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Beyond Transitional Justice

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Knowing the Truth – What For?

The Contested Politics of Transitional Justice in Burundi¹

1. Introduction

In the 1990s and early 2000s Burundi experienced a deadly civil war which was preceded by various cycles of violence following the country's independence in 1962. As a measure to fight impunity and to break these vicious cycles of violence and revenge killings, the Arusha Peace and Reconciliation Agreement establishes provisions for a series of transitional justice mechanisms. However, until today, neither a truth and reconciliation commission nor a special criminal tribunal has been established.

Transitional justice has become a prominent element in liberal peacebuilding (see Sriram 2007). 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 (Bell 2009). However, transitional justice is not a value-neutral process, but rather a political process through which historical 'facts' and 'truths' are produced. Therefore, 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 personally or through their respective 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 negotiation of the process of 'dealing with the past' process, political actors may try to depict certain 'pasts' which are most favourable for them.

In Burundi, transitional justice is a widely contested issue among political parties and politicians. They view it as a complex and delicate matter (Interview C). There is thus 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 that 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 itself.

This paper is mainly based on interviews with high-ranking representatives from political parties, interviews conducted during extensive empirical field work in Burundi.² The empirical part shows that, in addition to the workings of power politics, divergent conceptions of transitional justice lie at the basis of the contested transitional justice process. After a brief overview of the Burundian transitional justice process and a consideration of some structural reasons for its deadlock, the paper looks at the different stances of four main political parties. Political parties do not only disagree about transitional justice mechanisms and their mandate, but also have divergent understandings of justice and reconciliation, as well as truth. Moreover, an important question is what one ‘does’ with the truth. As an interviewee asks, one knows the truth in order “to do what? How would this truth be oriented and used?” (Interview A). 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 first section of the paper explains, on a theoretical level, why transitional justice might be contested due to fundamental interests of political actors and because of a different conceptualisation of justice, reconciliation and truth. Furthermore, it elaborates how transitional justice might be used as an instrument for political struggles. Finally, following the empirical part, the conclusion puts those different conceptions of the respective political parties in the wider context of the discussion of the contestation of transitional justice.

2. Producing 'truths'

Most practitioners and advocates who propagate a normative transitional justice model confirm that political will is a precondition for a transitional justice process to take place (cf. UN Secretary General 2004). It is assumed that the political actors would contest the principles of 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 lose 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 lose credibility among their voters if a truth commission sheds light on their role during the conflict. Such arguments for a lack of political will for 'dealing with the past' according to international transitional justice norms all stem from a logic of rational choice. Consequently, actors who do not benefit from transitional justice or even may be harmed by it will not be in favour of such a process and will 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 (cf. Sieff/Vinjamuri Wright 1999; Rubli 2010).

Various actors, including state authorities, political parties, or civil society organisations, 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). According to 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 et al. 2004). 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 (Bell 2009). Such produced 'truths', 'facts' 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). The past is framed in such a way that it serves as a basis with which to construct the present political apparatus and the state. For example, in the Arusha Agreement (2000), the parties agreed that the conflict in Burundi was a political conflict with a strong ethnic dimension. This framing of the conflict as political in nature made a reform of the political system a valid option. Moreover, the difficult question of identity transformation after a purely ethnic conflict was thus avoided. In this sense, political parties may use a truth commission and transitional justice as instruments of political struggle. For example, if the produced 'truth' posits that the killings of Tutsi in 1993 was a genocide, this official narrative will give more legitimacy to the ethnic quota which gives the Tutsi minority a huge over-representation in political institutions compared to their share of the population (14 percent Tutsi; Sculier 2008).

Norms, institutionalised rules and law 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 (McEvoy 2007). 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 world to be (McEvoy 2007). Thus, transitional justice is not a mere "(value-) neutral process" (Bell 2009: 6) to deal with past human rights abuses, but instead reflects certain social and normative values. As it is mainly in the field of politics that we decide about the organisation of a society and how and which norms and perceptions will be translated into legally binding institutions or regimes, transitional justice should be understood as an inherently political process. As a social engineering project (Rubli 2011), transitional justice reflects different perceptions and conceptions about justice and reconciliation or more generally about what the post-conflict society should look like. Consequently, transitional justice may be contested by political parties because their conceptualisations of justice or reconciliation does not fit with the ones of the normative transitional justice model.

The following empirical part of this paper looks at different understandings of justice, truth and reconciliation expressed and espoused by Burundian political parties and how – in addition to fundamental power interests – they might inform these parties’ stances on transitional justice. Moreover, it shows how the political parties may use the produced ‘truths’ and discourses to further certain partisan interests.

3. Burundi’s transitional justice process

Burundi experienced several cycles of violence. In 1965, an unsuccessful coup d’état by a group of Hutu gendarmeries triggered retribution by the Tutsi-dominated army. This pattern repeated itself several times in the following decades. In 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 army and led to the killing and disappearance of many Hutu intellectuals (Uvin 2009). In 1988, in an outburst of violence, around 20,000 Hutu were killed by the army. After democratisation efforts at the beginning of the 1990s, a civil war broke out in 1993 with the assassination of the first democratically elected president, Melchior Ndadaye (Daley 2007).

In August 2000, Burundian political parties signed the Arusha Peace and Reconciliation Agreement (Arusha Agreement 2000), which included provisions on transitional justice. The agreement claimed that, as a mechanism for national reconciliation, a Truth and Reconciliation Commission (TRC) would shed light on the truth about grave violence, promote reconciliation and forgiveness, and clarify the entire history of Burundi (ibid.: art. 8, protocol I, chap. 2). Moreover, the agreement also claimed that an International Judicial Commission of Inquiry (IJCI) should be set up to investigate and establish the facts relating to genocide, war crimes and crimes against humanity. Based on its findings regarding the occurrence of such acts, an international criminal tribunal would then try and punish those who are responsible (ibid.: art. 6, protocol I, chap. 2). The TRC and the IJCI were planned to be established during the transitional period following the signing of the Arusha Agreement (2000: art. 18, protocol II, chap. 2).

However, during the transitional period (2001–2005), neither the TRC nor the IJCI was established. As a reaction to the request by the government to establish the IJCI, the UN sent an international assessment mission to evaluate the advisability and the feasibility of the IJCI (Vandeginste 2009). The resulting so-called Kalomoh Report (2005) called for a reconsideration of the Arusha formula (TRC, IJCI and the International Criminal Tribunal) by proposing a twin transitional justice mechanism consisting of a TRC and a special chamber in the court system of Burundi.

Following the endorsement of the Kalomoh Report, the UN and the Burundian government negotiated, in 2006 and 2007, on the implementation of the report's recommendations. The idea of the special chamber seems to have been yielded in favour of a special criminal tribunal (Tribunal Penal Special – TPS) (Ndikummasabo/Vandeginste 2007). The main issues of discord 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 (*ibid.*). In 2007, as the lowest common denominator of the negotiations between the UN and the Burundian government, they agreed to hold popular consultations on the establishment of the transitional justice mechanisms. In 2009, a representative sample of all different Burundians societal sectors were invited to express themselves on issues such as the modalities and composition of the TRC and the TPS. However, the issues of discord between the Burundian government and the UN as well as on the opportunity of utilising one or the other mechanisms (TRC and TPS) were deliberately excluded (Comité de Pilotage Tripartite 2010). In this regard, the consultations have only a minor role to play in the construction of 'the truth'.

4. Transitional justice impasse

Except for the national consultations, there has been no progress in the transitional justice process since the signing of the Arusha Agreement in 2000. This delay in implementing the transitional justice mechanisms is possibly due to several structural reasons. Firstly, the Arusha Agreement did not end hostilities, as armed rebel groups, namely the CNDD-FDD (Conseil

National pour la Défense de la Démocratie – Forces pour la Défense de la Démocratie) and the FNL (Forces Nationales de Libération), were deliberately excluded from the negotiations (Sculier 2008: 8). During the transitional period the government did not consider transitional justice as a priority; instead, its preoccupation was with ending the violent hostilities, integrating the rebels into the state structures and preparing the elections and the new constitution. This also holds true for the armed groups; their focus was “not talking about truth”, but rather, first to integrate into the government and state structures in order to “be in a position of strength”, as a former vice-president (1998–2001) states (Interview B).

Even after the elections in 2005, which brought to power the former rebel group CNDD-FDD, the political climate was considered to be too unstable for a transitional justice process. As a representative of the CNDD-FDD says: “While the country was still at war with the FNL, it was at the very least impossible to establish a truth and reconciliation commission and transitional justice mechanisms” (Interview C). Priority was given to the achievement of a peace agreement with the last remaining rebel group, FNL, and its reintegration. In 2006 the Burundian government and the FNL finally signed the Dar es Salaam ‘Agreement for the Attainment of lasting Peace, Security and Stability’ (2006). However, fighting continued and it was not until April 2009 that the armed group was accredited as a political party (Vandeginste 2011). During both periods – the transitional period and the first mandate of Pierre Nkurunziza – the Burundian government gave priority to ending hostilities, and transitional justice was considered as an obstacle, or at least as a potential threat, to the goal of achieving peace. This raises the question of timing, such as when to establish transitional justice mechanisms within the wider peacebuilding process. However, as this paper will show, the transitional justice process might be blocked not only because of unfortunate timing, but also because of an inappropriate conceptualisation of transitional justice by the international normative discourse.

Secondly, with the first post-transition elections and the victory of the former rebel group CNDD-FDD and its leader Pierre Nkurunziza, a new power constellation emerged (African Elections Database 2011). The CNDD-FDD does not feel that it is bound by the Arusha Agreement (cf. *The Economist* 2011), because it was excluded from the negotiations (Sculier 2008). This might also hold true for the transitional justice issue. Although

the CNDD-FDD signed a global ceasefire agreement (Pretoria Protocol 2003) which did not challenge the provisions on transitional justice in the Arusha Agreement, the CNDD-FDD did not insist too much on their application (Vandeginste 2009) in its first term. From a rational point of view, this is understandable, since, as a former rebel group, the party is not interested in having a judicial mechanism that punishes human rights violators (at least from its own ranks). Although the Arusha Agreement (and later the Kalomoh Report) foresees two mechanisms, the CNDD-FDD questioned the TPS in a memorandum in 2007: “The choice has to be made between national reconciliation through the Truth and Reconciliation Commission and repression by means of the special criminal tribunal. Another possible solution would consist in favouring reconciliation and submitting to the special criminal tribunal only the disputes which could not be resolved through reconciliation.” In this regard, the long negotiations between the UN and the CNDD-FDD government (2006 and 2007) and the national consultations can be seen as a delaying tactic. As a civil society representative says: “The process of the consultations started in April 2007, and today it is June 2010, thus three years of consultations. I think the consultation process has only slowed down the transitional justice process. We have lost another three years in establishing the transitional justice mechanisms” (Interview D).

Thirdly, the Kalomoh Report 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 an important sequencing question, namely the relationship between the TPS and the TRC and the definition of acts as genocide, crimes against humanity and war crimes (Ndikumababo/Vandeginste 2007). The IJCI would, according to the Arusha agreement, have the mandate to determine whether these three international crimes had 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 state, such a deadlock would in such cases be due to the lack of political will for transitional justice. Human Rights Watch (2009) claims that “the [Burundian] government has shown little political will to hold account-

able 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 potentially fear prosecution. Thus, there is no support for a normative transitional justice model which promotes a rather adversarial, retributive mode of formal legal justice (Lambourne 2009). This conceptualisation might be largely contested by Burundian political parties because they have divergent understandings of justice, reconciliation and truth, which exacerbate this ‘lack of political will’.

5. Different understandings of justice, reconciliation and truth

The transitional justice provisions in the Arusha Agreement (2000) represent some sort of compromise between the negotiating parties. The main dividing lines during the negotiations between the political parties were along ethnic lines (OAG 2009). As the biggest parties represented in the negotiations, FRODEBU (Front pour la Démocratie au Burundi) headed the Hutu dominated block while UPRONA (Union pour le Progrès National) represented the pro-Tutsi block. With the democratisation attempts in the early 1990s and the following civil war, the number of political parties rocketed and, as of today there are around 43 officially registered political parties (OAG 2009). The history of the evolution of political parties is marked by many splits into different branches, defections of important figures from one party to another and the foundation of new parties by former members of others (Vandeginste 2011). Most of the political parties are quite small however, and do not have great influence; thus, 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 negotiations, and the CNDD-FDD and the FNL representing two former rebel groups.

5.1 UPRONA: punishment as a guarantee of non-recurrence

UPRONA (Union pour le Progrès National) was founded in 1957 and imposed itself in 1966 as the only party until – with the democratisation efforts during the 1990s – other political parties were permitted

(OAG 2009). Its leadership became increasingly Tutsi dominated, not least because Hutu were systematically excluded from higher political, educational and economic positions (Uvin 1999).

Over the question of whether or not to negotiate in Arusha, a small group broke away from the party to form the faction of UPRONA-Mukasi led by Charles Mukasi (OAG 2009). They opposed and denounced the negotiations, saying they were “aimed at institutionalising genocide and destroying the Burundi nation” (IRIN 2000). This small but rather extreme wing claimed publicly that in 1993 a genocide was carried out by the Hutu of FRODEBU and requested the establishment of the TPS (UPRONA 2009). This wing represents an often evoked discourse by Tutsi political elites (McKinley 1997). It says that the majority of Hutu would like to physically eliminate the Tutsi minority and makes reference to the genocide in Rwanda in 1994. Such parties seek to interpret the violent events in 1993 as a planned genocide against the Tutsi minority by referring to a report of a UN-led commission of inquiry in 1996 (UNICIB 1996: art. 473). Some of the Tutsi dominated parties firmly requested, during the Arusha negotiations, that the tribunal be put in place before the elections in 2005, as they expected that Hutu politicians (especially those who joined rebel groups) were to face 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). Thus, these political parties used 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 (2009) reiterated in 2009 its request to establish the TPS before the 2010 elections.

Although UPRONA does not evoke this Tutsi elimination discourse as prominently as the UPRONA-Mukasi faction, it nevertheless strongly advocates the setting up of a tribunal. According to UPRONA (Interview E), inquiries should be undertaken in order to classify the crimes which are potentially acts of genocide and crimes against humanity. This process should distinguish between those who executed the crimes and those who commanded them, with the intention of attributing guilt and responsibility to the latter. Justice should come first, as nothing else would dissuade those who have killed people from repeating their crim-

inal acts. For UPRONA, punishment is a guarantee of non-recurrence and a measure for preventing the still ongoing fear of genocide. Only after justice has been applied “we can speak about negotiations, reconciliation and forgiveness” (Interview E). Forgiveness cannot be enforced (Interview E) and it may not prevent recurrence, since someone who asks for forgiveness may not be sincere (Interview C). In this sense, forgiveness is equated with lack of punishment thus, with an amnesty for past crimes. Reconciliation is, for UPRONA, “knowing the truth in order that the Burundians are finally freed from the trauma of criminality and the cycles of violence” (Interview E). Thus, UPRONA considers the TRC and knowing the truth as necessary for reconciliation and for breaking the cycle of violence. However, the ‘truth discovered’ by the TRC should not be used to simply advance forgiveness; at least a minimum of judicial accountability is needed to reconcile Burundians. Thus, the TRC and the TPS are seen as complementary (Interview C).

5.2 FRODEBU: knowing the truth as a basis for prosecution or forgiveness

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). The party was accredited in 1992 and won the first democratic elections in 1993 (African Elections Database 2011). During the transitional period, FRODEBU was part of the government (Uvin 2009). Today, the party is a member of an alliance of opposition parties which claims that the 2010 elections were rigged (ADC-Ikibiri 2010). The Arusha Agreement stipulates that the transitional justice provisions should be put in place during the transitional period. However, at this time the country was still considered to be at war with the two rebel groups CNDD-FDD and FNL. According to a representative of FRODEBU, the priority of the government was, during the transitional period, to definitively end the war (Interview B). Here, FRODEBU cites an argument which fits into the debate on peace versus justice: justice is only possible if there is peace and, yet, justice itself can hinder the achievement of peace (Sriram 2009). Whether this argument served as a pretext to not set up the transitional justice mechanisms, especially the tribunal (since FRODEBU is accused of having committed

crimes during the civil war; c.f. Hara 2005) or whether this is simply not the case, is difficult to judge.

Generally, FRODEBU is in favour of a TRC in order to “to put together again the different components of society” (Interview F). Moreover, “during the war people lost their goods, abandoned their land, all this should be known in order to envisage a solution” (Interview G). The TRC should thus be established in order to ascertain the truth, following the example of South Africa (Interview F). In contrast, the party supports the TPS only if it is “necessary” (Interview G); that is, if there have been crimes against humanity, war crimes and acts of genocide which would then be judged by the tribunal. FRODEBU considers that, with the Kalomoh Report, the TRC and the IJCI would have been “merged” (Interview C). According to FRODEBU the IJCI should judge whether the crimes are acts which could be forgotten, which could be forgiven or which could be “described as unforgivable” according to international law (Interview F). Knowing the truth would then allow for the qualification of the crimes which would have originally been the mandate of the IJCI and the evaluation of which perpetrators are to be prosecuted by the tribunal and which one are granted amnesty or forgiveness. Thereby, the TRC would also execute legal tasks limiting the tribunal prosecutor’s independence in carrying 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 such a way that it serves particular political interests and the TRC might be staffed accordingly. A representative of FRODEBU reflecting on the current political context, said that, if UPRONA and the CNDD-FDD are implicated in crimes in some way, and both hold governmental power today, would they not design “a TRC that protect themselves?” (Interview F).

5.3 CNDD-FDD: truth and justice only for reconciliation

Originally, as an armed wing, the CNDD-FDD (Conseil National pour la Défense de la Démocratie – Forces pour la défense de la démocratie) emerged in 1994 and was, as an armed group, excluded from the negotiations in Arusha (Sculier 2008). After signing an agreement with the transitional government in 2003, the movement became a political party before the elections in 2005 and emerged victorious (African Elections Database 2011). During its first term and the election campaigns of 2010, the CNDD-FDD,

and especially its leader, Pierre Nkurunziza, successfully presented itself as the one that brought peace and reconciliation to Burundi (cf. Reyntjens 2005; Interview A), although fighting with the FNL continued until April 2008. Moreover, the CNDD-FDD has succeeded in moulding an image of itself as a national populist party which represents both ethnic groups. This is in contrast to former claims to fight for the Hutu cause (The Economist 2005). This inclusive stance is also reflected in the CNDD-FDD's understanding of reconciliation. A representative of the party explains that reconciliation does not start at a precise moment, but instead starts the day when the parties are able to sit together to negotiate. It is a kind of rapprochement between people which is in 'in progress' and to which something new would be added every day (Interview A). He indicated with his hands a steadily rising linear process describing reconciliation. For the CNDD-FDD the reconciliation process between Hutu and Tutsi has already progressed considerably and the cleavage between them has been closed or at least been significantly reduced. Consequently, this understanding of reconciliation influences the party's position on transitional justice. A party member says: "We have to push the pedal of reconciliation, thus, let's push the pedal of truth and reconciliation" (ibid.). The question of truth and reconciliation would, as with many other issues, be dealt with and thus "emptied" (ibid.) during the legislature 2010–2015, as reiterated by Pierre Nkurunziza (2010) in his presidential inauguration speech.

In contrast, the CNDD-FDD opposes the TPS which punishes, because the party's members might be among the first to be judged, since they are accused of having committed crimes during the civil war in Burundi (Watt 2008). However, this may not be the only reason; additionally, such a tribunal does not fit with the party's understanding of reconciliation. One interviewee expressed the view that reconciliation in Burundi has already reached a certain level and that people would steadily reconcile (Interview A). He asserts that establishing the TPS would "destroy what has already been achieved in terms of reconciliation" because individuals would simply be accused (ibid.) and these 'accusations' would once more tear apart the people. The CNDD-FDD considers that the reconciliation process is already too advanced for a tribunal and claims that the justice promoted by the TPS would risk reframing the conflict once more in ethnic terms by opposing (Hutu) perpetrators to (Tutsi) victims (ibid.).

Hence, the CNDD-FDD is only in favour of a tribunal as long as the party considers that it would contribute to (their understanding of) reconciliation. However, the tribunal's perceived conception of a punitive form of justice does not fit with the CNDD-FDD's conception of reconciliatory justice. Additionally, the ultimate aim of finding the truth should further enhance the reconciliation process: "this truth is used in a wise way in the sense that it would lead Burundians to reconcile" (Interview C). If the 'discovered' truth would cause conflicts again, then the TRC would not be useful for Burundi (Interview C). Thus, the TRC should produce a truth that would reconcile society and bridge the gaps between former adversaries (meaning ethnic groups). Moreover, the truth should be used in order to rehabilitate certain individuals that have been unjustly accused, but also in order to identify the criminals (Interview C).

5.4 FNL: social justice for past injustices

Burundi's so-called 'last rebel group', FNL (Forces Nationales de Libération) was founded in the late 1970s in Tanzania by Burundian refugees that fled the violent events in 1972 (ICG 2007) which it claims were a genocide against Hutu (cf. Lemarchand 1998). In order to be allowed to participate in the 2010 elections, the rebel group turned into a political party (Vandeginste 2011). After the elections it joined the alliance of opposition parties which claims that the elections were rigged (ADC-Ikibiri 2010).

The Dar es Salaam Agreement that the FNL signed in 2006 proposes some amendments concerning transitional justice issues. The most important one is the renaming of the TRC as the Truth, Forgiveness and Reconciliation Commission. Its mission shall be stated as being "to identify the responsibility of the different individuals with a view to forgiveness and reconciliation" (ibid.: art. 1). Nevertheless, this renaming seems not to have been taken up by most actors, as they continue referring to it as the TRC. However, the notion of forgiveness is a central element in the FNL's understanding of transitional justice. The party strongly opposes the TPS which punishes perpetrators; instead, it proposes that those who ordered the crimes should show regret and remorse and ask the population for forgiveness (Interview G). In addition to the fact that its members are accused of having committed crimes (Human Rights Watch 2010), there are possibly three reasons underlying this 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 innocent people left (Interview G). 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 define, as they concern the exclusion of one ethnic group from education, economic wealth and the access to the state (Interview H). The FNL, which claimed to have fought for social justice (for the Hutu), is convinced that the TPS would not address such past social injustices. Finally, the FNL does not trust the Burundian justice system, as it considers it to be biased and partisan. As a party member puts it, “like the army was monoethnic, also the justice [the judicial sector] was monoethnic, thus talking about the independence of the magistracy would be very difficult” (ibid.).

One of my interviewee explains that it would be insulting to talk about transitional justice, as it is an “unjust justice”. He reflects: “would it be only justice for a certain political context and [real] justice would only come into function afterwards?” (Interview H). In the meantime, individuals who have not been condemned because they occupy high-ranking positions, may have developed self-protecting systems (ibid.). This interviewee is referring here to members of the CNDD-FDD who are accused of having committed human rights violations, but have never been judged (ibid.). Double standards may emerge due to the fact that crimes committed in the past will be prosecuted but risk going unprosecuted when committed in the present, as transitional justice only applies to a certain time period (ibid.). 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). In order to have at least the opportunity of a ‘just’ (transitional) justice system, the FNL proposes that all “sit together and first look for the truth” (ibid.).

However, the party’s understanding of truth is not a simple one in the sense of ‘knowing what happened’; indeed, according to a party member, there would be two different phenomena; the reality and the truth. Knowing the truth is a process which is always unfinished, whilst reality is constituted by facts. He exemplifies this by saying that the body of a dead person found in the river would be a fact. In contrast, truth would be the

process of knowing who killed this person, in which circumstances, with what kind of motives and intentions, and whether the murderer acted on the command of somebody else (Interview H). By distinguishing between the reality (the violence and crimes) and the truth (the motives), the party might try to morally and politically justify certain past crimes and the party's violent rebellion.

6. Conclusion

This paper has looked at different perspectives on transitional justice among Burundian political parties. Only one out of the four parties is clearly in favour of the TPS. The planned TPS in Burundi is contested, not only because it may prosecute members and representatives of the political parties, but because it does not reflect or fit the parties' conceptions of justice. Although none of the four political parties oppose the TRC as such, they differ about its task or more generally about what kind of truth should be sought and what should be done with the 'produced' truth. It is striking that the majority of the four political parties fears that the transitional justice mechanisms would be negatively exploited. They are concerned that the 'produced' truth may hamper their own interests or even contradict their political claims. In addition, they dread the possibility that the TRC may produce a truth that protects political adversaries. On the other hand, this means that the version of the past which is constructed by transitional justice could constitute an opportunity to legitimise other political claims and interests.

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, they refer to and position themselves in favour or against the normative international 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 whether political parties evoke certain discourses only as an instrument of political struggle, 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 hand, 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 such as 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’. These might all 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 historical narratives it produces do not only concern the past, but also affect 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 (Leebaw 2008). Questions for further research might include 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 into a culturally relativistic approach.

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 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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- 2 All interviews have been conducted in French, as French is Burundi's second official language and politicians are used to expressing themselves in this language. Due to the tense political context during and after the elections in 2010, it was not possible to interview all the presidents of the parties as some were out of the country. Therefore, the people interviewed are the presidents, vice presidents or secretaries general of those parties. 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.

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Abstracts

In Burundi mechanisms to deal with the violent past are much contested by political parties. It seems that there is no 'political will' for a normative model of transitional justice based on international criminal, humanitarian and human rights law. On the one hand, transitional justice is contested because it touches on fundamental interests of politicians, especially those who have been implicated in past crimes. On the other hand, political parties differently conceptualise basic elements of transitional justice, such as justice, truth and reconciliation. As a political process, transitional justice mechanisms produce certain 'truths', 'facts' and interpretations about the past and reflect certain norms and values. This paper analyses the different political parties' stances on transitional justice, stances influenced by rational choice factors and divergent conceptions of justice, truth and reconciliation. Moreover, it shows how they use the normative concept of transitional justice as an instrument for political struggle.

In Burundi scheint bei den politischen Parteien der „politische Wille“ zu fehlen, um anhand eines normativen Modells der Übergangsgerichtsbarkeit („Transitional Justice“), basierend auf humanitärem Völkerrecht, Völkerstrafrecht und Menschenrechten, die gewaltsame Vergangenheit aufzuarbeiten. Einerseits ist die Übergangsgesetzgebung umstritten, weil sie fundamentale Interessen von Politikern und Politikerinnen tangiert, besonders wenn diese in vergangene Straftaten involviert waren. Andererseits interpretieren politische Parteien grundlegende Elemente einer Übergangsjustiz, wie Gerechtigkeit, Wahrheit und Versöhnung, anders als von einem normativen Modell propagiert. Mechanismen einer Übergangsjustiz stellen einen politischen Prozess dar, der bestimmte „Wahrheiten“, „Fakten“ und „Interpretationen“ der Vergangenheit „produziert“ und bestimmte Normen und Werte reflektiert. Dieser Artikel analysiert die unterschiedlichen Positionen der politischen Parteien, welche rationale Gründe und unterschiedliche Auffassungen von Gerechtigkeit, Wahrheit und Versöhnung reflektieren. Zudem wird dargelegt, wie sie das normative Konzept der Übergangsjustiz für ihre politischen Ziele nutzen.

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