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Politics of Indigeneity: Land Restitution in Burundi

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Activities of the land commission were brought to a halt this year in March 2015, after communities living in the southern province of Makamba bordering Tanzania in Burundi, barricaded roads using stones and tree trunks to prevent the land commission's agents from implementing their decisions in favour of claimants. For over two weeks, both residents *abasangwa*, and repatriates *abahungutse*, stood together to oppose the land commission: the Commission Nationale Terres et autres Biens (CNTB, National Commission of Land and other Assets), a body revisiting land restitution cases it had previously settled. The land commission had previously favoured the sharing of property between returnees and the residents. *Abasangwa* and *abahungutse* in Makamba together now accused the commission of corruption, with former claimants now owning several properties as a result of bribing the land commission's officials. Residents of Nyanza-lac, Kibago, Vugizo and Mabanda communes in the Makamba province, viewed the recent move by the land commission as a form of 'spoliation', in their eyes the commission had enabled corrupt practices with people acquiring several plots of land through the bribing of CNTB officials, overturning resolved land restitution cases.¹ In March 2015, the president's office supported the governor's decision to suspend temporarily activities of the CNTB till after the 2015 elections.

Land stands today are a testimony to the past, to the mass violence experienced by Burundi, and malleable law. A rebellion coming from southern Burundi, in 1972 launched a massacre against the Batutsi, led to genocide² of Hutu elites and peasantry by the republican state, led by a Tutsi

- 1 Complaints have been made against the land commission of people passing themselves for repatriates in order to acquire properties and sell them off, land restitution had become a "business." Dieudonné Hakizimana and Christian Bigirimana, "Makamba: des conflits fonciers ravivent les tensions," *Iwacu*, April 20, 2014, <http://www.iwacu-burundi.org/makamba-des-conflits-fonciers-ravivent-les-tensions>.
- 2 Jean-Pierre Chrétien and Jean-Francois Dupaquier, *Burundi 1972: Au bord des génocides*. (Paris: Editions Karthala, 2007). Chrétien and Dupaquier refer to the "bureaucratic aspect" of the organization of killings of Hutu describe events of 1972 as genocide (pp. 477).

military dictatorship. After the violence, which killed over 150,000, exiling thousands of Hutu, the state distributed the land to new landowners (mostly Tutsi), state and private companies. Over 150,000 Hutu were killed and over 300,000 fled to neighbouring countries in 1972. Since 1965, waves of killings and retaliatory killing continued to break out in 1988, 1991 culminating into the 1993 civil war which broke out and lasted over a decade following a coup against the first democratically elected Hutu president Melchior Ndadaye. In a space where 1972 is not publicly commemorated except for small gatherings, references in the media, discussing, *ikiza*³, the scourge, evokes a lot of emotions from all ethnic groups and is painfully discussed, as one group, the Tutsi, trying to exterminate the other, the Hutu and vice versa, while the Batwa are excluded from the debate.

Tensions are high following the 2011 approach of the CNTB, whose motto is *Gira aho uba wubahwe*,⁴ to restore property currently owned by *abasangwa*, to *abahungutse*, thus ending previous land sharing agreements as a solution to land scarcity and reconciling communities. Those with title deeds, argue that they bought the land in good faith, and have thus contested the legality of these claims. This paper studied the ways in which land tenure has changed through different periods of the past. Consecutive political violence since Burundi's independence has produced a displaced population: refugees, orphans, and internally displaced persons amongst others. The land restitution process has been used as a way to assert indigeneity and serve as a form of compensation for past injustices and retribution for those who moved into the properties of the refugees. This process has recreated new victims and new perpetrators.

As land remains a material reminder in the present about the contested memories and experiences of the past, land disputes play into the politics of autochthony about who belongs and does not belong, who is a citizen and who can be heard by the state. Land restitution offers not only a way of acknowledging the past, of healing, but also of rendering some form of justice to one part of the population, and reaffirming their citizenship.⁵

Lemarchand (1996) called it a 'selected genocide' due to its particular focus on the elite and the educated Hutu, though peasants were also killed. Hutu government and army leaders were assassinated.

3 Chrétien and Dupaquier, *Burundi 1972*, 9.

4 "Have a home, be respected" in Kirundi

5 Ruth Hall "Reconciling the Past, Present, and Future: The Parameters and Practices of Land Restitution in South Africa" in eds. Cherryl Walker, Anna Bohlin, Ruth Hall and Thembela Kepe, *Land, memory, reconstruction, and justice: perspectives on land claims in South Africa* (Ohio: Ohio University Press, 2010); Derick Fay and Deborah James, "Giving land back or righting wrongs? Comparative issues in the study of land restitution" in Cherryl Walker, Anna Bohlin, Ruth Hall and Thembela Kepe (eds.) *Land, memory, reconstruction, and justice: perspectives on*

This research asks the following question: By factoring in the ways in which land disputes are presented, negotiated and resolved by the CNTB, this research assesses the connections between the past and present through land: How political violence transforms the land question? What does the state's approach reveal about the connection between land and citizenship? How did the political settlement affect the land commission? How is land used to remember the past, and assert indigeneity? Though the focus on this paper is on land disputes related to land restitution, it has to be acknowledged that most land disputes are intrafamily: disagreements over land are disputes over rights to customary land between family members and neighbours.⁶ Over 90% of the population living off the land, and with over 90% of cases of land disputes, going to courts and tribunals.

The paper is divided in three sections: the first section traces the history and connection between land tenure, indigeneity, ethnicity, violence and the law. This will show how land and people are central in the genealogy of power relations. The second section looks at the policy on land restitution on paper, while the third section frames the debate on land restitution policy in praxis. The former constitutes everyone as a survivor, while the second recognizes one set as victims and the other as perpetrators. Political reform in Burundi has sought to resolve the land question, using the law, a product of the political violence, as a way to render justice to victims of the past. This paper shows how land ownership becomes central to belonging in the nation-state and how indigeneity and ethnicity are reasserted through land after violence.

From body to territory: Sovereignty from the precolonial to the postcolonial

This historical background section traces the history of the relationship between land, ethnicity and political violence. To grasp how the ruling party through the state, have chosen to handle the question of former refugees and their properties, by asking the beneficiaries of the past who now have legal rights over the properties to vacate them for their 'original' owners, one has to understand the history of land relations, political violence and ethnicity. Land has come to symbolize citizenship, and state control, whereas in the precolonial land represented not only what one could com-

land claims in South Africa (Ohio: Ohio University Press, 2010); Pauline E. Peters, "Inequality and Social Conflict over Land in Africa." *Journal of Agrarian Change*, 4 (2004, 3).

6 Dominik Kohlhaagen, "In quest of legitimacy: Changes in land law and legal reform in Burundi", *Rethinking Development in an Age of Scarcity and Uncertainty: New Values, Voices and Alliances for Increased Resilience* (University of York 2011)

munally enjoy, but also services and tribute to be paid to leaders. Each period shows how relations around power, land and identity continue to change: sovereignty shifts from body to territory, with the territory empowering the state over people⁷.

In 19th century Burundi, the *mwami*, king, had pre-eminent right over the land, but this right over property was more in theory than in praxis⁸. This is because the king ruled over the domains he owned, while the rest of his territory was delegated to royal princes, and chiefs to rule over. Land belonged collectively to families, and members only had usufruct rights without it being a private property⁹. Jan Vansina¹⁰ describes the location of power in the “alliance of lineages” and kings were meant to have emerged from those who first came and cleared the land, others would join the lineage as clients. Thus land tenure writes Vansina was important for the foundation of political structure. This makes Rwanda and Burundi unique, argues Vansina, for its political structures, which dictated land usage.

In the late nineteenth century, the strengthening of political control over land clashed with the population’s demographic expansion, with “the clearing of vast lands and vested rights by the one who cleared the land”¹¹. With a higher number of chiefs and sub-chiefs with their own increased demands, those in power sought to halt the ‘vested rights of ancestry’, and end lineage-based form of organization, in order to reduce the size of enclosures made up of extended families, to smaller ones for greater gains by each *urugo*, home.¹² Land management in the nineteenth century was decentralized, and for land use in lineages was based on indigeneity, those who first cleared the land.

Ethnicity was unknown and *ubwoko* was used to categorize people, trees, and plants. The same language and religion are shared among the four categories of people: Ganwa (royalty), Hutu, Tutsi and Twa.¹³ One could have a double identity of Hutu and Tutsi; it was not an “immutable”

7 Kings of Burundi were buried facing north of Burundi to mark the border with Rwanda, Jean-Pierre Chrétien and Émile Mworoha, “Les tombeaux des bami du Burundi: Un aspect de la monarchie sacrée en Afrique orientale,” *Cahier d’Études Africaines*, 10, 37 (1970)

8 Roger Botte (1982), “Burundi: de quoi vivait l’État (Burundi: How the State Made a Living) in *Cahiers d’Études Africaines*, Vol. 22, Cahier 87/88, Systèmes étatique africains (1982), pp. 277-324; Joseph Gahama, *Le Burundi sous administration Belge*. (Paris: Karthala, 1983).

9 Gahama, *Burundi sous administration Belge*, 310.

10 Jan Vansina, *Antecedents to Modern Rwanda: The Nyiginya kingdom* (Wisconsin: The University of Wisconsin Press, 2004), 29.

11 Botte, *Burundi: How the State Made a Living*, 313.

12 Ibid.

13 Jean-Pierre Chrétien, *Burundi L’histoire retrouvée: 25ans de métier d’historien en Afrique* (Paris: Editions Karthala, 1993).

identity. Hutu had two definitions: first a cultural or ethnic defined identity and one defined by social connotations.¹⁴ Status, and not ethnic identity “was the principal determinant of rank and privilege” in precolonial Burundi.¹⁵ After the Baganwa, the princes, the Banyamabanga, coming from mostly Hutu lineages, were the most influential as a ‘hereditary politico-ritualist aristocracy’.¹⁶ This category exercised spiritual power at the court of leaders and amongst the peasantry. They were holders of the secrets of the state, organized royal ceremonies and cults. The role Banyamabanga ‘the men of secrets’, who came mostly from Hutu lineages, was brought to an end during the colonial period. Bahutu, Batutsi and Batwa were not part of an order of dependency, but rather formed ranks within the same masses of banyagihugu (population) as producers of goods and suppliers of services to the kingdom.¹⁷

Belgian colonial administration¹⁸ expropriated peasants from their land for the profit of mining and agricultural companies or religious institutions, and reduced the domains owned by the king. Expulsions or dispossessions were not as common in the precolonial than in the colonial period, as it was in the chief’s interest to have control over the largest number of subjects.¹⁹ Reforms of the 1939 land law increased the power of customary authorities to intervene in land tenure. It gave power to chiefs to distribute vacant land, still in its wilderness, and receive payment for it.²⁰ From now onwards, peasants required the authorization of subchief and chief in order to clear marshland, bringing the authorities to intervene in land disputes, thus reducing the power belonging to the Bashingantahe in the lineage who used to resolve disputes.²¹ This produced rivalry as chiefs would receive the payment from new landowners, and act as the new owners of the land. Therefore colonial rule intensified the power of chiefs and Baganwa over land tenure and changed the relationship between chiefs and subjects, which was new to this region.

¹⁴ René Lemarchand, *Burundi Ethnic conflict and Genocide* (Cambridge: Cambridge University Press, 1996) 10, 15.

¹⁵ *Ibid.*, 10.

¹⁶ Émile Mworoha, *Peuples et rois de l'Afrique des Lacs: Le Burundi et les royaumes voisins au XIXe siècle* (Dakar-Abidjan: Les Nouvelles éditions Africaines, 1977), 116.

¹⁷ *Ibid.*

¹⁸ King Mwezi Gisabo (1852-1908) after having resisted the Germans signed the treaty of Kiganda, which recognized the kingdom as a German protectorate. The Germans proceeded with indirect rule. Belgium ruled Ruanda-Urundi under the League of Nations mandate after the First World War led Germany to lose its protectorates.

¹⁹ Gahama, *Burundi sous administration Belge*.

²⁰ *Ibid.*, 313.

²¹ *Ibid.*

Belgian colonisers were surprised to find that the rule of chiefs, princes was not territorially based, but tied to ‘personal relationships’.²² Even when princes went to war it was not over territory but over the gaining of ‘productive producers’: *igihugu ntikiribwa ivu kiribwa abantu*, a country does not feed on land, but on people.²³ The colonial administrators then set out to correct it to its own ideal of customs by “restoring the custom in its primitive purity: the political connection became once again territorial”²⁴. Chiefs were from now on bound to defined territories and not people. The colonial administration creates a feudal hierarchical power, yet the kingdom allowed for independent minded *chefs*, personal connections that allowed the population to taunt their chiefs, as well as the confusing of territorial borders due to numerous enclaves.²⁵

The colonial historiography described a “feudal” kingdom with Hutu as the majority, autochthonous and serfs, Tutsi as the minority, a racial identity, a superior race as the Hamite coloniser from Ethiopia, natural ruler with the royal Baganwa were assimilated into the Tutsi.²⁶ The last group, the Batwa, the pygmies were described as the first inhabitants.²⁷ Missionaries, explorers and colonial administrators emphasized on the physiognomy of the *Barundi*, which Lisa Malkki describes as “heavily elaborated cultural constructs – ideal types confounded by the reality of physical diversity and variation – did not in the least detract from their power as classificatory tools”.²⁸ For Chrétien the “social manipulation” of colonisers, who were informed by the missionaries, was based on three axes: feudalism, racial policy and cultural segregation²⁹.

The regrouping of chiefs and sub-chiefs practiced in Rwanda and Burundi by the resident Belgian governor in both countries in 1930s led to a

22 Jean-Pierre Chrétien, “Une révolte au Burundi en 1934: Les racines traditionalistes de l’hostilité à la colonisation” in *Annales. Histoire, Sciences Sociales*, 25^e Année, No. 6 (Nov. – Dec., 1970), 1702.

23 Botte, *Burundi: How the State Made a Living*, 278.

24 Government report 1927 in Chrétien, “Une révolte au Burundi en 1934”, 1702.

25 Chrétien, “Une révolte au Burundi en 1934.”

26 Ruanda-Urundi: In Ruanda, the royalty designated themselves as Tutsi unlike Burundi where they were above Hutu and Tutsi identities as ‘Baganwa’

27 Jan Vansina and other scholars such as David L. Schoenbrun have rejected the migration hypothesis of the Great Lakes region. “There were never successive immigrations of Twa foragers, Hutu farmers, and Tutsi herders since these social categories were only slowly developed as a means of labeling persons who were in the country” writes Vansina, Vansina, *Nyiginya*, 198.

28 Liisa H. Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania* (Chicago: the University of Chicago Press, 1994), 79.

29 Jean-Pierre Chrétien, “Hutu et Tutsi au Rwanda et au Burundi” in *Au cœur de l’ethnie*, ed. Jean-Loup Amselle Elikia M’Bokolo 2nd Ed. (Paris: Editions La Découverte, 1999) 143.

massive elimination of Bahutu leaders in place during that period. Tutsi power was naturalized countrywide. Segregation took place in schools, the Tutsi were the future leaders, administrators.³⁰ In 1959, before independence in 1962, chieftaincy whose numbers had been substantially reduced during the colonial period, centralizing power in the hands of few, was brought to end.³¹ Land, which was not registered, became the property of the state in 1960, allowing those who were granted plots by chiefs to register the land. Yet very few registered their land. In 1961, a title deed could be registered; yet, customary rights to land continued to prevail in regards to land relations. Though in statutory law, rule by 'custom' is not explained in any legal text.³²

Despite colonial administration segregation, Hutu and Tutsi were not territorially segregated, each with their own Native Authority, as would be the case with indirect rule; instead, they lived in the same space inside racially segregated institutions. This was thus a two-tiered racialized system, the first tier distinguishing whites from natives, the second Tutsi from Hutu. This was more of a centralized than a decentralized despotism. Instead of a decentralized despotism, with tribalized identities of Hutu and Tutsi having different ethnic homelands with their own native authorities and customary laws, it was rather a racialized centralized despotism within a single political and legal space.³³ This affected the formation of the post-colonial state. Politics of land is based on indigeneity in the precolonial, shifting to ethnicity during the colonial period: Hutu is constructed as autochthon while Tutsi is a migrant. Post-independence politics must be understood as continuing the colonial legacy whose structures and ideologies were not reformed.

Upon independence in 1962, it was a nationalist movement UPRONA (Union for National Progress) that came to power, led by Prince Louis Rwagasore who was soon murdered after the win in 1961. The party had both Hutu and Tutsi leaders, yet it is fight for Hutu representation in leadership which resulted in the tumultuous year of 1965 when the Hutu prime minister Pierre Ngendandumwe is murdered, and following legislative win by

30 Between 1929 and 1954, the rate of Bahutu chiefs went from 10% to 0% that of Batutsi chiefs from 21 to 26% with the blood princes taking the lion share in Chrétien, "Hutu et Tutsi au Rwanda et au Burundi," 145.

31 Botte, Burundi: How the State Made a Living; Kohlhausen, "In quest of legitimacy."

32 Kohlhausen, "In quest of legitimacy," 8.

33 Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press, 2001); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996).

the Hutu of over two thirds, King Mwambutsa Bangiricenge constitutes a new government led by the Ganwa royalty.³⁴ This was an important turning point in the hardening of ethnic rule and rivalries, which reinforced the colonial racialized centralized despotism, with the *Baganwa* and Tutsi seeking to hold power in government while the Hutu sought representation that equalled their numbers. When violence breaks out in political contestation amongst elites, it was thereafter used by the same elites to mobilize the population: “the initiatives of ethnic violence were led by the ruling stratum. After have confronted each other, the Hutu and Tutsi elites exported ethnic violence to the masses”.³⁵ Violence from the elites was dispersed into the population. Violence not only has political but economic underpinnings, as political power, is connected to economic access. After 1972, a strengthened racialized centralized despotism held power, without Hutu political representation. The armed struggle was the outcome, with the Party for the Liberation of the Hutu People (Palipehutu) created in 1980 in a refugee camp in Tanzania.³⁶

The rebellion in 1972 that set off the violence was led by Congolese Mulelist led massacres against Tutsi aimed at their extermination and their entire families, as well as Hutu who fit the so-called Tutsi prototype.³⁷ The rebels calling themselves “Mulele” came either from Zaïre or Tanzania, others were Babembe or Babwari already living in Swahili districts on the Burundi littoral, however most of the insurgents were Hutu who lived in the southern provinces, viewing the Tutsi as the enemy.³⁸ A witness described the attack in Nyanza-Lac commune, as being led by the people called Mulele from the Imbo region; they viewed themselves as Hutu liberators and sought to exterminate the Tutsi. A Hutu from the mountain was referred to as Tutsi and was the enemy.³⁹ Any person with a straight nose and tall stature was killed, whether Tutsi or not, they wanted to liberate the Hutu, “because in Imbo people could not stand the presence amongst themselves of those who came from the interior of the country”.⁴⁰ The violence in 1965 and 1972, the attack against Tutsi by Hutus, followed a blind repression led against educated Hutu, was ethnic violence amongst per-

34 René Lemarchand, *Rwanda and Burundi*, (London: Pall Mall Press, 1970) 296.

35 Barnabé Ndarishikanye, “Burundi: des identités ethnico-politique forgées dans la violence,” *Canadian Journal of African Studies* (Vol. 33, No. 2/3, 1999) 287.

36 Malkki, *Purity and Exile*.

37 Ndarishikanye, “Burundi: des identités ethnico-politique”; Chrétien and Dupaquier, *Burundi* 1972.

38 Chrétien and Dupaquier, *Burundi* 1972, 97.

39 *Ibid.*, 102.

40 *Ibid.*, 102.

sons in similar social conditions, without them being the instigators.⁴¹ This ignited the beginning of cycle of mass violence, perpetrated by one ethnic group against the other, the state vs. the people. Ethnic consciousness-raising occurred through violence.⁴² Events in Rwanda, also affect politics in Burundi, leading to a tense first decade after independence due to ethnic rivalries and growing regionalism. The so-called social revolution of 1959 in Rwanda reinforced politicized colonial identities. A small educated bourgeoisie that started anti-Tutsi movement, which was not instant among the peasantry⁴³. This movement results in thousands of Tutsi killed, Over 150,000 Tutsi refugees left for Burundi and Uganda to seek refuge against the massacres of Tutsi in 1959 to 1963 in Rwanda. This has influenced the “construction of a Tutsi dominated political system in Bujumbura.”⁴⁴

In order to understand the history of those who came from the countryside vs. those living on the Tanganyika coast, one must understand the history of the region. The Imbo region where the Mulele attack took place, stretches from Lake Tanganyika shore to dry lowland area, it has a different economy and social relations, than the highland and grassland. The region engaged in commercial ties with the Lake Tanganyika with Muslim trade networks different from culture of dynastic Burundi.⁴⁵ In the 20th century, the Hutu chiefs in the region were subjected to Baganwa, the princes. King Mwezi Gisabo would send Tutsi representatives to the Imbo region; the Belgians, who eliminated Hutu chiefs, made this worse. Yet in the 19th century, the region was rich in exchanges with services or tribute made to the court, with salt, mats. The sleeping sickness decimated the region from 1905, only in 1930 onwards, the population increased. Imbo inhabitants view themselves as Hutu.⁴⁶ The culture is different, Swahili is widely spoken, in contact with and exchanging with Congolese, fishermen, artisans, traders, by independence it was Hutu authorities that were elected under UPRONA. Babembe from then Zaïre moved to other shore of the Lake Tanganyika in 1950s and easily integrated themselves. The 1960s Imbo region was as a particularly welcoming cosmopolitan place, with Swahili, Indians, Babembe, Arabs, Rwandan and Barundi from all regions with 5,000 inhab-

41 Ndarishikanye, “Burundi: des identités ethnico-politique”.

42 Chrétien and Dupaquier, *Burundi* 1972, 21.

43 Claudine Vidal, “Situations ethniques au Rwanda” in *Au cœur de l’ethnie*, ed. Jean-Loup Amselle Elikia M’Bokolo 2nd Ed. (Paris: Editions La Découverte, 1999).

44 Prunier G. *The Rwanda Crisis 1959-1994: History of Genocide*, (Kampala: Fountain Publishers, 1995) 198.

45 David Newbury (2001) Pre-colonial Burundi and Rwanda: Local Loyalties, Regional Royalties” *The International Journal of African Historical Studies* 34 (No. 2, 2001) 262.

46 Chrétien and Dupaquier, *Burundi* 1972, 103.

itants.⁴⁷

The refugees who returned after 1972, got access to their plot, whilst neighbours and local administrators took over the plots of land of the thousands who did not return. Population from other provinces and communes moved to Rumonge soon afterwards, often they were encouraged by the administration, and attracted to the very fertile land, bordering the lake Tanganyika.⁴⁸ From 1974 to 1975, an important number of senior government officials took over properties, and would acquire several hectares or even an entire zone.⁴⁹ There are relatives who remained and who sold part of property to avoid having to share family land upon return of the refugees or exiled family members.⁵⁰ Not all Hutu fled, but the large majority did⁵¹.

In the second republic (1976 to 1987) led by Colonel Jean-Baptiste Bagaza who came to power through a coup, the first land commission was set up with a mission to settle the property disputes with the returning population. The commission had a special court with jurisdiction of common law.⁵² The state passed a decree to support its work to restore the belongings of the repatriates.⁵³ The so-called 1976 Mandi commission was ambiguous as it aimed to end illegal land attributions by the Michel Micombero regime⁵⁴, yet at the same time legalised a great number of these same attributions, with previous owners' rights limited to partial compensation. Thus very few refugees returned.⁵⁵ Out of 236 lodged complaints, 177 land rights were restored their properties.⁵⁶

By 1977, a decree brought to an end *ubugererwa*, as part of the Mandi commission, which allowed a family to give land to the landless, implied

47 Kohlhausen, "In quest of legitimacy," 52-54.

48 Gervais Gatunange, "La problématique foncière dans la perspective du rapatriement et de la réinsertion des sinistrés" in *Observatoire de l'Action Gouvernementale*, Bujumbura, 9.

49 République du Burundi, *Commission Nationale Terres et autres Biens: bilan d'activités période 2006 - 2011*, (Lake House, Bujumbura), 29.

50 Gatunange, "La problématique foncière," 10.

51 Félicien Sinarinzi and Théodora Nisabwe, "Étude sur la problématique des terres laissées par les réfugiés de 1972 dans les communes Rumonge et Nyanza- Lac", requested by the Presidency of the Fourth Commission of Arusha interBurundi negotiations, in charge of Development and Reconstruction, Bujumbura, October 1999.

52 Gatunange, "La problématique foncière," 10.

53 Law decree n° 1/191 of 30 December 1976 referred to land illegally attributed must return to the state, in Sinarinzi and Nisabwe, "Étude sur la problématique des terres"

54 Captain Michel Micombero led a coup against the monarchy and formed the first republic from 1966 till 1977 when he was overthrown by Colonel Jean-Baptiste Bagaza

55 RCN Justice and Democracy *Etude sur les pratiques foncières au Burundi: Essai d'harmonisation; Enquêtes menées dans 10 provinces du Burundi en février - mars 2004* (Bujumbura, 2004).

56 Gatunange, "La problématique foncière," 10.

an engagement in a patron client relationship.⁵⁷ Those who occupied that land were granted rights to that land after having lived in it for over fifteen years, whether the first occupation was illegal in the first place or not. Yet a dismal number of people registered those plots 50 years since the 1960 decree.⁵⁸ The 1986 land code, 'a compilation of former colonial laws' distinguished between registered land with a land title as '*propriété*', which would be protected by the state law, vs. '*droits privatifs*' or customary recognized rights, which if left vacant for over two years, the state could claim ownership⁵⁹. From a legal perspective, former occupants were the original owners and new occupants enjoy the land as owners without necessarily being the owners. The owner is of bad faith when he enjoys as the owner whilst knowing in reality that he is not one. Hence the thirty year prescription which transforms an occupant into an owner even if they were an owner of bad faith, whereas, if one occupied property in good faith, one acquires the title of the property in fifteen years.⁶⁰ This means that by the year 2005 whether one occupied land in good faith or in bad faith, one would be an owner if they took over properties after 1972.

In the third republic (1987-1988), President Pierre Buyoya's ascension to power after a coup in 1987 coincided with the democratization of the 1990s. There was pressure from the international community following recent killings and counter killings of Ntega-Marangara in the north, when a Hutu group attacked a Tutsi population, and the response was the repression of the Hutu population by the Tutsi majority army in 1988. President Buyoya initiated the "national unity" policy, which was about the sharing of power with ethnic Hutu members, who had become practically excluded since the 1972 crisis, from 20% government share to half.⁶¹ In 1991, a new commission in charge of the return, reinsertion of refugees (Commission Nationale chargée du retour, de l'accueil et de l'insertion des réfugiés Burundais) was established in 1991, with a double mission: help repatriates settle in available properties and investigate the cause of disputes during relocation of refugees, and strengthen national unity reconciliation.⁶² This was contentious because it clearly stated that repatriates were not to seek

⁵⁷ David Newbury and Newbury Catherine "Bringing the Peasants Back In: Agrarian Themes in the Construction and Corrosion of Statist Historiography in Rwanda" in *The American Historical Review*, Vol. 105, No. 3 (Jun., 2000), pp. 832-877; Kohlhausen, "In quest of legitimacy."

⁵⁸ Kohlhausen, "In quest of legitimacy."

⁵⁹ Article 231 of the 1986 Land Code in Kohlhausen, "In quest of legitimacy" 2.

⁶⁰ Gatunange, "La problématique foncière," 13.

⁶¹ RCN Justice and Democracy, *Etude sur les pratiques foncières au Burundi*, 12.

⁶² Arusha Peace and Reconciliation Agreement for Burundi, (28 August 2000, Arusha) 18; RCN Justice and Democracy, *Etude sur les pratiques foncières au Burundi*, 12.

to gain their properties if they were occupied by others, as they would be given land elsewhere. The government sought to settle them elsewhere rather than the region they had come from.⁶³ All the persons who could not return to their properties was given two hectares on vacant land, villages were also prepared.⁶⁴

After almost three decades of military republican rule, democratic elections took place in June 1993, Melchior Ndadaye, the Hutu leader of the pro-Hutu Frodebu (Front pour la Démocratie au Burundi) was elected in June 1993. The victory of Frodebu in 1993 resulted in the massive return of refugees occurred, and resulted in the returnees seeking their land.

Created in the political context of agitation, the commission was re-activated after the victory of FRODEBU. Under attack was the clause, which prevented the refugees from gaining their old properties. Occupants were thrown out. Ndadaye made a speech in Makamba, where he called for the respect of vested rights unless the occupant owned several properties, the state would allocate land for the returning refugees.⁶⁵ Yet, after Ndadaye is killed in 1993, former refugees fled Burundi once more, and many Tutsi were internally displaced.⁶⁶ This plunged Burundi into a civil war, which brought back President Buyoya in power from 1996 to 2003.

The law continuously privileged those who remained behind, hence it is the “instrumental use of law” which the government has never questioned and which is at the root of multiple land disputes.⁶⁷ “The core problem is that most of the spoliations and land grabs were at some point legalised, giving corruption and clientelism an almost normative character. To a large extent, statutory law in Burundi facilitates and even encourages practices that most people perceive as arbitrary, inequitable and unjust,” writes Kohlhagen.⁶⁸ Politicized ethnicities and violence by the state, produced a land where ethnicity and indigeneity become tied. When people flee violence, even though their land may change ‘ownership’, the refugees are remembered as the ‘first’ owners.

63 Gatunange, “La problématique foncière,” 12.

64 Arusha Peace and Reconciliation Agreement for Burundi, (28 August 2000, Arusha) 19.

65 RCN Justice and Democracy, *Etude sur les pratiques foncières au Burundi*,” 14.

66 RCN Justice and Democracy, *Etude sur les pratiques foncières au Burundi*,” 20.

67 Kohlhagen, “In quest of legitimacy.”

68 Kohlhagen, “In quest of legitimacy,” 4.

TRC and consociational power-sharing

Parliament approved the creation of the Truth and Reconciliation Commission in April 2014, at the same time that the special court for the CNTB was approved. The TRC will study ethnic violence from 1962 till 2008 for a period of four years, in order to identify which crimes were committed and who were its perpetrators. It will not have the right to prosecute. There have been no other avenues to discuss the past, or judge culprits of mass violence, be it the state, the individuals, groups or rebel groups.

The delay in creating a truth and reconciliation commission is due the form of political settlement, which Burundi underwent to end the civil war, a product of the Arusha agreement brokered by South Africa, Tanzania, and signed by the main opposition Hutu and Tutsi parties and the president in 2003. Although the CNDD-FDD did not sign this agreement, its emergence into power, through the parliamentary vote, was brokered by the Arusha agreement. The agreement has sculpted the current constitutional and political landscape.⁶⁹ This political settlement was based on “consociational power-sharing arrangement between ethnopolitical groups and an elite bargain between politicomilitary leaders”.⁷⁰ Burundi’s government follows a consociational power-sharing model, which requires it by the constitution to have a maximum of 60% Hutu ministers and a maximum of 40% Tutsi ministers. At least 30% are women. Thus the National Assembly had to have 60% Hutu, and 40% Tutsi and a minimum of 30% women representatives. The Minister of National Defence and the Minister in charge of the National Police must belong to different ethnic group.⁷¹ Each political party must have a mixture of Hutu and Tutsi candidates on the electoral lists. Each party has to have ethnic and gender diversity, thus “the dominant party CNDD-FDD, while rooted in a Hutu rebel movement, is no longer perceived as an exclusive Hutu party. Despite defusing ethnic tension, the Arusha Agreement was an elite power-sharing pact, focussing on the sharing of senior political, military or economic positions.⁷² Thus due to the character of Burundi’s transition, the TRC was delayed due to the ethnopolitical and politicomilitary groups not in the least being interested in transition justice: “As many of them have blood-stained hands, their in-

69 Vandeginste, S. “Burundi’s Truth and Reconciliation Commission: How to Shed Light on the Past while Standing in the Dark Shadow of Politics?” in *The International Journal of Transitional Justice*, 2012, 1-11; Vandeginste S. “Power-sharing, Conflict and Transition in Burundi: Twenty Years of Trial and Error” *Africa Spectrum*, 44, 3, 63-86 (2009).

70 Vandeginste, “Burundi’s Truth and Reconciliation Commission,” 5.

71 Vandeginste, “Power-sharing,” 75.

72 Vandeginste, “Burundi’s Truth and Reconciliation Commission”.

terests converge in having as little truth and accountability as possible.” For example if the CNDD-FDD is in power and handles the TRC process, other parties will be concerned with “one-sided truth telling”.⁷³

The power-sharing model has not led to a success in other state-building goals of democracy such as the rule of law, accountability, effective governance, anti-corruption or avoiding the electoral authoritarianism.⁷⁴ Consociationalism has not prevented the ruling party from becoming increasingly authoritarian, despite being perceived as providing a stable power-sharing democracy ending political violence and electoral authoritarianism. It has been argued that the last 2010 elections resulted in a more authoritarian state with the re-election of President Pierre Nkurunziza and the boycott by major opposition parties. However, opposition parties, that include former foes, formed a coalition to fight the growing hegemony of the ruling party. This has showcased a maturity among opposition parties. The 2015 elections has increased the hold of the ruling party, as President Nkurunziza chose to run for a third mandate on 21 July and won the elections, despite the constitution, based on the Arusha agreement, recognizing a two-term limits. The constitution in the end approved President Nkurunziza’s candidacy as its independence was questioned and doubted. This has led to protests similar to the ones earlier in Makamba province over land disputes, as neighbourhoods in the city of Bujumbura, have led anti-third mandate protests. They have since have been the targets of killings allegedly led by the police and youth members of the ruling party Imbonerakure, as well as opposition party members and civil society. This has tarnished President Nkurunziza’s third term as it has also been accused of seeking to reignite ethnic antagonism. This caused once more the movement of the population with an estimated 175,000 refugees in neighbouring countries.⁷⁵

Land commission: a reconciliatory policy

The 2000 Arusha Peace and Reconciliation Agreement for Burundi established a commission to assist refugees and displaced persons in recovering their properties.⁷⁶ Emphasis is placed on the right to regain possession of

⁷³ Vandeginste, “Burundi’s Truth and Reconciliation Commission,” 5.

⁷⁴ Vandeginste, “Power-sharing”.

⁷⁵ European Commission, “EU increases humanitarian aid for Burundi refugees,” press release, Brussels, July 30 2015, http://europa.eu/rapid/press-release_IP-15-5453_en.htm.

⁷⁶ Article 2 (e) of chapter one on “Rehabilitation and Resettlement of refugees and sinistrés” in Protocol IV Reconstruction and Development, Arusha Peace and Reconciliation Agreement for Burundi, (28 August 2000, Arusha), 77.

one's land in conformity to the laws and regulations of Burundi for the two identified groups of refugees and the *sinistrés* who are "all displaced, regrouped and dispersed persons and returnees".⁷⁷ When they cannot recover their property, they should be compensated, the Arusha agreement said.

The *Commission Nationale de Réhabilitation des Sinistrés* (CNRS) created in 2002 as a product of the Arusha agreement, was in 2006 replaced by the *Commission Nationale Terres et autres Biens* (CNTB). The government issued a call for the return of refugees in 2002, but it was in 2008 that saw a high number of repatriates return following the tripartite action of The Burundi government the United Nations High Commission for Refugees and the Tanzanian government.⁷⁸

The CNTB classifies refugees in two categories: longstanding refugees from 1972, and the second category is made up of recent refugees who fled the country in 1993 (including a large number of internally displaced population): this includes both members of Hutu and Tutsi population. The 1993 refugees were able to more or less regain easily their property. The main problem was the long-standing refugees of over 30 years who returned and wished to access their former properties. People without reference to their former property were placed in 'integrated rural villages', which included refugees of 1972. The number of 1972 and 1993 refugees repatriated from 2002 to 2009: 524,222 with the majority being 1993 refugees⁷⁹ while 162,156 Burundi refugees received citizenship from Tanzania in 2014.

In the CNTB report 2006-2011, the land commission sets out to resolve conflicts connected to the 1972 crisis through the "amicable settlement, restitution of property, sharing of property, demarcation, transfer, retrocession, confirmation of ownership by occupier, compensation." The two groups concerned are the refugees back from exile who wonder about accessing their old properties and those who have lived in those properties for over thirty years and who are concerned about what would happened if they lost the land.⁸⁰ In all its activities the CNTB aims to be neutral and to "reconcile law, equity, peaceful cohabitation and peace consolidation." The role of the commission was to explain and make the repatriate and the resident, understand that neither of them were at the root cause of the conflict

⁷⁷ Ibid.

⁷⁸ République du Burundi, 2006 - 2011, 27.

⁷⁹ Dissertation by Jean-Baptiste Ndayiragije entitled "Non-institutional mechanisms to resolve land conflicts between residents and returnees: Study of Nyanza-Lac commune in Makamba Province", April 2011

⁸⁰ République du Burundi, 2006 - 2011, 2.

and that they will gain from such cohabitation.”⁸¹ The land commission has a provincial delegation in each province, whose work is to do an inventory of land owned by the state, and identify land illegally acquired, handle all cases submitted by the *sinistrés*, who are all the displaced, regrouped and dispersed persons and returnees, with the aim of helping them recover their property, provide technical assistance to *sinistrés* to acquire their property rights.⁸² The land commission considered the possibility of compensating the *sinistrés* who have not recovered their land or goods and resolve pending litigations from the previous commissions, but this has not been done in practice.

The repatriate, upon his return from exile – from the war – and finds his plot occupied by another person or the state has built some form of infrastructure is to seek the CNTB. The report emphasizes that those who seek the CNTB is limited to those who fled because of the “socio-political crises”.⁸³ Often the repatriate has to use witnesses as they hold no land title while the occupant has one. Thus it is a battle whether memory and customary right or the law will win. With customary land, memory can help produce evidence, in locating the land, neighbours or people who can attest one’s ownership. Law means that the occupant must produce a land title. Yet the burden remains on the claimants to bring evidence that they were previous owners of the properties as a land title, which is not often there, is not required but witnesses rather.

The difficulties faced by refugees upon return or an internally displaced person include: the property was shared among remaining family members, the state took ownership of it and distributed it, or the land was requisitioned by the state for infrastructural projects.⁸⁴ The CNTB then asks the person to bring documents or witnesses and record the “plaintiff”, the “accused” living in the plot is invited to bring documents/explain themselves, bring a witness to support him, next part is when the land commission tried to make them reach a compromise. When the two parties fail to reach an agreement, CNTB settles it by: restitution of the property when the property was annexed, or the owner dispossessed, and when the land was exploited by the occupant, the commission will give the occupant one quarter of the land and three quarters to the repatriate. If the occupant has documents, proof that they are occupying the land legally, then the

81 République du Burundi, *Commission Nationale Terres et autres Biens: son organisation et ses activités 2006 - 2010*, (Lake House, Bujumbura), 19.

82 Ibid.

83 Ibid.

84 République du Burundi, 2006 - 2011, 2.

property can be cut in half, but not always, depending on its proportion. If a claimants' land was taken over by public infrastructures then the state has give the claimant land with the same surface area. Through retrocession if land was occupied illegally, or compensation when the occupant returns property, his assets should be evaluated and receive a compensation for them, but the commission has no funding for it.⁸⁵

The from 2006 to 2011 in its first mandate led by the clergyman Astère Kana, primarily sought to do inventory of land owned by the state, vacant land and privileged the sharing of properties or mediated settlement agreed by both parties. By 2011, over 27,000 cases were registered with the CNTB, close to 66% were amicably resolved, while 20% were settled by CNTB.⁸⁶ Before the CNTB's existence, the mode of resolving land disputes was the involvement of local leaders such as *Bashingantahe*.⁸⁷ In the past, *Bashingantahe* as wise men and women of the community, alongside local leaders, use to resolve disputes in the community. They have now become excluded from this process. Yet customary law remains important with the institution of *Bashingantahe*: "Negotiation, conciliation and arbitration continue to play an important role, whereas only very few people recognise written state law as an effective means to mitigate conflicts. Not only the *Bashingantahe* but also state administrators and even judges in state courts refer to customary values and logics to settle disputes".⁸⁸

The land disputes in Nyanza-Lac peasantries in the Makamba province are explained by the CNTB as due to the 1972 crisis whereby, large parts of the population fled, an area previously very populated and rich in agriculture.⁸⁹ In 1976, the government urged the population to return, some return others did not, those who returned did not return to settle but rather to reap, and would return to Tanzania and neighbouring DRC. In view of this "abandonment", writes the report, the government decided upon new usage of the land, it cleared the now forested land, and settled new peasantries, as part of this new agricultural project, the government would dictate what to plant, agronomists would monitor the planting of food crops: palm trees and cotton. The repatriates upon their return would expect to recover their plot but found other people settled in those parts

⁸⁵ République du Burundi, 2006 - 2010, 26.

⁸⁶ République du Burundi, 2006 - 2011, 43.

⁸⁷ These are trusted "wise men," chosen by the community as their mediators and representatives, from pre-colonial era. To solve land conflicts between returnees, residents, solution reached with the *Bashingantahe* was to share the property.

⁸⁸ Kohlhagen, "In quest of legitimacy," 9.

⁸⁹ République du Burundi, 2006 - 2010, 27.

by the government. This set out the beginning of the land conflicts in the peasantries.⁹⁰

The CNTB policy considers everybody as a survivor, it encourages reconciliation and prioritizes land sharing or agreement reached between both parties. Such an approach privileges the present, peaceful living and the breaking down of victim-perpetrator narrative.

Praxis of land restitution

Prudence Bigirimana in southern Burundi in Bururi province, a Tutsi, and native of another commune Matana, in the hinterland of the province, has been living in Rumonge, a town on the coast of lake Tanganyika, for over two decades. Bigirimana lost his plot of land to a repatriate last year in 2014 in the Rumonge commune. The returnee Nyabenda Buyabara returned from Tanzania in 2009 and sought to resolve the problem amicably. Failing to reach an understanding, Buyabara then went to the land commission to claim his property. Bigirimana on the other hand, argued, showing proof, that it is the OHP (Palm oil office)⁹¹, a state company, which gave out the land to encourage farmers to plant oil palms in 1983. In 2013, the land commission listened to both parties and visited the property. The commission thereafter gave right of property to Bigirimana, and then asked the plaintiff to make an appeal at the national level within two months deadline. The appeal did not take place. Nevertheless in May 2014, Bigirimana attested that the commission brought the repatriate in the property by force and refused to listen to Bigirimana. Bigirimana questioned how the commission could give out land to someone who lost before the same commission and did not even appeal. This Bigirimana said, is a regular occurrence with the CNTB, and would eventually lead to conflict, as two conflicting decisions were made in one case. The commission defended itself saying that Buyabara complained to the commission after Bigirimana sold the property to someone else⁹². Bigirimana owns another home where he resides in Rumonge.

In an interview with Bigirimana,⁹³ he called the commission “fraudulent”, describing it as corrupt with the commission in his view urging repatriates to seek a number of people to play the role of witnesses to claim land, which is not theirs, by paying CNTB some money. There is a lot of

⁹⁰ République du Burundi, 2006 - 2010, 28.

⁹¹ This was previously the SRD Rumonge (Société Régionale de Développement)

⁹² Interview with Prudence Bigirimana, December 2014.

⁹³ Dieudonné Hakizimana “Bururi, Makamba: La CNTB accusée de partialité,” Iwacu, May 26, 2014, <http://www.iwacu-burundi.org/bururi-makamba-la-cntb-accusee-de-partialite>.

hostility in the community, said Bigirimana, adding, “now we are hoping for a change in government: we hope a new body will come to undo the injustice done.” For Bigirimana, it is less about ethnicity now, ethnicity only appears when it comes to revisiting cases already settled by the sharing of property between returnees and residents, and when houses built post-1972 are attributed to repatriates or claimants because they were built in those same properties by the residing property owner.

Pierre Bandyatuyaga, who lost two of his properties in 1972 in Rumonge, gained them both in April 2014. Bandyatuyaga was elated and said justice was served, “better late than never”. He won the case after appeal in the special court. Emmanuella Tuyishemeza a representative of one of occupants of the properties said that the commission granted Bandyatuyaga the home without considering that it is her father who built the house in the property and not Bandyatuyaga. Tuyishemeza added that previously, the appeal court had rejected the CNTB provincial delegation’s decision to attribute the property to Bandyatuyaga, and suggested that the property be divided into two.⁹⁴

The CNTB came under the presidency’s office following revision of the CNTB law in 2011, and welcomed newcomer members of the ruling party, and the Forces Nationales de Libération (FNL) members who actively took part in the armed rebellion – which ended in 2006 – were appointed as provincial delegates of the CNTB. The new CNTB head in 2011, Serapion Bambonanire, accused the work of CNTB of favouring the residents and also called for unconditional restitution of land for the 1972 refugees from residents who were now referred to as secondary occupants.⁹⁵ The commission after 2011 sought for those living in the property owned previously by the Hutu who fled 1972, to promptly vacate the property. In the land commission’s records, up to 2013, out of 37,062 cases recorded since 2006, 59,9% were resolved amicably, 26,12% resolved through CNTB decision – which means, the current occupant told to vacate the property, 13,98% not conflict related cases, cases which are unresolved 29,88%⁹⁶. Another change in the land commission’s mission was article four of the mission, composition, organization and functioning of the commission, concede a change that from 2011 onwards, that if parties fail to reach an agreement at the provincial

⁹⁴ Nzorubonanya Felix “Rumonge: La CNTB restitue deux maisons à un rapatrié sur fond de contestations,” *Iwacu*, April 4, 2014, <http://www.iwacu-burundi.org/rumonge-la-cntb-restitue-deux-maisons-a-un-rapatrie-sur-fond-de-contestations/>

⁹⁵ The sacking of Bambonanire was sacked as the head of the CNTB on 18 April 2015, is related to the Makamba incident Bambonanire

⁹⁶ Statistics received from CNTB, 2013.

delegation level, the injured party can appeal to the national commission within two months of the decision made.⁹⁷

The spokesperson of the president, Léonidas Hatungimana, has argued that the state cannot be blamed in the past when it allocated land to new occupants after 1972, but rather the blame is on the occupants of that land, who became ‘illegal occupants’, because “the state had washed off its hands with the laws.”⁹⁸ This is in reference to presidential decrees in 1974 and 1977, which withdrew the seizure of properties of people condemned in May 1972, with the law decree of 1977 allowing the lawful reintegration of people who fled events of 1972. The land commission is reconciliatory because “when someone demands the jacket of his murdered father, without demanding their death, this is more than conciliatory?” asked Hatungimana. Thus for the president’s spokesperson, the illegal occupant should voluntarily return what does not belong to him, with compensations from benefiting from the “illegal occupation”. For Hatungimana there are no laws, which refer to compensation of illegally, enjoyed properties but instead there are laws regarding compensating a claimant whose property they can no longer access. Thus the notion of a legal occupant of a property with a land title was refuted, or a secondary occupant or who bought the land in good faith. This dismissal absolved the state, even though the state sold many properties, or encouraged population to move into vacant land.⁹⁹

In an exchange workshop in July 2013, to evaluate the work of CNTB and organized by the office of the presidency, creating a compensation fund was rejected because the CNTB does not believe that there are those who bought property in good faith.¹⁰⁰ Pierre Claver Sinzinkayo, head of the CNTB’s provincial delegation in the city of Bujumbura, said that they could not recognize title deeds by such occupants because that there are no good faith occupants, because the government that issued title deeds was in their view illegitimate because it had condemned to death the property owners, before seizing their property. Therefore no title deeds can be legally recognizable. Sinzinkayo emphasised that the CNTB was not put in place to dispossess one population for the benefit of another, but rather to “rectify errors of the past and rehabilitate victims of injustice committed in the

⁹⁷ République du Burundi, 2006 – 2011, 11

⁹⁸ Edouard Madirisha, “Karusi: Léonidas Hatungimana la star de la CNTB,” *Iwacu*, June 22, 2013 (<http://www.iwacu-burundi.org/karusi-leonidas-hatungimana-la-star-de-la-cntb>).

⁹⁹ République du Burundi, 2006 – 2011, 53.

¹⁰⁰ Floribert Nisabwe et Philippe Ngendakumana, “CNTB: que veut dire « acquéreur de bonne foi? », *Iwacu*, July 3, 2013, <http://www.iwacu-burundi.org/cntb-que-veut-dire-acquereur-de-bonne-foi/>

past.”¹⁰¹ Sinzinkayo questioned the authenticity of documents proving ownership of properties because the owners had been condemned to death.

Pauline Ntacunkurikira, whose husband was killed in 1972, was given her property by the land commission, after forcing out of the plot, 116 family members, in Busoni, in northern province of Kirundi in July 2014.¹⁰² The residents were told to vacate the 5 hectares plot. They argued that they had bought the land in 1980 from money they had received as compensation for the land they were forced by the state to relocate in order to make place for a market. The evicted, added that they knew nothing about the previous ownership and history of this property. They furthermore said that they did not know that the first property owner was a *menja*, a negative connotation used in the official literature to refer to a Hutu rebel. This term is prevalent in the discussion of Hutus, who have been portrayed as rebels, *bamenja*, and not as the victims of 1972. Thus the Hutu who fled 1972, were portrayed as rebels who attacked the people and the state, yet rebels though they had some support in the communes they launched the attack were not representative of the whole Hutu population. What is not discussed is the oppression thereafter.

In an interview with a CNTB official in November 2013, working on cases in Bujumbura city, he estimated that 85% of land disputes cases are Hutu vs. Hutu over plot disputes, thus for him, ethnicity only plays an aspect in the restitution of houses not land. Yet when it comes to housing it is disputed between Tutsi vs. Hutu. The disputes over property, which the official was handling in Bujumbura, were about Tutsi residing in houses owned previously by Hutu. Property is returned to 1972 owners, while the current owner is not compensated but told to pursue the person they brought the house from, the official added. The CNTB is viewed as a politicized entity, in place to settle political and ethnic score, according to Abbot Adrien Ntabona, the former head of the *Bashingantahe* council. For Ntabona, the current ruling party wishes to gain a Hutu electorate through this. Describing it as an ‘explosive situation,’ he said that no *mushingantahe* can get involved because there is a lot of scheming within the land commission. The interviewed CNTB official said those who oppose its work have politicized it, and yet those who oppose CNTB argue that it is the CNTB, which has politicized land restitution. For the CNTB official, land disputes are instrumentalized

101 Dieudonné Hakizimana, “CNTB: “Pas acquéreur de bonne foi,” *Iwacu*, August 7, 2013, <http://www.iwacu-burundi.org/cntb-pas-dacquereur-de-bonne-foi>.

102 Philippe Ngendakumana, “Les déguerpis de la CNTB, à Busoni: une décision légale mais injuste,” *Iwacu*, July 28, 2014, <http://www.iwacu-burundi.org/les-deguerpis-de-la-cntb-a-busoni-une-decision-legale-mais-injuste>.

and are “an opportunity to express the frustrations against the CNDD [-FDD, the ruling party].”¹⁰³ Political parties and civil society argue that the CNTB has not aimed at reconciliation, but is instead reviving ethnic hatred accusing the ruling party of seeking votes in the 2015 elections.¹⁰⁴

The land commission is used by the state to depoliticize the land disputes, by bureaucratizing the process of land, making it a procedural matter. Yet increasingly, the land commission’s work is seen as reigniting not only ethnic tension but as privileging one part of the population over the other, in its endeavour to remediate the past. The land commission on the other hand argues that reconciliation can only happen when those who have returned have their property restored. This has limited the commission’s capacity to listen to both sides, and has aggravated disputes over land. The CNTB policy in praxis has privileged the past, rendering justice to the victims of 1972, by ensuring that beneficiaries of the past, vacate the properties belonging to the refugees. The beneficiaries are viewed as the perpetrators, illegal occupants who knowingly stayed in properties that did not belong to them despite those with land titles. The state is absolved of any responsibility, despite contradicting laws in previous commissions.

Ending remarks

As sovereignty shifted from body to territory during the colonial period, indigeneity that indicated those who first cleared the land was replaced by ethnicity to mark bodies. Politics and ethnicity as products of continued racialized centralized despotism in the post-independence state produced law to suit itself, and violence - connecting and disconnecting the body to territory, bringing out a new form of ethnicized indigeneity in the twentieth century, marking the ‘ethnic’ body as tied to particular property.

Land restitution in Burundi shows how a new policy may emerge as the outcome of the land commission’s actions, and inactions. This process is complicated with properties passing through many owners, and the state passing laws, which allowed occupants to gain ownership of the property with time, legalizing the dispossession of population who fled for their lives. The establishment of the land commission without a Truth and Reconciliation Commission to work hand-in-hand together to acknowledge events of the past, and provide funding for compensation, has created and continues to create new victims and perpetrators, and performed in-

¹⁰³ Interview with a CNTB official in November 2013.

¹⁰⁴ Rénovat Ndashinze, “Forsc: la loi sur la CNTB souffle sur les braises de la haine ethnique en faisant les yeux doux aux Hutu,” *Iwacu*, January 1, 2014, <http://www.iwacu-burundi.org/forsc-loi-cntb-souffle-sur-les-braises-de-la-haine-ethnique-en-faveur-hutu-contre-tutsi>.

clusionary and exclusionary practices that have strained the nation and peace building process of Burundi post-violence. The political settlement, based on consociational power-sharing agreement, has been a top-down initiative and has not engaged in dialogue with the population, rather dividing the population as either perpetrator or victim. Not compensating the residents and holding them accountable for past violence by the state against the population. Land restitution in this instance comes to inform and strengthen one view of the past where one part of the population is a victim of another part of the population. This also shows how malleable the law is, it has been used to dispossess a population fleeing violence and to also give them back their land.

Can the state's approach plausibly be considered as restorative justice and as transcending the categories of conflict? Does this serve as foundation for a new society: a new community, new political relation, and new man/woman in post conflict Burundi? Unfortunately the responses to these interrelated questions are negative. Despite invoking land as restorative justice, the Burundi experiment has been seen as having many challenges. The approach is elitist and too institutional and fails to involve communities in addressing land alienation and other legacies of the violence. At the top, the two, commission and the special court are passing conflictual orders and decisions, which have been challenged, by other court. It appears more of a corrective rather than restorative justice.

In brief, the Burundi experience reveals the scar and trauma of the violence in the political foundation and essence of the post conflict community of Burundi. Mamdani¹⁰⁵ argues that the solution is the deethnicization and depoliticization of ethnic identities, through survivor's justice, in which Hutu, Tutsi, and Twa are both survivors and all belong to the land. Land ownership and reform has become central to political reform and political justice in Burundi, defining who are the victims, perpetrators not survivors is what the government has done.

¹⁰⁵ Mamdani, *When Victims Become Killers*.