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STONES LEFT UNTURNED

Law and Transitional Justice in Burundi

Stef Vandeginste
For Natan and Eneas
ACKNOWLEDGMENTS

This book is based on a doctoral thesis I defended in 2009, at the end of a long and fascinating journey. Numerous companions travelled with me. Without their encouragement and support, I might not have reached my destination.

Some fifteen years ago, Koen De Feyter appointed me as the rapporteur of a small internal ad hoc think tank he was chairing. For Amnesty International, we wrote a report on female circumcision and human rights together. It was the first – and by no means the last – opportunity for me to learn from his analytical skills, his capacity to structure thoughts, his concern about the relevance of hard and soft law for the real world (and vice versa), his team spirit and so much more. He was the ideal supervisor, challenging interim research findings and providing additional food for thought on several occasions, but also reassuring and encouraging in times of doubt. Filip Reyntjens irreversibly infected me with his Central Africa virus. Our joint research ventures have greatly enriched my understanding of how theory, policy and practice are sometimes strange bedfellows. Without his unconditional support and his enthusiasm, I would certainly not have been the doctor I am today. It was Marc Bossuyt who offered me fascinating insights into the interaction between law and politics and how this affects human rights protection, both at the very local level and in our global village. It was a privilege to work with him and to enjoy not only his expertise but also his sense of humour. My sincere thanks also go to Stephan Parmentier. He introduced me to the world of research based human rights activism. His ever inspiring enthusiasm and genuine interest in my Burundi adventure have been most stimulating. With few words, Luc Huyse gave me a decisive fatherly push to embark on my doctoral journey. Each time I did not find the right words to express what I wanted to say, I imagined how Luc would phrase it. That was somewhat frustrating (as I knew he would do so much more accurately and elegantly than I would ever be able to). But above all, he was a great source of inspiration and critical self-reflection, for which I am truly most grateful.

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PREFACE

You are holding in your hands, dear reader, an absolutely fascinating piece of work – what I believe to be a true milestone in legal scholarship of transitional justice, as well as in our understanding of Burundi. It is very well researched and written, complete and nuanced, thoughtful and creative. It is a true joy in every respect of the work, a brilliant piece of legal scholarship – without doubt the best of its kind I have ever seen.

The case of Burundi is largely unexplored in the international academic and legal scholarship. This is a pity, for Burundi represents a fascinating case of a successful negotiated transition to peace, in which the international community played a major and positive role. There are not many cases where international peacemaking and peacekeeping can be clearly said to be a success, but Burundi is one, and it deserves to be known better for that reason alone.

But this book is important – and brilliant – for far more than merely being about an understudied and interesting case. It truly sets the standard in what to expect of the contemporary legal analysis of transitional justice.

For starters, this work contains a gorgeous historical analysis. This is done far too little. Most studies of transitional justice may give us a short overview of the nature of the crisis, and then they focus solely on contemporary legal and political issues. It is true that in the contemporary period the tools of transitional justice are far more sophisticated and salient than they were in the past (Burundi, as documented by Vandeginste, is no exception to this). But it is equally true that what preceded the contemporary period is not gone, forgotten, or irrelevant. Vandeginste’s detailed study of Burundi’s post-Independence period shows how transitional law was always a political device for power holders; it also shows the complacency and inefficacy of the international community to make any difference in this sorry situation. Nobody in Burundi has forgotten this – it is only the outsiders for whom history only starts with their arrival. This lengthy section in the book is a model of detail, nuance, and insight, a truly fascinating historical lesson in judicial real-politik.

In so doing, Vandeginste does what he calls, following McEvoy, “thick” legal research, i.e. a combination of legal empirical and doctrinal research with socio-political and historical knowledge. Admittedly, Vandeginste does not seek to
create new political science insights, but his work is steeped in a fine and nuanced understanding of the socio-political dynamics of Burundi. He does so better than almost any other scholar of the region: his nuance and objectivity are truly unique. In a region where so many scholars are biased, Vandeginste is a model of dispassionate scholarship – a model, according to me, of how a sophisticated legal mind can bring clarity to political issues that many political scientists and historians specialized in the region fail to achieve. At the end of the day, then, this book stands not only as a great example of how thick legal analysis can usefully bring history and political science knowledge to bear on legal scholarship; but also of how research based on legal standards and careful respect for the facts can benefit the social sciences.

Finally, Vandeginste develops an original and relevant proposal for a potential role of the Constitutional Court of Burundi – and of constitutional adjudication in general–in shaping Burundi’s transitional justice law and practice in a way that is more in accordance with international legal standards, and less prone to partisan interests and political expediency. This model – a move away from the special courts, chambers, or commissions so popular in the transitional justice community nowadays – is highly relevant for other cases as well and should be considered by all who are interested in transitional justice.

I repeat: this is a beautiful book. Everything about it is nuanced, grounded, well argued, and creative. Even if you do not much care about Burundi, I encourage you to read it, and to savour what top legal scholarship can look like. You will be enriched by it.

Medford, 1 July 2010

Peter Uvin
Academic Dean and Director of the Institute for Human Security
The Fletcher School, Tufts University
# CONTENTS – SUMMARY

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>vii</td>
</tr>
<tr>
<td>About the Author</td>
<td>ix</td>
</tr>
<tr>
<td>Preface</td>
<td>x</td>
</tr>
<tr>
<td>Contents – Summary</td>
<td>xiii</td>
</tr>
<tr>
<td>Map of Burundi</td>
<td>xxiv</td>
</tr>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
</tbody>
</table>

## PART I

THE LAW, POLICY AND PRACTICE OF TRANSITIONAL JUSTICE IN BURUNDI: A HISTORICAL ACCOUNT

- Chapter 1
  Burundi’s Legacy of Large-Scale Human Rights Abuses .................. 17

- Chapter 2
  Transitional Justice Law and Practice in the Aftermath of each Cycle of Large-Scale Human Rights Abuses .......................... 39

- Chapter 3
  Transitional Justice Law and Practice in Response to the Full Legacy of Large-Scale Human Rights Abuses, During and Beyond the Burundian Peace Process .................................................. 135

## PART II

TRANSITIONAL JUSTICE IN BURUNDI: THE POTENTIAL AND THE LIMITS OF THE LAW

- Chapter 4
  Sources and Determinants of Burundi’s Transitional Justice Law and Practice ................................................................. 235

- Chapter 5
  Burundi’s Obligations under International Law ............................ 281
Chapter 6
Applying International Law and Reducing Political Expediency Through Constitutional Adjudication ........................................ 359

Conclusion ......................................................... 425
Bibliography ....................................................... 433
DETAILED TABLE OF CONTENTS

Acknowledgements ................................................................. vii
About the Author ................................................................. ix
Preface ................................................................................... xi
Contents – Summary ............................................................... xiii
Map of Burundi ................................................................. xxii

Introduction ......................................................................... 3

PART I
THE LAW, POLICY AND PRACTICE OF TRANSITIONAL JUSTICE IN
BURUNDE: A HISTORICAL ACCOUNT

Chapter 1
Burundi’s Legacy of Large-Scale Human Rights Abuses .................. 17
1.1. The 1965 Events ........................................................... 17
1.2. The 1972 Events ........................................................... 22
1.3. The 1988 Events ......................................................... 25
1.4. The 1991 Events ......................................................... 26
1.5. The 1993 Events ......................................................... 28
1.6. Concluding Observations ............................................. 33

Chapter 2
Transitional Justice Law and Practice in the Aftermath of each Cycle of
Large-Scale Human Rights Abuses .......................................... 39
2.1. The 1965 Events ........................................................... 39
2.1.1. The Aftermath of the Assassination of Prince Louis Rwagasore
and other Political Violence before Independence ................ 40
2.1.2. The National Reconciliation Conference of 1964 and the
Assassination of Pierre Ngendandumwe ............................. 43
2.1.3. The Response to the 1965 Events ............................. 44
2.1.4. The Historical Context of Burundi’s Amnesty Legislation .......................... 48
2.2. The 1972 Events ........................................................... 50
2.2.1. Political trials in the Run-Up to the 1972 Events ............. 50
2.2.2. The Response to the 1972 Events at the National Level ........ 52
2.2.3. The Lack of Response at the International Level .......................... 57
2.3. The 1988 Events .............................................................................. 59
  2.3.1. The International Response ....................................................... 59
  2.3.2. The National Response ............................................................... 61
2.4. The 1991 Events .............................................................................. 70
  2.4.1. The International Response ....................................................... 70
  2.4.2. The National Response ............................................................... 72
  2.4.3. The Aftermath of the 1991 Events and Judicial Reforms.............. 75
2.5. The 1993 Events .............................................................................. 77
  2.5.1. Introduction ................................................................................ 78
        1. The Amnesty Law of September 1993 ........................................... 78
        2. The Reform of the National Commission for the Return and Reintegration of Refugees ......................................................... 82
  2.5.2. Transitional Justice Response at the National Level ..................... 84
        1. The Assassination of President Melchior Ndadaye and other Political Leaders ................................................................. 85
           1.1. The Investigative Stage ............................................................ 85
           1.2. The Trial Hearings and the Verdict ........................................ 87
        2. The Massacres of Civilians Following the Coup Attempt ....... 90
           2.1. Legal and Institutional Aspects of the Organisation of the Massacres Trials ................................................................. 91
           2.2. The Investigative Stage ............................................................ 93
           2.3. The Trial Hearings Stage .......................................................... 96
           2.4. The Massacres Trials after the Arusha Peace and Reconciliation Agreement ............................................................. 99
        2.5. The Massacres Trials after the 2005 Elections ........................... 102
3. Developments in Terms of Political Reconciliation and Power-Sharing ................................................................. 106
  3.3. The Law Decree of 13 September 1996 on the Institutional System of Transition ............................................................. 113
  3.4. The Constitutional Act of Transition of 6 June 1998 ................. 114
2.5.3. Transitional Justice Response at the International Level .......... 115
  1. The Preparatory Fact-Finding Mission Ake-Huslid ....................... 117
  2. The UN Security Council Fact-Finding Mission and the Position of the UN Security Council ......................................................... 120
  4. The International Commission of Inquiry for Burundi ............... 125
  5. No Follow-Up .................................................................................. 129
Chapter 3  
Transitional Justice Law and Practice in Response to the Full Legacy of Large-Scale Human Rights Abuses, During and Beyond the Burundian Peace Process .................................................. 135

3.1. Brief Overview of the Burundian Peace Process and Peace Agreements 135
3.1.1. Some Political Observations on the Peace Agreements ............ 142
3.1.2. Legal Status of the Peace Agreements .......................... 143

3.2. The Past and Dealing with the Past in Burundi’s Peace Agreements ... 147

3.3. Truth ................................................................. 149

3.4. Accountability ....................................................... 155
3.4.1. A Call for National Legislative Reform and for International Judicial Bodies ............................................. 155
3.4.2. The Enactment of Temporary Immunity Legislation .............. 159
3.4.3. The Peace Agreements and Amnesty Legislation ................. 170
3.4.4. The Identification and Release of ‘Political Prisoners’ .......... 172
3.4.5. Vetting ............................................................ 178

3.5. Reparation ........................................................... 181
3.5.1. Individual and Collective Measures of Restitution, Compensation and Rehabilitation ..................... 182
3.5.2. Symbolic Measures of Satisfaction .............................. 185
3.5.3. Guarantees of Non-Repetition ................................... 185

3.6. Macro-Level, Political Reconciliation ................................ 185

3.7. The UN Assessment Mission on the Establishment of an International Judicial Commission of Inquiry for Burundi .................. 192
3.7.1. The Kalomoh Mission and Report ............................... 193
3.7.2. The Debate Before the UN Security Council and Resolution 1606 (2005) .................................................. 198
3.7.3. The Negotiations Process between the Government of Burundi and the United Nations ......................... 200
  1. Chronology of the Negotiations ................................. 200
  2. Transitional Justice Mechanisms as Proposed by the Governmental Delegation ............................................. 207
  3. Consultation of the Population on the Proposed Transitional Justice Mechanisms ...................................... 212
  4. The Issue of Amnesty ................................................ 217
  5. The Relationship between the TRC and the Special Tribunal ................................................................. 222

PART II
TRANSITIONAL JUSTICE IN BURUNDI: THE POTENTIAL AND THE LIMITS OF THE LAW

Chapter 4
Sources and Determinants of Burundi’s Transitional Justice Law and Practice .............................................. 235

4.1. General Overview ................................................................. 235
   4.1.1. Field A – International Law ......................................................... 239
          1. A Constructivist View .......................................................... 240
          2. A Realist View ................................................................. 242
          3. A Liberal View ................................................................. 245
   4.1.2. Field B – Non-Transitional Domestic Law and Justice ............ 249
          1. Transitional Justice as ‘Ordinary’ Justice: Continuity Proponents .................................................. 251
          2. Burundi’s Non-Transitional Justice System and Its Legacy of Weaknesses .............................................. 253

4.2. The Burundi Case-Study as an Illustration of the Potential and the Limits of the Law ..................................................... 255
   4.2.1. Law as a Source Versus Law as an Instrument ...................... 256
   4.2.2. Blatantly Unjust Law, Retroactivity and the Rule of Law ....... 260
   4.2.3. Law and Transitional Situations .............................................. 263
   4.2.4. Law and the Politicisation of Dealing with the Past .............. 266
   4.2.5. Globalising, Transplanting and Localising Transitional Justice Law ...................................................... 269
          1. Globalisation of Transitional Justice Law .................................. 269
          2. Transplanting Transitional Justice Law ................................... 271
          3. Localising Transitional Justice Law ....................................... 274

Chapter 5
Burundi’s Obligations under International Law .................................................. 281

5.1. The International Legal Framework as It Applies to Burundi .......... 283
   5.1.1. Introduction: The Status of International Law in Burundian Law ...................................................... 283
          1. Direct Application of International Law ................................... 283
          2. International Treaties Ratified by Belgium Prior to Burundi’s Independence ......................................... 287
   5.1.2. International Humanitarian Law .............................................. 290
          1. The Burundian Situation as an Armed Conflict under the Geneva Conventions ..................................... 291
          2. Legal Force of Common Article 3 and Protocol II .................. 293
3. Application to the Various Sets of Events .......................... 299
4. Duty-Bearers under Common Article 3 and Protocol II ...... 304
5. Conclusion .............................................................. 306

5.1.3. International Human Rights Law ............................... 307
   1. The Convention on the Prevention and Punishment of
      The Crime of Genocide ........................................... 309
   2. The International Covenant on Civil and Political Rights ... 311
   3. The African Charter on Human and Peoples’ Rights ....... 312

5.1.4. International Criminal Law .................................... 314
   1. The Statute of the International Criminal Court .......... 314
   2. Crimes Against Humanity as Crimes under Customary
      International Law ............................................... 315
   3. Crimes under International Law and Statutes of
      Limitations .................................................... 317

5.1.5. State Responsibility of Burundi for the Conduct of Rebel
       Movements .......................................................... 320

5.2. Rights and Duties Resulting from Violations of International Law ... 322
   5.2.1. General Obligations of Burundi under International Human
          Rights Law and International Humanitarian Law ....... 322
   5.2.2. Obligations and Rights Related to the Truth ............ 325
   5.2.3. Obligations and Rights Related to Accountability ....... 329
          1. Conventional Sources of Burundi’s Duty to Prosecute ... 329
          2. Implied Obligations Inferred from other Treaty Provisions 331
          3. Burundi’s Duty to Prosecute on the Basis of Customary
             International Law ........................................... 334
   4. Consequences for Amnesties or Other Measures
      Affecting Accountability ......................................... 339
   5. Soft Law Standards Related to Accountability .............. 338

5.2.4. Obligations and Rights Related to Reparation ............. 345
   5.2.5. Obligations and Rights Related to Reconciliation ...... 350

5.3. Final Considerations on the International Legal Framework as it
     Applies to the Specific Context of Transitional Justice Situations ...... 352

Chapter 6
Applying International Law and Reducing Political Expediency Through
Constitutional Adjudication .............................................. 359

6.1. A Focus on Constitutional Adjudication ........................ 360
    6.1.1. The Constitutional Court as a Custodian of the Constitutional
           and Transitional Justice Blueprint Laid Down in the Arusha
           Agreement .................................................... 360
    6.1.2. Constitutional Law as the Meeting Point Par Excellence
           of Law and Politics .......................................... 361
### Detailed Table of Contents

6.1.3. Constitutional Court or Legislator? The Countermajoritarian Difficulty ......................................................... 363
6.1.4. Constitutional Adjudication as a Way of Dealing With Conflicting Rights, Duties and Interests and of Accommodating the Plurality of Conceptions of Truth, Accountability, Reparation and Reconciliation ................. 365
6.1.5. International Mechanisms: Absence and/or Failure to Deliver. . 368

6.2. Burundi’s Constitutional Court ........................................ 370
6.2.1. Historical Overview .................................................. 372
6.2.2. Composition, Powers and Case-Law .............................. 374
    1. Composition .................................................................. 375
    2. Powers and Procedural Matters ...................................... 378
    3. Case-Law .................................................................... 383

6.3. The Constitutional Court of Burundi and Transitional Justice ...... 402
6.3.1. The Court’s Record of Adjudication in Transitional Justice Matters ...................................................... 402
    1. RCCB 31, 34 and 35 ........................................................ 402
    2. RCCB 54 .................................................................. 404
    3. RCCB 174 .................................................................. 406
6.3.2. Concluding Observations on the Role of the Constitutional Court in Reviewing Forthcoming Transitional Justice Legislation ......................................................... 410
    1. Lessons Learned after Fifteen Years of Constitutional Adjudication ................................................................. 411
    2. Essentials of the Constitutional Court’s Adjudication on Transitional Justice .................................................. 415
    3. Emancipating the Constitutional Court from Political Subservience .............................................................. 417

Conclusion ............................................................................. 425
Bibliography ........................................................................ 433
MAP OF BURUNDI

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.