a steering committee. This was to be composed of two representatives from the government, two from the UN and two from civil society and began operation in July 2009 funded by the UN Peacebuilding Fund. Gender representation was set at 50 percent and, although initially all the deputies elected were women, after protests by women's organisations, all representatives were awarded equal status. In response to the recommendations of the Arusha Agreement, Burundian women began to organise and develop advocacy strategies. Their intention was to inform the government about the need to involve the women in the unfolding transitional justice processes to enable a more gender-sensitive revelation about the truth about Burundi's past.

### Box 3. Reports and Accords on the Burundian Conflict

**International NGOs Reports on violations of human rights, 1994** (Human Rights Watch/Africa, Fédération Internationale des Droits de l'Homme, Ligue des Droits de l'Homme dans la Région des Grands Lacs, Organisation Mondiale contre la Torture, National Center for Development Cooperation, Nederlandse Organisatie voor Internationale Ontwikkelingssamenwerking (NOVIB)). These organisations have formed an International Commission of Inquiry into Violations of Human Rights in Burundi since October 1993. The report recommended that the Burundian authorities *'fight against impunity, reform the army, eliminate arbitrariness, fight against rumors, educate about human rights and resettle the displaced and refugees'*.<sup>8</sup>

The Simeon Aké Martin Huslid Report S/1995/157, 1995 was a UN survey of Burundi conducted at the request of the Security Council to establish facts and provide advice to facilitate the efforts of the government of Burundi and the Organisation of African Unity (OAU) in peacemaking. The findings of this report confirmed those of the non-governmental organisation's (NGO) report and complemented policy recommendations towards reconciliation. The problem of land reform, linked to the return of refugees who found their lands occupied during their exile, was mentioned as an obstacle to reconciliation.

The Kalomoh Report, 1995: This UN report was produced by a UN mission, consisting of five internationally respected lawyers led by the UN Assistant Secretary-General Tuliameni Kalomoh. Its mandate was to:

- 1) Define the modalities and options for establishing an International Commission of Investigation and discuss possible approaches to reconcile the demands of truth, reconciliation and that of justice;

8 G. Nduwayo. *Les Dilemmes de la Justice Transitionnelle au Burundi* [The dilemma of transitional justice in Burundi] (unpublished report), p.35.

- 2) Assess the added value of an international commission of investigation;
- 3) Define the distribution of responsibilities and powers between the TRC and the commission of investigation, especially their respective responsibilities with respect to investigations and the question of amnesty; and
- 4) Consider the temporal jurisdiction of the commission, assess its working conditions (security, financial, logistical and human) and clarify expectations on the practical application of the findings of the investigation including criminal prosecutions. In its conclusions, the commission says for the first time that *'evidence available is sufficient to establish that genocide had been committed in Burundi against the Tutsi minority on October 21, 1993 and following days to the orders and with the participation of some Hutu Frodebu activists and officials including those at municipal level'*.<sup>9</sup> Moreover, the report denounces the reprisals that followed and which resulted in several deaths of the Hutu population. It notes that *'Burundian army and police members and Tutsi civilians committed an indiscriminate slaughter of Hutu men, women and children ... The Hutu military authorities at all levels of the hierarchy did no effort to prevent, stop, punish such acts or investigate the matter'*.<sup>10</sup>

Peace and Reconciliation Agreement for Burundi: Protocol II of the Agreement addresses issues of peace and safety and the causes, manifestations and the main vectors of violence and insecurity. Among the causes of violence, it cites: the impunity of perpetrators of political crimes and violations of human rights, the ideology of genocide and exclusion. Through this protocol, the 19 negotiating parties acknowledge that *'acts of genocide, war crimes and other crimes against humanity have been committed since its independence against the ethnic Hutu and Tutsi in Burundi'*.<sup>11</sup> Under this same protocol, negotiators recognised the guidelines of transitional justice, namely: criminal investigations, truth-seeking, reparation and rehabilitation, and institutional reforms.

As a result of the delays created by the Burundian government in pursuing the mandated transitional justice processes, doubt exists as to whether national consultations will meet the expectations of the population in general and women in particular. During a series of outreach initiatives by women's organisations, as well as during the focus groups held as part of this study, there was widespread confusion expressed about the proposed transitional justice initiatives, even among educated women. This confusion stems from Burundi's current fragile peace, the massive nature of the crimes and sheer number of victims, perceived legal obstacles as well as total distrust of the legal system by the majority of the population. This is exacerbated by the fact that many women see little prospect for transitional justice led by the government to change their current circumstances in any real way.

Burundian human rights organisations, women's organisations, youth organisations, trade unions and representatives of the traditional justice process – the *bashingantahe* – have all been engaged in preparatory processes for the national consultations. Activities included the dissemination of information about transitional justice to communities in order that they become more involved in understanding the various models proposed for Burundi. Women's organisations such as *Dushirehamwe* (Let's Reconcile) organised community meetings with women victims and collated some of the concerns in advocacy documents. They also hosted training focused on topics such as how consultations should address issues of rape and other forms of sexual violence.

Nonetheless, civil society has identified some major challenges to the realisation of Burundi's proposed transitional justice mechanisms.

- 1) The current government and leaders of the previous regimes are reluctant to establish effective transitional justice mechanisms as it may implicate them or many of their supporters.
- 2) Presidential and parliamentary elections in 2010 may prevent the realisation of truth-seeking processes due to the complicity of many candidates in the conflicts.

9 UN Security Council, S/2005/158, March 2005.

10 UN Security Council, S/2005/158, March 2005.

11 Accord d'Arusha, Protocole I Chapitre 5, Article 3.

- 3) The independence of the truth commission and a special tribunal may be compromised due to their dependence on Burundian law and the absence of an independent body to implement their mandates.
- 4) Reports such as the Kalomoh Report were received differently by Burundi's population. For example, many felt the Kalomoh Report was biased due to its focus on specific atrocities, particularly those committed in 1993, while largely ignoring other events such as the massacres of 1972. Among many survivors and victims, there was a perception that politicians had betrayed them by using the Kalomoh Report as the basis for establishing mechanisms to target perpetrators.
- 5) The jurisdiction relating to prosecution in Burundi is controversial with some arguing it is reflective of ethnic bias since it focuses on specific human rights violations while overlooking others.
- 6) The mixed composition of both local and international actors is both an advantage and a challenge: while there is some concern regarding international interference, there is also concern about domestic bias.
- 7) Both truth-seeking and prosecutions processes that are in accordance with international standards will require a substantial budget.
- 8) The issue of addressing human rights violations remains sensitive and many women fear reprisal if they reveal their experiences.
- 9) The length of time it has taken to implement these processes has further entrenched a culture of impunity for violent crimes and in particular sexual-based crimes.
- 10) The protection of witnesses is of extreme concern in a country where assassinations, rapes and other heinous crimes are rife.

#### Box 4. Steps by Government and the UN to Set up Mechanisms for Transitional Justice

- Aug 2000:** Protocol II of the Arusha Peace and Reconciliation Agreement provides for the establishment of two mechanisms: an International Commission of Judicial Investigations on crimes of genocide, war crimes and other crimes against humanity; and a National Truth and Reconciliation Commission (NTRC) and the creation of an International Court.
- May 2004:** At the request of the government of Burundi, a UN assessment mission led by Ambassador Kalomoh visited Burundi and produced a report in 2005 which suggests dual mechanisms: a truth commission and a judicial mechanism of accountability, through a special chamber.
- Dec 2004:** The government of Burundi signed a decree-law No. 1/018 on the mission, composition, organisation and operation of the TRC. This law was widely criticised by civil society.
- June 2005:** The UN Security Council adopted Resolution 1606 which reaffirmed *the need to uncover the truth, investigate crimes, identify and prosecute those who bear the greatest responsibilities for genocide, crimes against humanity and war crimes since Burundi's independence.*
- Oct 2005:** The government of Burundi established a committee to negotiate with the UN and to reach a conclusion on the TRC and a Special Chamber (SC).
- Feb 2006:** The government drafted a secret memorandum on the TRC and SC. The memorandum proposes the replacement of the SC by a Special Court.
- March 2007:** Negotiations reached a consensus on the need to hold broad and inclusive national consultations prior to the establishment of transitional justice mechanisms.

- March 2007:** The High Commissioner for Human Rights Louise Arbour's visit to Burundi precipitated the end of the deadlock in communications and allowed for the establishment of the Tripartite Steering Committee. The mandate and mission of this committee included '*the organisation and conduct of national consultations prior to the establishment of mechanisms for transitional justice in Burundi*'.<sup>12</sup>
- Nov 2007:** Official launch of the Tripartite Steering Committee.
- April 2009:** Women's organisations in Burundi prepare an advocacy paper regarding the need to take into account the expectations and concerns of women during national consultations.
- July 2009:** National consultations began with equal participation of men and women among participants and facilitators.

## TRUTH-SEEKING

The high levels of violence since Burundi's independence in 1962 have led to calls for clarity over the contested truth of the country's past. According to analysts Rene Lemarchand and Peter Martin (1974), some 3.5 percent of Burundi's Hutu population was massacred in 1972 by the Tutsi army.<sup>13</sup> Some have suggested that many of the victims of the violence in 1972 became the perpetrators in 1993 when Tutsis were killed by the Hutu population. Both of these events were described as genocide in the 2002 report of International Commission of Inquiry for Burundi prepared for the UN Security Council. Appeals for truth-seeking were entrenched in the Peace and Reconciliation Agreement in Burundi in 2000. At the time, Burundian political actors requested that the international community, particularly the UN, help shed light on events during the conflict, in order to establish responsibilities and prosecute perpetrators.

As in many countries emerging from violent conflict, Burundi faces the challenge of pursuing accountability in the face of an overwhelming array of human rights violations, compounded by a defunct judicial system. As such, a truth-seeking mechanism may provide some form of acknowledgement for the victims of widespread violations, particularly those subject to gender-based violations. In the course of this study, those women interviewed, primarily those living in IDPs camps and some returnees, are concerned that ultimately there will be no judicial process to address crimes they have experienced. The majority have called for processes that promote reconciliation instead of legal accountability, but this largely stems from fear of reprisals against themselves or other victims. As a number of victims noted during interviews 'only the poor will be reformed or prosecuted' and 'the truth about crimes committed in Burundi will only be known when the authorities of yesterday and of today are arrested'.<sup>14</sup>

It was noted during interviews that, given the scope of human rights violations, the *bashingantahe* could contribute to any truth-seeking processes through gathering testimonies, identifying suspects and locating mass graves. The *bashingantahe*, a traditional justice process similar to the *gacacas* in Rwanda, have historically mediated disputes among neighbours, families and other community members in Burundi. This mechanism has revealed its transformative potential due to the role it played during Burundi's conflicts. While traditionally women were not part of the *bashingantahe*, quotas were established according to a charter adopted in 2002 to ensure women make up 33 per cent of management committees. Displaced women and returnees interviewed and nationals of Ruyigi and Kayanza municipalities identified the *bashingantahe* as a process that could be critical to ensure effective peacebuilding.

<sup>12</sup> Framework agreement between the government of Burundi and the UN, point 8.

<sup>13</sup> R. Lemarchand (1974). *Selective genocide in Burundi*. Minority Rights Group Report, 20.

<sup>14</sup> Women focus group from Bujumbura Rural.

## PROSECUTIONS

Legal proceedings are critical to Burundi's transition since many believe that pursuing truth-seeking alone will not be sufficient to address the past. However, survivors of sexual violence rarely pursue convictions domestically due to a range of impediments over reporting as well as inadequate judicial services. Sexual-based crimes are rarely treated with the severity they deserve and those convicted of petty theft are often given longer prison sentences than those convicted of rape. This is compounded by the fact that crimes of sexual violence are often addressed through an exchange of livestock or cash between the perpetrator and the victim's family. In the context of the mass gender-based violations committed during the conflicts, survivors of rape and other sexual assaults are trying to seek justice many years after the violations were committed. This means that not only is evidence difficult to produce due to the lack of documentation, but also the situation is compounded by victims' lack of faith in judicial processes. According to a 2008 survey on transitional justice, less than 24 percent of respondents said that they completely trusted the national judiciary to deliver justice, while 28 percent stated that they distrusted it completely.<sup>15</sup> Focus groups in Ruyigi, Bujumbura Rural and Bubanza provinces called for the complete reform of the judicial system. Fear also exists over the risk of retribution and there are calls for protective measures to be taken to avoid the risk of further violence. This can be achieved through a variety of measures, such as in-camera hearings which could ensure that women do not have to choose between justice and personal security.

Those interviewed in the Central and East provinces (Kayanza and Karusi) as well as those of the South and West provinces (Bururi and Bubanza) expressed difficulty in talking about what happened to them during the conflict. They were not only affected by the violence, but they have also since been intimidated by perpetrators in their communities. Discussions during this study revealed two competing views about the transitional justice process: those who call for forgiveness, the primary philosophy promoted by the authorities, and those who insist on prosecutions for perpetrators despite fears over reprisal for witnesses. Among this second category, some women living in IDPs camps near urban centres say that they are willing to both speak out and name the perpetrators. According to one respondent, 'we have lost so much, there's no fear of what may happen after telling the truth'.<sup>16</sup>

Nonetheless, there are undoubtedly challenges to pursuing prosecutions. First, despite a number of arrests in the aftermath of the conflict, the majority of perpetrators have been released without trial through decrees by the president in 2006 and 2009 who awarded "provisional immunity" to those accused of "political crimes". This resulted in the release of over 3000 prisoners.<sup>17</sup> Considerable concern has been expressed regarding the release of perpetrators of serious crimes such as rape back into the community. Moreover, the majority of those released were "foot-soldiers", while the leaders of various factions have enjoyed immunity. This situation has been compounded by the fact that many government officials have publicly expressed support for amnesty for crimes, including those of genocide, war crimes and crimes against humanity, despite the fact that the Arusha Agreement explicitly prohibits the granting of amnesty for these crimes.

Second, there may be unrealistic expectations from the victims as to the possible scope of prosecution. While victims' organisations have engaged in awareness campaigns as well as preparing to lodge complaints on behalf of women who have been raped, traumatised or suffered other sexual violence but who are unwilling to talk publicly, there are a number of impediments to pursuing these cases. Nonetheless, in light of the serious violations of women's rights and the fact that UNSCR 1325 on Women Peace and Security emphasises in Article 11 that 'all forms of sexual and other violence against women and girls should be excluded from amnesty', any future prosecution process should allow no immunity for sexual-based violations.

## SECURITY SECTOR REFORM

As a result of the widespread human rights abuses perpetrated by Burundi's security forces, reforming this sector was a priority for effective peacebuilding. Through various peace agreements and laws, a complex

<sup>15</sup> 'Search for common ground, ready to talk about the past'. Available at <http://www.communicatingjustice.org/en/surveys/burundi>.

<sup>16</sup> Interview with woman from Rumonge (Bururi).

<sup>17</sup> Ministry of Justice Report, May 2005.

framework has been constructed to bring about reforms. While women were traditionally excluded from the security structures, in 1997 President Pierre Buyoya established military service for women which was to have a profound impact on Burundian culture. A series of laws were passed in 2004 which both created a new police force and reformed the military through, among other measures, excluding those responsible for war crimes, crimes against humanity and torture. This was reinforced by the 2005 constitution which created a quota system for positions within the defence and security forces in order to create more balance with regards to ethnicity and gender. Following the ceasefire with the CNDD-FDD in 2003, all military institutions were integrated. However, harmonisation of military grades has been a lengthy process and women's low status within the army has been a source of contention.

The Arusha Agreement identified the need to implement a comprehensive DDR process but this has been widely criticised for failing to address the multiple roles of women during the conflict. As noted earlier, female combatants were a feature in all the rebel groups, although the extent was not reflected in the DDR process. Many female ex-combatants have had problems reintegrating due to the stigma associated with sexual slavery, while others were rejected due to returning with children of rape. Many also criticise the insecurity created by the reintegration of perpetrators into their communities.

Reforms to Burundi's SSR have encountered a number of structural problems and political barriers which have impeded their implementation. Beyond the politics of integration, additional challenges have centred on how to change the culture of these organisations to ensure greater implementation of the rule of law. For example, considerable concern exists as to the prevailing attitudes of the police to gender-based violence and implementing women's rights.

## REPARATIONS

Reparations can fulfil a number of practical and symbolic purposes of acknowledging the harm inflicted upon victims through restitution, compensation and memorialisation. They also have a transformative potential to rebuild women's lives by addressing some of the gender inequalities in existence prior to the conflict. In Burundi's context, where the majority of perpetrators remain unaccountable for their crimes, reparations may be the only form of justice that victims receive. Reparations could also provide redress for women who may not want to become involved in any truth-seeking or legal initiatives due to the stigma associated with gender-based violations.

Funding of practical reparations, such as the provision of care for the physical and mental health of victims and educational support to tertiary level for orphans, are of greatest value. Women interviewed noted the need to ensure reparations for those families caring for children born of rape, forced pregnancy and forced prostitution; to ensure compensation for women for the destruction of family property; as well as providing mechanisms to tackle the feminisation of poverty as a result of the conflict. Following the repeated crises in Burundi, victims are calling for a comprehensive reparations programme that identifies victims and the type of violations experienced in order to recognise the diverse gender-specific needs of victims. The government has argued that some form of collective reparations are currently underway through the construction of schools and hospitals; however, no measures have focused on the abuses suffered by women, who remain in need of psycho-social support.

In Burundi, monuments commemorating key sites of Burundi's conflict have already been erected at a variety of locations. For example, in Gitega, on the site where up to 75 Tutsi high school students were abducted from school, locked in a gas station and burnt alive in 1993, a genocide memorial has been erected. For some women, these types of memorials are valued places of mourning and healing, but for others they hold little worth. These differences stem from the lack of information about the rationale for these memorials, and questions have arisen due to their ethnic undertones. Nonetheless, there are many views as to the types of monuments that need to be built in order to satisfy the victims and survivors of the conflict and women's organisations need to be consulted.

## CONCLUSION

Burundi's numerous conflicts have resulted in gross human rights violations which have had a profound impact on women. Nonetheless, concerns abound over the reality of holding perpetrators to account. Key issues that need to be addressed include the following:

- 1) While the UN has focused on consultation with the government to adopt transitional justice strategies, the government has not prepared the population adequately for these envisaged mechanisms;
- 2) The proposed transitional justice mechanisms are poorly understood by women due to inadequate outreach campaigns;
- 3) Women do not believe prosecutions for the violations committed against them are possible because they believe the system is corrupt and will never address those most responsible for organising these crimes; and
- 4) Women's organisations need to be involved to ensure the successful work of any truth-seeking and prosecution strategies. More outreach efforts need to ensure women are effectively involved.

### TRUTH-SEEKING

Burundian women demand that priority is given to gathering testimonies from victims of sexual and gender-based crimes and that initiatives be put in place to reveal the truth about the root causes of the violations against women. Outreach is needed to reach all vulnerable sectors of the population – youth, returnees, IDPs and demobilised persons – in order to recognise the multiple ways people were affected by the conflict. Emphasis is needed to involve women's organisations in the conceptualisation, implementation and evaluation of truth-seeking initiatives.

### PROSECUTIONS

Burundian women not only recognise that it is not possible to prosecute all criminals, but also that post-conflict governments rarely have the resources to bring all perpetrators of serious violations of human rights to justice. Nonetheless, Burundi's transitional justice processes must not allow impunity for sexual-based violations.

### SECURITY SECTOR REFORM

Many women claim to be unaware of reforms in the army and police and decry the fact that they still had to live with demobilised people who continue to terrorise and rape in the community. They suggest further reforms so that women's needs are better met including reform of the legal system to ensure more sensitivity to gender-based crimes.

### REPARATIONS

Funding of practical reparations, such as the provision of care for the physical and mental health of victims and educational support to tertiary level for orphans, would be of greatest value. Women interviewed noted the need to ensure reparations for those families caring for children born of rape, forced pregnancy and forced prostitution; to ensure compensation for women for the destruction of family property; as well as providing mechanisms to tackle the feminisation of poverty as a result of the conflict.

## RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY

### **Financially support the government of Burundi to ensure the following:**

- The report from the national consultations is widely disseminated so that the whole population is aware of its content.
- As a priority, women suffering from trauma stemming from sexual violence receive special attention. Psycho-social mechanisms must be implemented for women victims.
- Discussions are facilitated around transitional justice in order to allow all voices to be heard over the priorities of Burundians on strategies to promote and accountability.
- There must be no impunity for those responsible for sexual-based crimes.
- Any future mechanism must ensure the protection of victims and witnesses in order to encourage women to testify without fear of reprisal.
- A truth commission and special court must be provided with sufficient training and resources in order to address the severe violations perpetrated against women and children during the conflicts.
- Considering the lack of local resources, any programme for reparations needs to adequately take into account gender needs.
- Documentation is needed to chart the extent of SGBV during the conflict in Burundi.
- An analysis is needed of both Burundi's previous DDR programmes and amnesties to gauge the lessons learnt.

### **Financially support local NGOs to ensure the following:**

Support is provided for community and victims' groups to ensure appropriate forms of memorialisation which encourage the healing of memories and reconciliation through a healthy dialogue about the past.

Roundtable discussions are held with women's organisations regarding transitional justice and relevant comparative experiences.

## APPENDIX

Methodology	Number of people
<b>1) Focus groups</b>	
Bubanza Province: Mpanda and Rugazi municipalities	16 women and 10 men
Buja Rural Province: Mubimbi and Kanyosha rural municipalities	25 women and 5 men
Kayanza Province: Rango and Muruta municipalities	15 women and 10 men
Bururi Province: Buyengero and Rumonge municipalities	20 women and 6 men
Karusi Province: Gihogazi and Mutumba municipalities	24 women and 5 men
Ruyigi Province: Butaganzwa and Ruyigi municipalities	25 women and 5 men
Rutana Province: Bukemba and Giharo municipalities	26 women and 3 men
Bujumbura Mairie: Kinaùma and Cibitoke municipalities; Musaga and Kanyosha	52 men and 8 women
<b>2) Individual interview of organisations' leaders</b>	
Réseau Femme et Paix (Women and Peace Network)	The Vice President
Association pour la défense des Droits des Femmes (Association for the Women's Rights Defense)	The President and one victim
AC Génocide Cirimoso (Action against Genocide)	The Legal Delegate
AFRABU	Legal delegate
SERUKA Center	Coordinator
Association des Femmes Juristes	The President
Commission Justice et Paix (Justice and Peace Commission)	The General Secretary
INTAHE Foundation	Legal delegate
League ITEKA	Leader of the project "Fight against GBV"
CEDAC	The Legal Delegate
CENAP	The Program Officer
Child Protection Unit (police)	The Director
Mother's Union	The Coordinator
Office of the High Commissioner for Human Rights	The Gender Coordinator
Gender Commission of the General Assembly	The Commission President

## INITIATIVE FOR PEACEBUILDING

c/o International Alert  
205 Rue Belliard, B-1040 Brussels Tel: +32 (0) 2 234 5792 Fax: +32 (0) 2 234 5799  
ifp@international-alert.org www.initiativeforpeacebuilding.eu



THIS INITIATIVE IS FUNDED  
BY THE EUROPEAN UNION

## PARTNERS



International Alert.

