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Panel 43: Contested truths in Africa: facing power, transitional justice, and memory politics

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Knowing the truth – *pour en faire quoi?* The contested politics of transitional justice in Burundi

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Introduction

In the 1990s and early 2000s Burundi experienced a deadly civil war which was preceded by various cycles of violence since the country's independence. As a measure to fight impunity and to break these vicious cycles of violence and revenge killings, the Arusha Peace and Reconciliation Agreement foresees a series of transitional justice mechanisms. However, until today, neither a truth and reconciliation commission nor a special penal tribunal has been established.

Transitional justice has become a prominent element in liberal peacebuilding. It aims to promote social and political integration and reconciliation, to enhance the rule of law, to fight impunity and to increase trust in government institutions. This normative model is mainly based on humanitarian law, international criminal law and human rights law. However, transitional justice is not a value-neutral process, but instead a political process through which historical 'facts' and 'truths' are produced. Thereby it is open to negotiations and contestation because, on the one hand, it touches on fundamental interests of politicians, especially those who have been implicated either directly or through the parties' armed wings in the civil war. On the other hand, transitional justice may be contested because the politicians' understandings of the basic concepts of transitional justice, such as justice, reconciliation and truth, do not fit with international transitional justice norms or the liberal peacebuilding model. Through the contestation and negotiations of the dealing with the past process political actors may try to depict certain 'pasts' which are favourable for them and their political claims.

In Burundi, transitional justice is a widely contested issue among political parties and politicians. As one party president[1] sums it up: "la question est suffisamment complexe, c'est une question très délicate". There is no consensus for the normative transitional justice model propagated by liberal peacebuilding and international donors. It is true that most of the political actors in Burundi have been implicated in the violent past and a transitional justice process would certainly touch their interests. But behind this 'lack of political will' for the normative model are also divergent conceptions and understandings of justice, reconciliation, truth and even transitional justice.

This paper, which is based on extensive empirical field work for a PhD thesis in Burundi, shows that in addition to fundamental power interests such divergent conceptions lie at the ground of the contested transitional justice process. After some methodological remarks, it starts with a short introduction on the Burundian context and some structural reasons for the deadlock of transitional justice. Then the paper looks at different positions and conceptions of four main political parties concerning transitional justice. Political parties do not only disagree about transitional justice mechanisms and their mandate, but also have divergent understandings of justice, reconciliation as well as truth. Moreover, an important question is also what does one 'do' with the truth. As an interview partner asks, knowing the truth "pour en faire quoi? C'est une vérité qui sera orienté comment et qui sera exploité comment ?"[2]. This implies a variety of questions. Should the truth be known in order to prosecute alleged perpetrators, to rewrite a certain version of history or to gain legitimacy and votes during elections? Political actors, by appropriating the normative concept of transitional justice, may use it as an instrument for partisan interests. The conclusion of the paper puts those different conceptions by the political parties in the wider context of the discussion of the contestation of transitional justice.

[1] Radio show, La Benevolencija, January 22, 2011.
[2] Interview, Bujumbura, summer 2010, BUJ-II-a-6.

Methodological remarks

The empirical part of the paper is mainly based on interviews with representatives of the main political parties in Burundi. It is clear that political parties are not unitary actors and the opinions and positions expressed during the interviews may not reflect the official stance of the party, as most of them do not have an explicitly formulated position regarding transitional justice. Therefore, I triangulated the information with various kinds of additional data such as official documents, press releases, radio and television shows, or public speeches and campaigning events. Some of the data is in the national language, Kirundi. The challenge, as raised by Ficklin and Jones (2009), is to render meaning accurately through translations. Thus, translated quotes are re-created rather as summaries than direct quotes.

The interviewed persons were either the presidents, vice presidents, secretaries general or the speakers of those parties. Due to the tense political context during and after the elections in 2010, it was not possible to interview the presidents of all major political parties as some of them had left the country. In one case, no interview could take place, as the interview partner was arrested and only four weeks later released. Moreover, some refused to talk to me citing that the issue of transitional justice "est une question delicate et difficile"[3]. This is confirmed by several radio stations which tried to organise discussion rounds on the subject in the run-up to the elections. Those reactions indicate that transitional justice is much contested among politicians and political parties.

All interviews with politicians were conducted in French, as French is Burundi's second official language and they are used to expressing themselves in this language. However, due to my accent in French, I was not perceived to be a citizen of Belgium, the former colonial power in Burundi. As a Swiss, I was perceived to come from 'a neutral and the most peaceful country in the world'. Nevertheless, some informants were hesitant in the beginning of the interview, because they thought that as a white woman I am part of the 'international community'. The 'international community' in Burundi is strongly advocating a transitional justice solution with a special tribunal, thus with a retributive element, which does not correspond to the stance of some political parties. In addition, some interview partners deduced from my interest in transitional justice, that I would be a lawyer lobbying for international norms. This is probably due to the perception that they consider 'doing research' as a matter of advocating for transitional justice and accusation of human rights violations, as for example it is with the activities of Human Rights Watch or International Crisis Group in Burundi. However, with the explanation that I am political scientist, with a strong interest in politics and the reality on the ground, they were very willing to talk to me and to explain to me their own as well as their parties' position.

Burundi's transitional justice process

Burundi experienced several cycles of violence. In 1965 the unsuccessful coup to overthrow the monarchy by a group of Hutu officers and the assassination of the then Hutu Prime Minister by a Tutsi gunman sparked ethnic hostilities. In late April 1972 a Hutu-led insurrection caused by the more or less systematic exclusion of Hutu from the institutions of government triggered a violent response by the Burundian army and led to the killing and disappearance of many Hutu intellectuals. In August 1988, in an outburst of violence, around 20'000 Hutu were killed by the army. After democratisation efforts at the beginning of the

[3] Request by phone for an interview, Bujumbura, 2010.

1990s, a civil war broke out in 1993 with the assassination of the first democratically elected president Melchior Ndadaye.

In August 2000, Burundian political parties signed the Arusha Peace and Reconciliation Agreement which resulted from two years of negotiations. However, in general armed groups were deliberately excluded from the negotiations and therefore the agreement did not stop violent hostilities. The Arusha accords include provisions on transitional justice. As a mechanism for national reconciliation a Truth and Reconciliation Commission (TRC) should shed light on the truth about grave violence, promote reconciliation and forgiveness, and clarify the entire history of Burundi (art. 8, Protocol 1, chap. 2). Moreover, a national monument and a national day remembering all victims of genocide, war crimes and other crimes against humanity should be erected and instituted. Finally, an International Judicial Commission of Inquiry (IJCI) should investigate and establish the facts relating to genocide, war crimes and crimes against humanity. Based on its findings of the existence of such acts, an international criminal tribunal should try and punish those who are responsible (Arusha agreement, art. 6, protocol 1, chap. 2). Both transitional justice mechanisms – the TRC and the IJCI – should be established during the transitional period following the signing of the Arusha agreement (art. 18, protocol II, chap. 2). Their objective is to fight impunity and break the cycle of violence.

However, during the transitional period (2001 – 2005) neither the TRC nor the IJCI was established. In December 2004, the transitional parliament passed a law on the mission, composition, organisation and functioning of a National Truth and Reconciliation Commission (loi 1/018 du 27/12/2004), but this law was abandoned. Pursuant to the Arusha agreement, the transitional government requested the UN Security Council to establish the IJCI. The latter reacted to the request by sending an international assessment mission to evaluate the advisability and the feasibility of the IJCI. The resulting so-called Kalomoh report (2005) called for a reconsideration of the Arusha formula (TRC, IJCI and the international special tribunal) by proposing a twin transitional justice mechanism consisting of a TRC and a special chamber in the court system of Burundi to try those responsible for acts of genocide, war crimes and crimes against humanity. Although formally the report proposed a special chamber, the Burundian actors, such as civil society organisations as well as political parties, use the term 'tribunal spécial pénal' (TPS) to designate the special chamber. Therefore, I will use this notion to refer to the judicial mechanism.

Following the endorsement of the Kalomoh report in Resolution 1606, the UN Secretary General called for a start to negotiations with the Burundian government concerning the implementation of the report's recommendations. Two rounds of such negotiations took place in March 2006 and March 2007, respectively. The main issues of disaccord were the question of amnesty for war crimes, crimes against humanity and genocide; the independence of the special tribunal's prosecutor and the interrelationship between the TRC and the TPS. In May 2007, as the lowest common dominator, the UN and the Burundian government agreed to hold popular consultations on the establishment of the transitional justice mechanisms. Between June and December 2009, a representative sample of all different Burundians societal sectors could express themselves on the modalities and composition of the TRC and the TS, and on the issues of reparations, institutional reforms as well as on the period of investigation and reconciliation. However, the pending issues of the formal negotiations between the Burundian government and the United Nations as well as on the opportunity of one or the other transitional justice mechanisms (TRC and TS) have been deliberately excluded. In this regard the consultations have only a minor role in the construction of 'the truth'. Since the publication of the final report in December 2010, which recommends taking

up negotiations between the government and the UN to finalise an accord on the pending issues, the transitional justice dossier is again put on hold.

Transitional justice impasse

To summarize, except from the national consultations, there has been no progress in the transitional justice process since the signing of the Arusha Peace and Reconciliation agreement in 2000. This delay in implementing the transitional justice mechanisms might be due to several structural reasons. First, the Arusha agreement did not end hostilities as armed rebel groups, namely the CNDD-FDD and the FNL-Palipehutu, have been excluded from the negotiations. During the transitional period the government did not consider transitional justice as a priority rather its preoccupation was ending the violent hostilities, integrating the rebels into the state structures and preparing the elections and the new constitution. As a former vice-president[4] (1998-2001) states:

"Il y avait des grands mouvements encore en guerre, c'était le CNDD-FDD et c'était le FNL. Alors le premier chantier du gouvernement de transition était d'arrêter définitivement la guerre. C'est dans ce sens là, que ce gouvernement s'est attaché à rentrer tous les groupes armés et discuter sur comment plutôt entrer aux seins des corps défense et sécurité. […] Quand les groupes armés sont rentrés, leurs préoccupations ce n'était pas de parler de la vérité, c'est d'abord d'intégrer des structures gouvernementales, structures étatiques, pour qui sont en force".

Even after the transitional period and the elections in 2005 which brought to power the former rebel group CNDD-FDD and its leader Pierre Nkurunziza, the political climate was considered to be too unstable for a transitional justice process. "Pendant que le pays était encore en guerre contre le FNL, il était tout au moins impossible de se dire, on va mettre sur pied un mécanisme de commission vérité réconciliation, de justice transitionnelle" as a representative of the CNDD-FDD says[5]. Priority was given to the achievement of a peace agreement with the last remaining rebel group FNL-Palipehutu and their reintegration. In 2006 the Burundian government and the FNL-Palipehutu finally signed the Dar es Salaam "Agreement for the Attainment of lasting Peace, Security and Stability". However, it was not until December 2008 that the armed group transformed into a political party. During both periods – the transitional period and the first mandate of Pierre Nkurunziza – the Burundian government has given priority to ending hostilities and transitional justice has been considered as an obstacle or at least as a risk factor to achieve peace. This raises the question of sequencing and timing of transitional justice within the wider peacebuilding process. However, as the paper will show the transitional justice process might not only be blocked because of an unfortunate timing and sequencing, but also due to an inappropriate conceptualisation of transitional justice along the international normative discourse.

Secondly, with the first post-transition elections in 2005 a new power constellation emerged. In the 2005 elections the former rebel group CNDD-FDD gained 59 out of the 100 seats (58% of the vote) in the National Assembly and its leader Pierre Nkurunziza was elected President by the National Assembly. As an armed movement in the late 1990s, the CNDD-FDD was excluded from the negotiations in Arusha. Consequently, the party does not feel that it is bound by the Arusha Peace and Reconciliation agreement (c.f. The Economist 2011). This might also hold true for the transitional justice issue. Although the Global Ceasefire Agreement between the transitional government and the CNDD-FDD signed in 2003 did not challenge the provisions on transitional justice in the Arusha agreement, the CNDD-FDD did

[4] Interview,Bujumbura, summer 2010, BUJ-II-a-3-8.
[5] Radio show, La Benevolencija, January 22, 2011.

not insist too much on its application (Vandeginste 2008: 13) in its first mandate. From a rational point of view, this is understandable because as a former rebel group the party is not interested in having a judicial mechanism that punishes human rights violators (at least from their own ranks). Although the Arusha agreement (and later the Kalomoh report) foresees two mechanisms, the CNDD-FDD questioned in a memorandum in May 2007 the TPS: "Il est question ici de faire un choix entre la voie de la réconciliation nationale à travers la Commission Vérité et Réconciliation et la voie de la répression à travers un Tribunal Pénal Spécial. Une autre piste à explorer consiste à privilégier la voie de la réconciliation et à remettre au tribunal les litiges qui n'ont pas pu être vidés par la voie de la réconciliation". The long negotiations between the UN and the CNDD-FDD government (2006 and 2007) and the national consultations on the establishment of the transitional justice mechanisms can be seen as a delaying tactic. As a civil society representative[6] says: "Ces consultations ont commencé en Avril 2007 et aujourd'hui nous sommes en Juin 2010. Donc trois ans de consultations, je trouve que le processus de consultations a juste ralenti le processus de la justice transitionnelle. On a perdu encore trois ans sur le chemin vers la mise en place des mécanismes de justice transitionnelle."

Thirdly, the Kalomoh report which was released in the same year as the first post-transition elections took place altered the game of transitional justice in Burundi. The idea of the IJCI was abolished in order "to avoid the establishment and operation of two virtually identical commissions — a national truth and reconciliation commission and an international judicial commission" (Kalomoh report 2005). This proposition opened up questions about the relationship between the two other mechanisms (TRC and TPS), namely the independence of the special chamber from the TRC and the qualification of acts as genocide, crimes against humanity and war crimes. The IJCI would have the mandate to determine if those three international crimes have been committed in Burundi. Thus, the Kalomoh report opened up new opportunities for the political actors to negotiate the terms and conditions of transitional justice in Burundi.

As several transitional justice advocates and human rights organisations states, this deadlock in the process of transitional justice in Burundi would be due to the lack of political will. Human Rights Watch (2009) puts forward: "the government has shown little political will to hold accountable those alleged to have committed these crimes". Underlying this statement is the assumption that political actors do not want to deal with the past, as many of them have been implicated in past crimes and therefore would fear prosecution. Thus, there is no political will for dealing with the past according to a normative transitional justice model which promotes a rather adversarial, retributive mode of formal legal justice (Lambourne 2009). This conceptualization of transitional justice, of the TRC and the TPS is largely contested by Burundian political parties. However, they may have divergent understandings and conceptions of justice, reconciliation and truth, which leap into this 'lack of political will'. The next chapter will look at some theoretical underpinnings of the contestation of transitional justice.

[6] Interview, Bujumbura, summer 2010, BUJ-II-b-1.

Producing 'truths'

Most practitioners and advocates that propagate a normative transitional justice model confirm that political will is a precondition for a transitional justice process to take place (c.f. S/2004/616). Thereby it is assumed that the political actors contest transitional justice, as many of them might be responsible for past crimes. A transitional justice process, especially criminal prosecution, would touch on fundamental interests of political actors. For example they can loose their office position if, through a vetting process, it is discovered that they are responsible for human rights violations. Or, they may even risk long prison sentences if a special tribunal discovers their past crimes. Finally, they may loose credibility among their voters if a truth commission sheds light on their role during the conflict. Those arguments for a lack of political will for dealing with the past according to the international transitional justice norms all stem from a rational choice logic. Consequently actors who do not benefit from transitional justice or even may be harmed will not be in favour of such a process and try to block it or at least to influence it in their own favour. The intuitive assumption is that the more power actors hold, the more capable they are of shaping the transitional justice mechanisms in a way that serves their interests[7].

Various actors involving state authorities, political parties, civil society representatives or international organizations negotiate, shape and compete for the nature and direction of a transition, as "whoever can win the transition, can win the peace, and whoever can win the peace, can win the war" (Bell 2009: 25). Under the premise of 'never again', transitional justice is supposed to reform the system which allowed gross human rights violations and to design a legal and political system that prevents violent conflict. Such reforms may be contested either in terms of the intrinsic values of reasserting the rule of law or in terms of the broader political affirmation or denial of a certain constitutional or political past (Bell, Campbell, and Ni Aolain 2004: 7). Thus, transitional justice has the capacity to adjudicate the rights and wrongs of the conflict and more generally the 'truth' about the past. It assesses and judges individual guilt and social and institutional responsibilities. Such produced 'truths', 'facts', discourses and interpretations about the past are then translated into institutions and institutionalised norms, such as the rule of law or the new constitution. Consequently, transitional justice does not only affect the past but also affects the future. Historical lessons are framed in relation to the needs of the present (Leebaw 2008: 109). The past is framed in a way that it serves as a basis to construct the present political apparatus and the state. For example, in the Arusha negotiations the parties agreed that the conflict in Burundi was a political conflict with a strong ethnic dimension. This framing as a political conflict made a reform of the political system a valuable option. Moreover, the difficult question of identity transformation after a purely ethnic conflict has been avoided.

Law and institutionalised rules regulate our behaviour, shape our political relations, our language and even the way we think; thus they have the capacity to regulate violent behaviour and expose arbitrary state practices. In the transitional justice language, they fulfil the functions of the 'never again' or 'non-recurrence' premise (cf. Joinet 1997). At the same time, formalised norms and laws represent a way of conceptualising and articulating how we would like the social word to be (McEvoy 2007: 416). Thus, transitional justice is not a mere (value-) neutral process to deal with past human rights abuses, but it reflects certain social and normative values. As it is mainly in the field of politics in which we decide about the organisation of a society and how and which norms and perceptions will be depicted into legally binding institutions or regimes, transitional justice should be understood as an inherent

[7] On power constellations and different designs of transitional justice processes, see Sieff and Vinjamuri Wright (1999) or Rubli (2010).

political process. As a social engineering project, transitional justice reflects different perceptions and conceptions about justice, reconciliation or more generally about what the post-conflict society should look like.

To summarize, transitional justice might not only be contested because it touches on fundamental interests as assumed by a normative model, but because transitional justice is a process through which a certain social world is moulded. By producing certain 'truths' and depicting a particular version of the past it reflects certain perceptions of justice and reconciliation based on which a society and a state should be being rebuilt. Moreover, the produced 'truths' and discourses may be used to further certain partisan interests. The next section looks at different understandings of justice, truth and reconciliation of Burundian political parties and how they affect the parties' stance on transitional justice.

Different understandings of justice, reconciliation and truth

As mentioned earlier the actual formula of transitional justice – the TRC and the TPS – was mainly (with some amendments) decided upon in the Arusha Peace and Reconciliation Accord. These transitional justice provisions represent some sort of compromise between the negotiating parties. The main dividing lines during the negotiations were along ethnic lines; the Hutu and Tutsi dominated political parties grouped along the two blocks G7 and G10[8], respectively. FRODEBU and UPRONA were the biggest parties at that time, represented in the negotiations. As a mainly Hutu dominated party FRODEBU headed the G7 while UPRONA represented the pro Tutsi G10 block, although it claimed to be a party for all ethnic groups. However, as of today, there are new political parties which emerged for example in the run up of the 2005 and 2010 elections[9] and others lost political weight and influence. Moreover, rebel groups or armed wings of political parties transformed into proper political parties. The (CNDD-)FDD, the military wing of the CNDD and the (FNL-)PALIPEHUTU transformed into political parties in 2003 and 2008, respectively. With the democratisations attempts in the early 1990s and the following civil war, the number of political parties exploded in Burundi[10]. This paper only looks at the position of four of the most important parties, namely the FRODEBU and UPRONA as two parties representing the ethnic blocks during the Arusha Peace and Reconciliation agreement, and the CNDD-FDD and the FNL as representing two former armed rebel groups.

UPRONA

UPRONA (Union pour le progress national) was founded in 1961 and was the single party until - with the democratization efforts during the 1990s – other political parties were allowed. In 1993, the first multiparty elections took place. Although all Burundians were theoretically

[8] The G10 consisted of ten rather Tutsi dominated political parties: ABASA, ANADDE, AV-INTWARI, INKINZO, PARENA, PIT, PRP, PSD, UPRONA. The rather Hutu dominated G7 block included seven parties: CNDD, FRODEBU, FROLINA, PALIPEHUTU, PL, PP, RPB.

[9] For example MSD (Mouvement pour la solidarité et la démocratie) (2007) or UPD (Union pour la paix et le développement) (2000).

[10] There are around 45 officially registered political parties in Burundi. The history of the evolution of political parties is marked by many splits into different branches (e.g. UPRONA or CNDD-FDD), defection of important figures from one party to another (e.g. FRODEBU or CNDD) and the foundation of new parties by former members of others (e.g. CNDD, ADR). Most of the political parties are only small and do not have great influence, thus for my research I mainly look at the seven biggest political parties in 2010, namely CNDD-FDD, CNDD, UPRONA, FRODEBU, FNL, MSD and UPD.

members of the party, its leadership was mainly Tutsi dominated, not at least as Hutu has been systematically excluded from higher political and economic positions as well as education.

Over the question of whether to negotiate in Arusha, a small group which were against the negotiations broke away from the party into the faction of UPRONA-Mukasi led by Charles Mukasi. They denounced the negotiations saying they were "aimed at institutionalising genocide and destroying the Burundi nation" (IRIN 2000, July 28). This small, but rather extreme wing claimed publicly at several occasions that in 1993 a genocide has been carried out by the Hutu of FRODEBU and requested the establishment of the TPS (cf. communiqué 2009 and 2010). This wing represents an often evoked discourse by Tutsi political elites. It says that the majority of Hutu would like to physically eliminate the minority of the Tutsi and makes reference to the genocide in Rwanda in 1994. Such parties thereby seek to interpret the violent events in 1993 as a planned genocide against the Tutsi minority. Thereby they often refer to the report of an UN-led international commission of inquiry in 1996 which concluded that there had been genocide against the Tutsi in 1993 (S/1996/682, Art. 473)[11]. Consequently they seek measures to prevent such an extermination of the Tutsi for example by a constitutional ethnic quota set out in the Arusha agreement and the 2005 constitution[12]. Concerning the transitional justice mechanisms some parties of the G10 group firmly requested during the Arusha negotiations that the tribunal would be put in place before the elections in 2005, as they expected that Hutu politicians (especially those who joined rebel groups) were to fear criminal prosecution which would end their political career. Once sentenced or jailed, they would no longer be political competitors in elections for the pro Tutsi parties (Vandeginste 2007: 10). Thus, these political parties use the concept of transitional justice, especially the TPS, to strengthen their power and gain more political influence through elections by 'eliminating' political adversaries and competitors. Not surprisingly, the Mukasi wing of UPRONA reiterated in a memorandum in December 2009 its request to the UN Independent Expert on Human Rights in Burundi to establish the TPS before the 2010 elections.

Although the main UPRONA today does not evoke this Tutsi elimination discourse as prominently, it nevertheless strongly advocates for a tribunal.

"[…] plus important c'est de faire d'abord les enquêtes, il faut en fait catégoriser les crimes […] c'est-à-dire pour des crimes qui ont la ressemblance au génocide, crimes contre l'humanité, que ce soit pendant la guerre ou dans une période relativement paisible, il y a toujours des planifications qui sont quelque fois des commanditaires et aussi des exécutants innocents et des exécutants qui savent ce qu'ils font ici au Burundi. […] il faut catégoriser ça, et puis il faut la justice et après la justice on peut parler de la réconciliation parce qu'on ne peut pas donner le pardon forcément. […] Il faut d'abord punir l'individu suivant la catégorisation des crimes. Et puis on pourra parler de négociation, de réconciliation, de pardon. Il faut vraiment que la justice soit la première chose à appliquer parce que s'il y a quelqu'un qui a tué les gens et qui vient, demande pardon on lui dit, nous vous pardonnons. Est-ce que vous êtes vraiment sûrs qu'il ne va pas refaire parce que s'il sait que même s'il tue, il demandera pardon et il sera pardonné, rien n'empêche qu'il va refaire."[13]

This citation shows the position of UPRONA on transitional justice. The party wants to ensure punishment for those who have commanded the crimes and who are responsible for genocide and crimes against humanity. For UPRONA, punishment is a guarantee of non-recurrence, in contrast to forgiveness which may not prevent recurrence since someone who

[11] Although the report recommended that in international jurisdiction would be set up, the UN Security Council did not take any action in this regard (Human Rights Watch 2009: 88).
[12] The 2005 constitution, which takes up most provisions of the Arusha agreement, guarantees the Tutsi a 50 percent representation in all security forces and a 40 percent representation in the National Assembly.
[13] Interview, Bujumbura, summer 2010, BUJ-II-a-1.

asks for forgiveness might not be sincere[14]. In this sense, forgiveness is equalized with no punishment, thus, with amnesty for past crimes. In addition to the TPS, UPRONA considers the TRC and knowing the truth as necessary for reconciliation and for breaking the cycle of violence. "[…] la reconciliation, c'est en fait la connaissance, la découverte de la vérité pendant la période préscrite, que les Burundais seront enfin libérés contre ce traumatisme de criminalité et ce cycle de violence."[15].

To summarize, the party sees both mechanisms as complementary for reconciliation and breaking the cycle of violence. Thus, they are in favour of establishing both transitional mechanisms. However, the 'discovered truth' should not be used to simply advance forgiveness without any accountability.

FRODEBU

The second party which played an important role in negotiating transitional justice in Arusha was the mainly Hutu dominated FRODEBU (Front pour la démocratie au Burundi). It was founded in 1992 and won the first democratic elections in 1993. In line with the Arusha agreement they provided the vice-president and the president for the first and second half of the transitional government, respectively. Today the party has joined an alliance of opposition parties that claims that the 2010 elections were rigged. The Arusha agreement stipulates that the transitional justice provisions should be put in place during the transitional period. However, as a representative of FRODEBU states : "Il y avait des grands mouvements encore en guerre, c'était le CNDD-FDD et c'était le FNL. Alors le premier chantier du gouvernement de transition était d'arrêter définitivement la guerre"[16]. FRODEBU cites an argument that typically fits into the debate on peace versus justice. Justice would only be possible if there is peace and justice would hinder the achievement of peace. Whether this argument served as a pretext to not put in place the transitional justice mechanisms, especially the tribunal (since FRODEBU is accused of having committed crimes during the civil war) or not, it is difficult to judge.

Generally, FRODEBU is in favour of a truth and reconciliation commission in order to "remettre ensemble les différentes composants de la société, qu'il va falloir quand même savoir ce qui s'est passé. Les années 60s, 70s, les années 80s, 93, qu'est-ce qui s'est passé ? D'abord dans l'optique de savoir la vérité. Voilà, donc mettre en évidence la vérité à l'instar de l'Afrique du Sud"[17]. In contrast, the party supports the TPS only if it is 'necessary', thus if there have been crimes against humanity, war crimes and acts of genocide which then would be judged by the tribunal. As FRODEBU considers that with the Kalomoh report the TRC and the IJCI would have been "merged"[18], the TRC should establish and qualify the crimes that later the TPS would deal with.

According to a representative in a radio show in Kirundi, the task of the TRC would be to know the truth about the facts, about the crimes such as genocide, crimes against humanity, war crimes and political crimes. He adds that during war people would loose their goods, abandon their land, all this should be known in order to envisage a solution[19]. Thus, knowing

[14] Radio show, La Benevolencija, January 22, 2011.
[15] Radio show, La Benevolencija, January 22, 2011.
[16] Interview, Bujumbura, summer 2010, BUJ-II-a-8.
[17] Interview, Bujumbura, summer 2010, BUJ-II-a-3.
[18] Radio show, La Benevolencija, January 22, 2011.
[19] Radio show "Ukurui gutegura kazoza", Isanganiro, April 17, 2010.

this kind of truth should then allow for the qualification of the crimes which would have originally been the mandate of the IJCI: "[…] L'événement qui était derrière la commission d'enquête judiciaire internationale, pour juger les crimes, s'il s'agit des crimes qu'on peut oublier, qu'on peut pardonner, ou décrire impardonnable conformément à la juridiction internationale"[20]. Knowing the truth should allow the judging of which perpetrators will be prosecuted by the tribunal and which one is granted amnesty or forgiveness. Thereby the TRC would also execute legal tasks limiting the tribunal prosecutor's independence to carry out their own investigations. It would become quite a powerful body in producing and interpreting truths. Thus, the mandate of the TRC might be designed in a way that it serves particular political interests and the TRC might be staffed accordingly or as a representative of FRODEBU itself reflects in the current political context: "Maintenant je me pose une question, si l'UPRONA est accusé jusque là et que le CNDD-FDD a commis aussi des crimes, peut-être accusé jusque là, ils partagent le gouvernement, ne vont-ils pas imaginer une commission vérité réconciliation pour se protéger?"[21].

To sum up, FRODEBU is in favour of a TRC, but the TPS should only be set up if it has been established (by the TRC) that acts of genocide, crimes against humanity and war crimes have been committed. Thereby the truth plays an important role as it provides the basis for judging whether a crime should be prosecuted or forgiven.

CNDD-FDD

The CNDD-FDD (Conseil national pour la défense de la démocratie – Forces pour la défense de la démocratie) emerged as the armed wing of the party CNDD (among them many former FRODEBU members) which was founded in 1994. While the CNDD signed the Arusha agreement, the CNDD-FDD as an armed group was deliberately excluded from the negotiations by the then mediator Julius Nyerere, the former president of Tanzania (Sculier 2008: 23). The transitional government started negotiations with the CNDD-FDD which finally led to the signing of the Pretoria Protocol on Political Defense and Security Power Sharing in 2003. The movement transformed into a political party before the elections in 2005 and emerged victorious. During the first mandate and in the election campaigns of 2010 the CNDD-FDD and especially its leader Pierre Nkurunziza could (successfully) present themselves as the ones that brought peace and reconciliation to Burundi[22] although fighting with the FNL continued until April 2008. Moreover, the CNDD-FDD succeed in moulding an image as a national populist party which represents both ethnic groups although they claimed formerly fighting for the cause of the Hutu. This inclusive stance is also reflected in the CNDD-FDD's understanding of reconciliation. A representative of the party states that:

"Quand on a dit que la réconciliation est comme si ça commence à un moment pile, non, la réconciliation a commencé le jour où on a pu s'assoir ensemble pour négocier. La réconciliation a déjà commencé ce jour là. Et progressivement, chaque jour il y a quelque chose de nouveau qui s'y implante et qui se met en place progressivement, et les gens à travers de ce rapprochement progressive, progressivement on est arrivé jusqu'à conclure ces accords (referring to the Pretoria Protocol, annotation of the author).Voilà ça c'est une réconciliation qui est en cours."[23]

[20] Interview, Bujumbura, summer 2010, BUJ-II-a-3.
[21] Interview, Bujumbura, summer 2010, BUJ-II-a-3.
[22] Speech of Pierre Nkurunziza for the communal elections 2010, Bujumbura Mairie. Interview, Bujumbura, summer 2010, BUJ-II-a-6.
[23] Interview, Bujumbura, summer 2010, BUJ-II-a-6.

Thereby he was indicating with his hands a steadily rising linear process describing reconciliation. For the CNDD-FDD the reconciliation process between Hutu and Tutsi has already considerably progressed. Consequently, this understanding of reconciliation influences the party's position on transitional justice. Concerning the TRC, several representatives of the party as well as president Pierre Nkurunziza in his inauguration speech[24] reiterate that the TRC would be put in place during the legislature 2010-2015. The TRC may contribute to the reconciliation process: "D'abord, nous disons, au sein de CNDD-FDD, poussons d'avantage sur le pédale de la réconciliation, poussons donc sur le pédale de vérité réconciliation. C'est ainsi [que] nous nous sommes dit, que dans cette législature de cinq ans que nous venons de commencer, cette question vérité réconciliation sera mise en place, donc vidé"[25]. In contrast, the CNDD-FDD opposes the TPS that punishes as the party's members might be among the first who will be judged since they are accused of having committed crimes during the civil war in Burundi. However, this may not be the only reason; additionally, such a tribunal does not fit with the party's understanding of reconciliation.

"Et la réconciliation, il y en a, par exemple, au niveau de la société, il y en a qui disent, non, il faudrait, par exemple, mettre devant les tribunaux. Mais nous nous disons, déjà à notre étape où nous sommes, la population […] donc continue à se réconcilier davantage. Et à chaque jour on voit qu'il y a quelque chose de nouveau, quelque chose de bon. Alors, si on met le tribunal en devant, ça veut dire, en fait, qu'on va détruire ceux qu'on a déjà construits en matière de réconciliation puisqu'il y aura tout simplement des accusations, bon de dire quelqu'un a fait ça, quelque d'autre a fait ça "[26].

The CNDD-FDD judges that the reconciliation process in Burundi is already too advanced for a tribunal. Thus, as long as the justice promoted by the TPS would not further reconcile the Burundians[27], it would throw back the reconciliation process and reframe the conflict again in ethnic terms by opposing (Hutu) perpetrators to (Tutsi) victims[28]. Hence, the CNDD-FDD is only in favour of transitional justice mechanisms as long as the party considers that they would contribute to (their understanding of) reconciliation. This is also true for a truth commission.

"[Autre chose qu'il faut retenir], c'est l'objectif ultime de cette vérité. Une fois qu'on a cette vérité, qu'est-ce qu'on en fait. Si on dit la CVR, il est clair que nous cherchons la vérité en vue de la réconciliation. Donc, si c'était une vérité qui amène les Burundais à se rentrer là-dedans encore une fois, ça ne serait pas une vérité, ça ne serait pas utile pour le Burundi. C'est donc, cela qu'il faut qu'on sache la vérité, et que cette vérité soit utilisée à bonne escient, dans le sens qui amène les Burundais à se réconcilier"[29]. In addition "il est important que cette vérité soit utilisée dans le sens de réhabiliter certaines personnes qui sont accusées injustement. Mais aussi de connaître les criminels."[30]

To summarise, for the CNDD-FDD transitional justice mechanisms must contribute to reconciliation, otherwise they may not endorse such a process. The produced 'truth' then should also be used to further enhance the reconciliation process.

FNL

Burundi's so-called 'last rebel group', the Palipehutu-FNL movement was founded in the 1970s in Tanzania among Burundian refugees that fled the assassinations of Hutu, mainly

[24] Speech of Pierre Nkurunziza for his inauguration as the President of Burundi, September 2, 2010.
[25] Interview, Bujumbura, summer 2010, BUJ-II-a-6.
[26] Interview, Bujumbura, summer 2010, BUJ-II-a-6.
[27] Radio show, La Benevolencija, January 22, 2011.
[28] Interview, Bujumbura, Summer 2010, BUJ-II-a-6.
[29] Radio show, La Benevolencija, January 22, 2011.
[30] Radio show, La Benevolencija, January 22, 2011.

intellectuals, and revenge killings in 1972. For these events it claims a genocide against the Hutu. Its political wing, the Palipehutu, signed the Arusha agreement while its armed branch continued fighting until April 2008 despite the Dar es Salam Agreement signed in 2006. In order to be allowed to participate in the 2010 elections, the rebel group turned into a political party in December 2008 by abolishing Palipehutu in its name as such ethnic references are forbidden for political parties[31]. After the elections it joined the alliance of opposition parties that claims that the elections were rigged.

While the Pretoria Protocol with the CNDD-FDD did not alter the transitional justice provisions, the Dar es Salaam agreement with the FNL proposes some amendments concerning transitional justice issues. The most important one is the renaming of the TRC into Truth, Forgiveness and Reconciliation Commission. "Its mission shall be to establish the facts regarding the dark periods of our history and to identify the responsibility of the different individuals with a view to forgiveness and reconciliation among the Barundi" (art. 1). However, in Burundi this renaming seems not to be taken up by most actors as they continue referring to the TRC. Even the recent national consultations on establishing the transitional justice mechanisms officially used only the term 'truth and reconciliation commission' (cf. Comité de Pilotage Tripartite 2010). However, the notion of forgiveness is a central element in the FNL's understanding of transitional justice. The party strongly opposes the TPS that punishes perpetrators; instead it proposes that those who ordered the crimes should regret, remorse and ask the population for forgiveness[32]. In addition to the fact that its members are accused of having committed crimes, there might be three reasons underlying the rejection of a tribunal. The first one is a rather pragmatic one; the party considers that if everybody who has committed a wrongdoing in the past is accused then there would only be a very few innocents left[33]. Thus, there would be too many people to be judged by one tribunal and Burundi would be deserted except for the overcrowded prisons. Secondly, for the FNL some of the past crimes that should be dealt with are difficult to qualify as they concern the exclusion of one ethnic group to education, economic wealth and the state. "Et comme vous savez l'injustice n'a pas été seulement au niveau des biens, c'est aussi au niveau de l'école, imaginez-vous on était Hutu, […] le fait d'accéder à l'école ici au Burundi c'était très difficile"[34]. Thus, the FNL is convinced that the TPS would not address such past injustices. The FNL claimed to have fought for social justice (for the Hutu). Finally, the FNL does not trust the Burundian justice system as it considers it as biased and partisan. "[…] comme on disait que l'armée était monoethnique, tout comme la justice c'était monoethnique. Et parler de l'indépendance de la magistrature c'est un peu difficile"[35]. This perception of the Burundian justice system is also reflected in the party's understanding of transitional justice. As one of my interview partners states:

"[…] en fait dans notre organisation, ça serait abusive de parler de la justice transitionnelle. […] On transit vers où ? C'est un peu difficile pour nous, si c'est transitionnel, est-ce que c'est une justice intermédiaire ? Et que la justice elle-même va travailler après ? En fait, ce terme est un peu ambigu, le mot justice transitionnelle. Est-ce qu'il faudrait pour un passage, pour un contexte politique, qu'entre temps on stoppe de juger des gens pour les rejuger après ? […] Il faut rendre justice, non pas de façon transitoire, parce que ça veut dire, si vous faites une chose de façon transitoire, ça veut dire qu'il y a des choses que vous laissez en ne pas être jugé. […] Si vous dites justice transitionnelle ça veut dire que vous parlez d'une justice injuste. Ça veut dire vous appliquez la justice jusqu'à une dégrée et en attendant pour appliquer jusqu'à une autre dégrée. Et entre temps on ne sait pas

[31] The political wing of the Palipehutu-FNL already renamed itself earlier into the Party for the Liberation of People – Agakiza.
[32] Radio show "Ukurui gutegura kazoza", Isanganiro, April 17, 2010.
[33] Radio show "Ukurui gutegura kazoza", Isanganiro, April 17, 2010.
[34] Interview, Bujumbura, summer 2010, BUJ-II-a-4.
[35] Interview, Bujumbura, summer 2010, BUJ-II-a-4.

si ces gens là qui n'ont pas été condamnés parce qu'ils occupent des rangs importants s'ils n'auront pas développé des systèmes d'autodéfense […]"[36].

Hence, for the FNL transitional justice does not contribute to restoring the country's judicial system and rule of law, as the transitional justice literature suggests (e.g. Van Zyl 2005). According to the party this ambiguity on the period and degree of applying transitional justice can be used to develop measures to protect oneself from the pursuit of justice. With the term 'high placed persons' the interview partner is referring to members of the CNDD-FDD which are accused of having committed human rights violations, but have never been judged. In order to have at least the opportunity of a 'just' transitional justice system, the FNL proposes "on doit s'assoir et chercher la vérité d'abord"[37]. However, the party's understanding of truth is not a simple one in the sense of 'knowing what happened', but

"[…] il y a deux phénomènes, la réalité et la vérité. La vérité étant un processus qu'on ne peut jamais aboutir tandis que la réalité s'était faite […]. Ici on vous dit que quelqu'un est mort, non, non, vous allez peut-être à l'embouchure d'une rivière vous trouvez il y a des cadavres. Ça c'était un fait. […] Maintenant la vérité c'est quoi ? C'est un processus de savoir qui l'a tué, dans quelle circonstance. Et si vous trouvez quelqu'un, ce n'est pas déjà la vérité, vous devez aller jusqu'à savoir qui a motivé celui-là, qui l'a envoyé, quelles sont les armes utilisées, quelle était l'intention, vous pouvez mourir sans trouver la vérité."[38]

Thus, this kind of truth and knowing why a certain crime has been committed might morally and politically justify it.

In conclusion, the FNL advocates for a social justice and a reform of the 'biased' justice system in order to address the injustices of the past and the exclusion of Hutu. However, it seems that the party does not consider transitional justice, at least a tribunal, as the appropriate mechanisms for this.

Conclusion

This paper has looked at different understandings and conceptions of Burundian political parties of justice, reconciliation as well as truth and their relationship to the parties' stance on transitional justice. Only one out of the four parties is clearly in favour of the TPS. This might be due to the fact that UPRONA does not fear criminal prosecution of its members to the same degree as other parties. But, more probably, the party sees in the TPS an opportunity to get rid of long standing political adversaries and as measure to prevent the still ongoing fear of genocide. Moreover, in the UPRONA's understanding of reconciliation, forgiveness is insufficient and at least a minimum of judicial accountability is needed to reconcile Burundians. For the CNDD-FDD and the FNL it seems that their understanding of justice does not fit with the tribunal's conception of a punitive justice. While the CNDD-FDD prefers a justice that reconciles, the FNL advocates a social justice which should allow for correcting the past social injustices. Thus, the planned TPS in Burundi is not only contested because it may prosecute members and representatives of the political parties, but because it does not reflect or fit the parties' conceptions of a just justice.

Concerning the second planned transitional justice mechanism, none of the four political parties oppose the TRC as such. However, they differ about the task of the TRC or more generally about what kind of truth should be searched for and what should be done with the

[36] Interview, Bujumbura, summer 2010, BUJ-II-a-4.
[37] Interview, Bujumbura, summer 2010, BUJ-II-a-4.
[38] Interview, Bujumbura, summer 2010, BUJ-II-a-4.

truth which is produced. For the CNDD-FDD the TRC should produce a truth that would reconcile the Burundians, thus the truth should bridge the gaps between the former adversaries (between the two ethnic groups). In contrast, the FNL imagines a truth that acknowledges the exclusion of the Hutu as ethnic group prior to the 1990s and thus provides a justifiable explanation for the violent rebellion. By distinguishing between the reality (the violence and crimes) and the truth (the motives) the party tries to morally and politically justify the violence.

It is striking that almost all of the four political parties fear that the transitional justice mechanisms and 'the truth' will be negatively exploited. They fear the possibility that the truth produced by the TRC may hamper their own interests or even to contradict their political claims. In addition they dread that 'the truth' might be negatively used by other political actors. On the other side, this means that the version of the past which is constructed by a TRC will constitute an opportunity to legitimize other political claims and interests. Or as a representative of FRODEBU[39] states, the TRC may produce a truth that protects certain actors. For example, if the produced 'truth' posits that the killings of Tutsi in 1993 has been a genocide, this official narrative will give more legitimacy to the ethnic quota which gives the Tutsi minority a huge overrepresentation in political institutions compared to their share of the population. Thus, TRCs and more generally transitional justice mechanisms become instruments of political struggles.

This paper has shown that political parties contest the norm of transitional justice on the basis of divergent conceptualisations of basic transitional justice elements such as justice, reconciliation and truth. Furthermore, political parties refer to and position themselves in favour or against the normative discourse of transitional justice in order to gain legitimacy for their stances, political claims or power interests. However, on a conceptual level it might be difficult to distinguish if political parties evoke certain discourses only as an instrument of political struggles or because they are a reflection of the party's conceptualisation of justice, truth and reconciliation. For example, a party that is accused of having committed crimes would rationally not support a tribunal that may target its members. On the other side, the party may not support it because it thinks that reconciliation is a process which would be hampered by prosecuting wrongdoers through retributive justice.

Indeed, further research is needed on issues of the social construction of truth, the use of transitional justice as a political instrument and the framing and conceptualisation of basic elements of dealing with the past. They all might have an impact on the (future) design of a transitional justice process. For example, the mandate of a truth commission might differ according to the underlying understanding of which kind of truth should be produced and what end this truth should serve. This is even more important if we consider that transitional justice and the produced historical narratives do not only concern the past, but affect also the future. As a political process transitional justice institutionalises certain rules and norms and frames historical lessons, narratives and truths in relation to the perceived needs of the present. Questions of further research might be how to reconcile different transitional justice concepts, whether the normative transitional justice discourse and its tool box are the only way to conceptualise dealing with the past and what its potential limitations are, and how to understand the different local conceptualisations without falling back in a cultural relativistic approach.

[39] Interview, Bujumbura, summer 2010, BUJ-II-a-3.

For transitional justice advocates and practitioners it is crucial to identify the different discourses and understandings of the various actors concerned, especially if they are confronted with a situation of a lack of political will for the normative transitional justice model. This gives them entry points for the lobbying of transitional justice and allows them to address the lack of political will by adapting the mechanisms to the beliefs and understanding of political actors. Finally, it ensures the legitimacy of transitional justice which is crucial for the success of the process, as it takes up local understandings of justice, reconciliation and truth.

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