

**WHAT ARE THE PILLARS OF TRANSITIONAL JUSTICE?  
THE UNITED NATIONS, CIVIL SOCIETY AND  
THE JUSTICE CASCADE IN BURUNDI**

WENDY LAMBOURNE\*

*Burundi has experienced cycles of political and genocidal violence for the past 40 years. Under the terms of the Arusha Peace and Reconciliation Agreement of 2000, the government was expected to establish a Truth and Reconciliation Commission followed by a Special Tribunal. The United Nations, meanwhile, has supported the creation of a forum of local community facilitators ('FONAREC') who are being trained to educate and inform local communities about the four pillars of transitional justice and the importance of popular participation in the TRC process. But what are these four pillars and who has defined them? This paper surveys some of the different theoretical frameworks and pillars of transitional justice proposed by scholars and practitioners. It questions the appropriateness of the UN framework of transitional justice being imposed in Burundi, with its limited perspective on accountability as prosecutions, and its failure to include reconciliation as a fundamental component. The paper challenges the domination of the 'justice cascade' of Western legal human rights discourse and practice in the field of transitional justice, with its tendency to transplant pre-existing models and frameworks, and calls instead for a genuine engagement with local communities in the co-creation of a contextualised approach to transitional justice.*

I INTRODUCTION

As one of the poorest countries in the world, Burundi is struggling to recover from 40 years of political and genocidal violence, including a civil war during which approximately 300 000 people died and many more were wounded, internally displaced or became refugees. The Arusha Peace and Reconciliation Agreement of August 2000 established the terms for United Nations ('UN') peacekeeping and peacebuilding, including a transitional justice process to promote accountability as well as reconciliation. In this paper, I explore the UN approach to transitional

---

\* BSc (Hons) (Melb), GradDip (Inf Serv) (RMIT), MA (Int Rel) (ANU), GradDip (Int Law) (ANU), PhD (Syd), Senior Lecturer, Academic Coordinator and Deputy Director, Centre for Peace and Conflict Studies, University of Sydney.

justice, its theoretical and empirical foundations, and the extent to which it is fulfilling the promise of national consultations, civil society participation and local ownership.<sup>1</sup>

The UN Secretary-General declared in his 2004 report on the *Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, that: ‘The most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out’.<sup>2</sup> Scholars and practitioners before and since have expressed concern about the exclusion of civil society views and the lack of focus on victims in the top-down nationally and internationally driven transitional justice industry.<sup>3</sup> Criminal law processes have been singled out for particular criticism because of their lack of concern for the needs of victims, and their focus on the rights of the accused for a fair trial and the need to establish evidence according to narrow legal precepts. The importance of localisation and ‘transitional justice from below’ has been advocated by researchers drawing on theories of development and principles of legitimacy and sustainability, and I have argued previously for a rethinking of transitional justice to focus on a transformative approach applying the principles of participation, contextualisation, local ownership and capacity-building.<sup>4</sup>

In order to address these concerns in the context of legal trials, the concept of outreach has been added to the lexicon and practice of transitional justice, emphasising the importance of transparency and information dissemination to the local population. I have proposed the concept of ‘inreach’ to be added to the focus on outreach, to emphasise the role of information flow in the

---

<sup>1</sup> Civil society actors are considered to operate within a state in at least three ways that are relevant to transitional justice: 1) they can act as a ‘bulwark of freedom’ against an oppressive state; 2) they can act as an intermediary between the state and the market in ways that are either constructive (eg building social trust and civic capacities) or destructive (eg fostering revenge or resistance to democratic change); or 3) they can operate in the public sphere to support the functioning of a viable democratic government. Domestic civil society can thus play a role in improving the effectiveness of transitional justice by supporting or holding the government to account through democratic participation. Civil society can, of course, take on a ‘negative’ role and undermine the means and ends of transitional justice, but that is not the type of civil society participation advocated in this article. This article is also less concerned with the role of international civil society, although undoubtedly important in the field of transitional justice. However, it is concerned with domestic civil society that may need strengthening in the post-mass violence context. D Crocker, ‘Truth Commissions, Transitional Justice, and Civil Society’ in R I Rotberg and D Thompson (eds), *Truth v. Justice: The Morality of Truth Commissions* (Princeton University Press, 2000) 99, 109–114.

<sup>2</sup> Kofi Annan, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, UN Doc S/2004/616 (24 August 2004) para 16.

<sup>3</sup> See, eg, Crocker, above n 1, 99, 99–121; P Lundy and M McGovern, ‘The Role of Community in Participatory Transitional Justice’ in K McEvoy and L McGregor (eds), *Transitional Justice from Below* (Hart Publishing, 2008) 99, 99–120; Wendy Lambourne ‘Outreach, Inreach and Civil Society Participation in Transitional Justice’ in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice* (Intersentia, 2012) 235, 235–261.

<sup>4</sup> Rosalind Shaw and Lars Waldorf with Pierre Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford University Press, 2010); Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing, 2008); Wendy Lambourne, ‘Transitional Justice and Peacebuilding After Mass Violence’ (2009) 3(1) *International Journal of Transitional Justice* 28–48.

other direction, from the people to the court or other transitional justice mechanism.<sup>5</sup> The idea of ‘inreach’, or civil society participation in the design and implementation of transitional justice, is seen as important, rather than simply gathering civil society feedback on a transitional justice mechanism designed and implemented by the international community or national government.

In 2010, the UN issued a new report on transitional justice that included national consultations as its fifth key pillar, in addition to the four substantive key pillars of prosecutions, truth-telling, reparations and institutional reform.<sup>6</sup> I argue in this paper that, despite the implication that the UN is therefore going to respond to the views of affected populations through ‘national consultations’, this has not been the case in practice. The UN’s emphasis on four predefined key pillars undermines the potential for considering local perspectives on transitional justice priorities. Its guiding principles result in further contradictions in practice and I argue that they therefore fail to effectively support the goals of local ownership and participation. The transitional justice options promoted by the UN continue to be limited to the standard mechanisms of courts and truth commissions, with an emphasis on prosecutions, reflecting the normative priorities of a practice that is grounded in international law and human rights discourse, rather than authentically engaging in meeting the needs of affected populations. Truth commissions are seen as an acceptable interim alternative to prosecutions because they can satisfy the ‘right to know’ (truth-seeking) and can also potentially address the ‘right to reparation’, but because they cannot provide the ‘right to justice’ (prosecutions) they are regarded as insufficient in themselves.<sup>7</sup>

The South African model of a Truth and Reconciliation Commission offering conditional amnesties, forgiveness and reconciliation, for example, has been rejected as inadequate, while more recent transitional justice processes have included both truth commissions and tribunals operating in tandem, such as in Sierra Leone.<sup>8</sup> Local affected communities and national governments are not offered the opportunity to develop alternative mechanisms tailored to meet their particular goals and priorities, especially since the permanent International Criminal Court (‘ICC’) has come into being.<sup>9</sup> The ICC has the most progressive and comprehensive approach to local ownership and participation, as reflected in its policy on outreach, but in practice this promise has not been fulfilled.<sup>10</sup> Local affected populations are not directly represented in the decisions of the national government, the ICC Prosecutor or the UN Security Council to refer a

---

<sup>5</sup> Wendy Lambourne, ‘Outreach, Inreach and Civil Society Participation in Transitional Justice’ in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice*, (Intersentia, 2012) 235, 235–261; Norman Henry Pentelovitch, ‘Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals’ (2008) 39(3) *Georgetown Journal of International Law*.

<sup>6</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010).

<sup>7</sup> Swisspeace, ‘A Conceptual Framework for Dealing with the Past: Holism in Principle and Practice’ (Background Paper, Dealing with the Past, Swisspeace 2012).

<sup>8</sup> William A Schabas and Shane Darcy (eds), *Truth Commissions and Courts: The Tension between Criminal Justice and the Search for Truth* (Kluwer Academic, 2004).

<sup>9</sup> To be clear, I am not suggesting that local affected populations might not prioritise prosecutions, but rather that their multiple transitional justice needs are not being addressed by assuming that they do.

<sup>10</sup> International Criminal Court, *Strategic Plan for Outreach of the International Criminal Court*, Doc No ICC-ASP/5/12 (29 September 2006); Mariana Goetz, ‘The International Criminal Court and its Relevance to Affected Communities’ in Nicholas Ward and Phil Clark (eds), *Courting Conflict? Justice, Peace and the ICC in Africa* (Royal African Society, 2008).

case or initiate investigations, nor have they been able to influence the design or conduct of the transitional justice process controlled by the ICC.

Whilst local traditional or informal approaches are being promoted by transitional justice scholars and some practitioners, the UN appears not to take such alternatives seriously. The 'justice cascade' prevails, with a sometimes grudging nod towards the truth commission alternative, with little recognition that other more creative options might prove to be more appropriate in different cultural and conflict contexts. For example, the purpose of truth recovery, as articulated in the UN's guiding principles on transitional justice, appears to be limited to a factual/forensic truth whilst failing to recognise the more personal/narrative, social/dialogical and healing/restorative truths identified as also important by the South African Truth and Reconciliation Commission.<sup>11</sup>

In this paper I use the Burundian experience as an example to illustrate how the UN's approach to transitional justice, confined as it is to promoting one model with its four key pillars, has limited the opportunity for local civil society to develop its own culturally relevant approach to transitional justice.<sup>12</sup> At the same time, civil society work on trauma healing, reconciliation and peacebuilding at the micro-level in local communities is not recognised by the UN as contributing to transitional justice and peacebuilding at the macro-level. I conclude that the UN's approach to transitional justice could be more effective in addressing impunity if it works more closely with existing local civil society networks in addition to national governments to develop a contextually relevant approach to transitional justice that goes beyond the imposition of a predefined set of key pillars.

Before exploring the UN's approach to transitional justice in Burundi and the involvement of civil society, this paper will first review the context of the Burundian civil war and peace process. This will be followed by an analysis of different theories and models of transitional justice, with their alternative 'key pillars', including the model being developed by Burundian civil society as an adaptation of the UN model to the Burundian cultural and conflict context. The data for this analysis has been drawn from my research and interviews conducted during several visits to Burundi in 2012 and 2013 with members of local civil society in the capital, Bujumbura, and the rural town of Gitega, and my observations during a workshop on transitional justice which I ran for the Quaker Peace Network in Burundi in July 2013.<sup>13</sup> I also spoke with staff of the UN mission's Transitional Justice Unit, international donors, the Burundian government and international non-government organisations.

---

<sup>11</sup> Alex Boraine, 'Defining Transitional Justice: Tolerance in the Search for Justice and Peace' in A Boraine and S Valentine (eds), *Transitional Justice and Human Security* (International Center for Transitional Justice, 2006) 22, 22–37.

<sup>12</sup> Chandra Lekha Sriram, 'Transitional Justice and the Liberal Peace', in E Newman, R Paris and O P Richmond (eds), *New Perspectives on Liberal Peacebuilding* (United Nations University Press, 2009) 123.

<sup>13</sup> I visited Burundi in May, June and December 2012 and in July 2013. Local and international NGOs consulted included Trauma Healing and Reconciliation Services (THARS), Healing and Rebuilding Our Communities (HROC), MiPAREC and Impunity Watch, as well as FONAREC community facilitators in Bujumbura and Gitega. The workshop I conducted was held at the THARS Training Center in Gitega from 9–11 July 2013.

## II ETHNIC TENSIONS, GENOCIDE AND CIVIL WAR

Burundi, together with its more well-known neighbour, Rwanda, was colonised by Germany as part of German East Africa in 1890, and following World War I, it became a League of Nations mandate, and later, following World War II, a trust territory of Belgium. The kingship structure and geographical boundaries of Burundi remained relatively unchanged since the mid-19<sup>th</sup> century, with a very high population density in a country less than the size of Belgium.<sup>14</sup> In pre-colonial Burundi, rank and privilege were determined largely by social status rather than ethnic identity as such, although these tended to coincide,<sup>15</sup> and there were no wars or conflicts between the majority Hutu and minority Tutsi groups.<sup>16</sup> The political system was relatively stable, and the Hutu/Tutsi divide remained more fluid in Burundi even under Belgian colonial rule, compared with neighbouring Rwanda, with the result that post-independence in 1962 an ethnically-mixed government emerged in Burundi.<sup>17</sup> However, political stability quickly eroded over the next four years, with an increase in Hutu/Tutsi differences and a number of coups d'état, resulting in Tutsi military rule from 1966 until the beginning of the civil war in 1993.<sup>18</sup>

Like Rwanda, Burundi has experienced genocide, but the history of power dynamics, political coups and violence since independence has been more volatile and more politically and ethnically complex. In 1972, approximately 200 000 Hutu were massacred by the Tutsi army in response to a violent Hutu uprising against Tutsi rule, and up to an estimated 300 000 Hutu refugees fled to neighbouring countries.<sup>19</sup> It was after the genocide of 1972 that the Hutu/Tutsi divide became more widely and deeply entrenched. Hutu were thereafter almost totally excluded from political and military leadership, education and business,<sup>20</sup> and the memories continued to haunt the Hutu masses, creating a collective trauma driven by fear of another 'holocaust'.<sup>21</sup> In 1988, a small violent uprising, incited by extremists afraid of impending liberal reforms, was followed by a localised but still vicious revenge massacre by the Tutsi army, which added further fuel to Hutu fears.<sup>22</sup>

Efforts towards democratisation resulted in a brief period of Hutu-led government, which was abruptly ended when the President was killed in a coup d'état in 1993.<sup>23</sup> An estimated 50 000 Tutsi lost their lives in revenge killings, and a further 700 000 Hutu refugees fled in fear of reprisal massacres.<sup>24</sup> The civil war had begun.

<sup>14</sup> Nigel Watt, *Burundi: Biography of a Small African Country* (Hurst & Company, 2008) 23–24.

<sup>15</sup> René Lemarchand, *Burundi: Ethnic Conflict and Genocide* (Woodrow Wilson Center Press, 1996) 10.

<sup>16</sup> Peter Uvin, *Life After Violence: A People's Story of Burundi* (Zed Books, 2009) 7.

<sup>17</sup> Lemarchand, above n 15, 1.

<sup>18</sup> Uvin, above n 16, 9. For an explanation of how and why ethnic tensions rose during this period, see also Lemarchand, above n 15, 58–75.

<sup>19</sup> Watt, above n 14, 34.

<sup>20</sup> Uvin, above n 16, 10.

<sup>21</sup> Lemarchand, above n 15.

<sup>22</sup> Watt, above n 14, 41.

<sup>23</sup> Uvin, above n 16, 11–14.

<sup>24</sup> Watt, above n 14, 48.

## III PEACE PROCESS AND TRANSITIONAL JUSTICE

Violence had become a political strategy in Burundi, with coups a regular occurrence when any hint of political stability seemed on the horizon. Factional splits in the Hutu rebel movement resulted in a number of rebel groups emerging to fight the Tutsi-dominated security forces and the local Tutsi militia, whilst divisions amongst the Tutsi elite also fuelled the violent approach to political power.<sup>25</sup> The internationally mediated Arusha Peace and Reconciliation Agreement ('Arusha Agreement') was signed on 28 August 2000, and the UN provided a peacekeeping mission which supervised the election of a power-sharing government in 2005.<sup>26</sup> However, the fighting continued until December 2008 when the last of the rebel groups, Palipehutu-FNL, finally agreed to disarm, but only after reassurances that they would not be arrested and prosecuted.<sup>27</sup> Other transitional justice issues that were discussed during the final peace negotiations included the release of combatants and prisoners of war, integration of former combatants into the security forces, and the rebels' preference for a 'Truth, Forgiveness and Reconciliation Commission'.<sup>28</sup>

The 2000 Arusha Agreement had already provided a framework for transitional justice in Burundi, including the establishment of a Truth and Reconciliation Commission ('*Commission de la Verité et Réconciliation*', or 'CVR') in order to investigate the crimes committed in Burundi, promote reconciliation, and clarify and rewrite the country's history.<sup>29</sup> It also stipulated that the transitional government would request the UN Security Council to set up an international judicial commission of inquiry, which would be followed by a request for an international criminal tribunal for Burundi should evidence be found that acts of genocide, crimes against humanity or war crimes had been committed.<sup>30</sup> An interim agreement to establish a special chamber within the Burundian court system was replaced by the proposal for a special tribunal, but negotiations between the UN and the Burundian government to establish a judicial mechanism floundered based on disagreements about the relationship between the two proposed bodies.<sup>31</sup>

## A CVR and National Consultations

Legislation for the establishment of the CVR was adopted in December 2004, but it was not implemented. Further progress was delayed until the government agreed to national consultations

<sup>25</sup> Lemarchand, above n 15; David Taylor, 'Truth under the Avocado Trees. Local Needs and Burundi's TRC: Whither the Truth?' (2013) 7 *Journal of East African Studies* 450.

<sup>26</sup> The UN Peacebuilding Commission and Fund have also supported the Burundian government with achieving poverty reduction and other peacebuilding priorities. David John Penklis, *Implications of the 1993 to 2008 Burundi Peace Process for United Nations Peacekeeping Operations*, (unpublished PhD Thesis, 2011, University of Sydney).

<sup>27</sup> Stef Vandeginste, 'Burundi's Truth and Reconciliation Commission: How to Shed Light on the Past While Standing in the Dark Shadow of Politics' (2012) 6 *International Journal of Transitional Justice* 355.

<sup>28</sup> Ibid 3.

<sup>29</sup> Taylor, 'Truth Under the Avocado Trees', above n 25, 4.

<sup>30</sup> Vandeginste, 'How to Shed Light on the Past', above n 27, 2.

<sup>31</sup> 'The Transitional Justice Process in Burundi' (Briefing Paper, International Centre For Transitional Justice, 18 April 2011); Taylor, 'Truth Under the Avocado Trees', above n 25, 3; Vandeginste, 'How to Shed Light on the Past', above n 27, 2.

on transitional justice following the recommendation of the Kalomoh report arising from the UN assessment mission that was submitted in March 2005.<sup>32</sup> The national consultations in Burundi arose because of the insistence of the United Nations, and the terms of the process were set out in an agreement signed in November 2007 between the Burundian government, civil society and the UN.<sup>33</sup> Consistent with the UN's subsequently published guiding principles, these terms included an assurance that the consultations would be independent, balanced and inclusive of women and different categories of victims.<sup>34</sup>

However, the consultations did not give respondents the opportunity to express their preference on the type of transitional justice mechanism, but instead asked about specific aspects of each of the four pillars predefined as constituting a truth and reconciliation commission in order to seek the truth and a special tribunal to achieve prosecutions, along with reparations and institutional reform.<sup>35</sup> The consultations also asked about the period of inquiry to be covered by transitional justice, and about what Burundians thought would assist in building reconciliation and a sustainable peace. Other than these two more open questions, it is clear that the UN has been able to impose not only its predefined four pillars, but also the types of transitional justice mechanisms available to Burundians.

The results of the national consultations released in 2010 have been interpreted as revealing majority support for the establishment of a Truth and Reconciliation Commission with a mixed national and international composition and a mandate to investigate the full range of crimes from independence in 1962 until the end of the civil war in 2008, as well as provision for reparations.<sup>36</sup> However, the proposal for a mixed truth commission was not pursued. Instead, after the 2010 elections, the Burundian government established a technical committee composed of seven members appointed by the government, which released its report (known as the 'Kavakure report') on 18 October 2011. The Burundian President announced that a Truth and Reconciliation Commission would be launched by the 50<sup>th</sup> anniversary of independence on 1 July 2012,<sup>37</sup> and several draft versions of a law with guiding principles for the proposed CVR were presented to Parliament. However, it took until May 2014 before the law to establish the Truth and Reconciliation Commission was finally passed and promulgated by the President.<sup>38</sup>

---

<sup>32</sup> Stef Vandeginste, 'Transitional Justice for Burundi: A Long and Winding Road' in Kai Ambos, Judith Large and Marieke Wierda (eds), *Building a Future on Peace and Justice* (Springer-Verlag, 2009) 393, 393–422.

<sup>33</sup> 'The Transitional Justice Process in Burundi' (Briefing Paper, International Centre For Transitional Justice, 18 April 2011). The consultations were funded by the UN Peacebuilding Fund.

<sup>34</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010); 'The Transitional Justice Process in Burundi' (Briefing Paper, International Centre For Transitional Justice, 18 April 2011).

<sup>35</sup> *Rapport des Consultations Nationales sur la mise en place des Mechanismes de Justice de Transition au Burundi* (Government of Burundi and United Nations, 20 April 2010).

<sup>36</sup> Mathieu Boloquy, Selim Mawad and David Taylor, 'Victim's Perspectives on the Independence of the TRC' (Newsletter, Issue No 2, Impunity Watch, February 2013); *Rapport des Consultations Nationales sur la mise en place des Mechanismes de Justice de Transition au Burundi* (Government of Burundi and United Nations, 20 April 2010).

<sup>37</sup> Vandeginste, 'How to Shed Light on the Past', above n 27, 2.

<sup>38</sup> For an analysis of how the Burundian government has been appearing to comply with international obligations in relation to transitional justice whilst failing to genuinely commit to their implementation, see David Taylor, 'We Have no Influence: International Discourse and the Instrumentalisation of Transitional Justice in Burundi' (2013) 2(3) *Stability: International Journal of Security and Development* 1, 1–10.

In July 2013, when I was in Burundi, expectations were high that the Parliament would pass a third draft of the legislation in its current sitting, but it failed to do so. Notably, this draft contained some significant amendments from the second draft presented in November 2012, including removal of any reference to consultations prior to the appointment of the CVR commissioners. This and other changes in the draft law signalled the government's intention to retain political control over the mandate and functioning of the CVR, going against most of the advice of the UN and preferences of civil society.

Whilst the Burundian government asserted its control over the transitional justice process and continued to delay creation of the CVR, the UN has maintained a mandate in its political missions to support transitional justice, most recently the UN Office in Burundi ('BNUB') established in 2010, which includes a Transitional Justice Unit ('TJU').<sup>39</sup> Impotent to affect the Burundian government's policies and facing the threat of expulsion from the country, the TJU was instead tasked with supporting civil society engagement in transitional justice in addition to its existing project on witness protection preparing for the eventual creation of the CVR. However, the interviews I conducted with representatives of non-government organisations in Burundi in 2012 and 2013 revealed disappointment with the UN's approach: they reported a lack of support for transitional justice-related programs in local communities from the BNUB/TJU because of constraints in the type of funding available. At the same time, the TJU, with funding provided by BNUB, has created the FONAREC/JT ('*Forum National des Relais Communautaire en Justice de Transition*', or 'Forum of Community Facilitators in Transitional Justice'), which is discussed later in this article.

## B *GRJT and Civil Society*

Meanwhile, local Burundian and international non-government organisations, Impunity Watch and Global Rights, formed the Reflection Group on Transitional Justice ('*Groupe de Réflexion sur la Justice Transitionnelle*' or 'GRJT') in 2006 to enable information exchange and strengthen of civil society involvement in the transitional justice process. Along with the UN and other local civil society groups, the GRJT commented on the Kavakure report and its members have made submissions to the government regarding subsequent versions of the draft law for the establishment of the CVR.<sup>40</sup> These comments have included criticisms that the draft law failed to comply with international standards and did not reflect the findings of the national consultations.

The third draft of the law, which was presented to Parliament in December 2012, included amendments that provided for pardon in exchange for confessions (conditional amnesty), and gave the Burundian government the sole authority to nominate and select the commissioners

---

<sup>39</sup> UN Security Council resolution 2137 of 13 February 2014 extends the mandate of BNUB to the end of 2014 and includes the following in relation to transitional justice: 15. *Calls upon* the Government of Burundi to work with international partners and BNUB for the establishment of transitional justice mechanisms, including a credible and consensual Truth and Reconciliation Commission to help foster an effective reconciliation of all Burundians and durable peace in Burundi, in accordance with the results of the work of the Technical Committee, the 2009 national consultations, Security Council resolution 1606 (2005) as well as the Arusha agreement of 28 August 2000.

<sup>40</sup> See Boloquy, Mawad and Taylor, above n 36; Taylor, 'Truth Under the Avocado Trees', above n 25 for an analysis of the draft law and the potential for the proposed TRC to meet the needs of the local population.

instead of opening the process to public participation.<sup>41</sup> This development was disturbing but not surprising given that the government comprises a number of former rebel leaders who could be accused of genocide, war crimes and crimes against humanity through the CVR, and who thus have a vested interest in maximising their control of the Commission.<sup>42</sup> By contrast, 53 per cent of respondents in the national consultations rejected political involvement in the appointment of the commissioners, fuelled by mistrust of their political leaders, and 77 per cent preferred to see a hybrid commission comprising both foreign and Burundian commissioners as a means to counter political influence and potential corruption.<sup>43</sup> Approximately 88 per cent of respondents indicated that civil society should be involved in selecting the commissioners. An overwhelming majority (93 per cent) of respondents believed that the commissioners should come from civil society while 73 per cent thought they should come from the government.<sup>44</sup>

It is therefore a challenge for civil society in Burundi to have a meaningful say in the proposed CVR, despite the national consultations and UN presence. Essentially, the design and implementation of the CVR and any other national transitional justice process is in the hands of the Burundian government, which is unlikely to support a robust investigation through a truth commission, far less prosecutions through the establishment of a special tribunal.

Despite the continuing presence of BNUB, the influence of the UN over transitional justice in Burundi has gradually reduced since the release of the Kalomoh report on the UN assessment mission and passing of UN Security Council Resolution 1606 in 2005 endorsing the report's recommendations,<sup>45</sup> with the last flurry of impact appearing to be the conduct of national consultations in 2009 and release of the ensuing report in 2010. Local and international civil society actors in Burundi are asking why the UN did not do more to ensure that the CVR was established in a timely fashion, while the victims and perpetrators going back to 1962 are still alive, and furthermore, why the government has been allowed to ignore the results of the national consultations in terms of the proposed CVR mandate.<sup>46</sup>

Local civil society actors are also questioning their own lack of influence over the transitional justice process, despite evidence that in other areas civil society has been successful in influencing government policy especially when it engages in media campaigns.<sup>47</sup> Vandeginste maintains that 'societal pressure from below has not been very significant', at least in terms of its impact on government decision-making in relation to transitional justice, despite extensive civil society lobbying efforts through the GRJT.<sup>48</sup> In addition to the national consultations, several international and local civil society initiatives have reported on research revealing further insights into the needs, expectations and priorities of victims and others in the Burundian

---

<sup>41</sup> Boloquy, Mawad and Taylor, above n 36.

<sup>42</sup> Taylor, 'We Have No Influence', above n 38, 3.

<sup>43</sup> Boloquy, Mawad and Taylor, above n 36.

<sup>44</sup> *Rapport des Consultations Nationales sur la mise en place des Mechanismes de Justice de Transition au Burundi* (Government of Burundi and United Nations, 20 April 2010).

<sup>45</sup> Kofi Annan, *Letter Dated 11 October 2009 From the Secretary General to the President of the Security Council*, UN Doc S/2005/158 (11 March 2005); SC Res 1606, UN SCOR, 5207<sup>th</sup> Mtg, UN Doc S/RES/1606 (20 June 2005).

<sup>46</sup> Interviews with local and international NGO representatives in Bujumbura, December 2012 and July 2013.

For an analysis of the UN role, see also Taylor, 'We Have No Influence', above n 38.

<sup>47</sup> Interview with representative of local civil society media organisation, Bujumbura, July 2013.

<sup>48</sup> Vandeginste, 'Burundi's Truth and Reconciliation Commission', above n 27, 8.

population.<sup>49</sup> As with the national consultations, the government appears to be ignoring these efforts at civil society participation in the design and implementation of transitional justice processes in Burundi.

#### IV FONAREC AND THE FOUR PILLARS OF TRANSITIONAL JUSTICE

The UN, through FONAREC/JT, has invested significant resources in training community facilitators in its model of transitional justice, rather than using the opportunity to extend consultations to gather information in order to contribute to the design of transitional justice processes and a model more appropriate for the Burundian context. The FONAREC 'Guide for Community Facilitators during Transitional Justice' is clear that it is 'an information document rather than a consultation of the population' as 'that consultation had already been carried out during the national consultation'.<sup>50</sup> Crucially, the FONAREC guide replaces the UN's fifth pillar of national consultations with the promotion of 'popular participation', with the aim of training community facilitators at all levels of Burundian society throughout the country. The UN is apparently treating national consultation as a one-off event, whilst restricting its ongoing commitment to local participation to information provision and sensitisation rather than continuing to engage Burundian civil society in the design and implementation of transitional justice. Whilst empowerment with information is important and the FONAREC process is contributing to some kind of capacity-building, it is insufficient to promote local ownership and better address the needs and priorities of the affected population.

The FONAREC/JT training for community facilitators is firmly grounded in the four pillars of transitional justice from the UN Secretary General's 2010 Guidance Note.<sup>51</sup> As such, it focuses on prosecutions rather than the broader concept of accountability, and it does not include reconciliation or healing except as a subset of reparations, along with memorialisation. Meanwhile, local Burundian NGO Trauma Healing and Reconciliation Services ('THARS'), has produced its own brochure about transitional justice. The content is also based on the UN's four pillars, but includes healing along with reparations as one of the 'pillars', to match its priorities in its work with local communities. It adds sections on reconciliation and forgiveness, again consistent with its perception of priorities. THARS has conducted a survey on Burundian attitudes towards transitional justice, as well as experiences of trauma, and it has been pursuing a program relating to transitional justice and trauma sensitisation amongst rural communities.

The FONAREC/JT community facilitators were selected from local human rights NGOs and other prominent individuals in civil society who were identified, elected by the community and provided with training. The community facilitators were identified and selected on the basis of four criteria in order to gain the confidence and trust of all the population: firstly, to be a member of a civil society organisation, faith-based organisation, or a community leader recognised for his (or her) engagement in service to the community; secondly, to be known in the community as a

---

<sup>49</sup> Boloquy, Mawad and Taylor, above n 36; Taylor, 'Truth Under the Avocado Trees', above n 25.

<sup>50</sup> Forum National des Relais Communautaires pour la Justice de Transition (FONAREC/JT), *Le Guide du Relais Communautaire en Justice de Transition* (OHCHR September 2012).

<sup>51</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010).

person of integrity with irreproachable moral qualities; thirdly, not to belong to the executive bodies of a political party or a member of an influential political party; and fourthly, not suspected of having committed crimes in the past crises. Ethnic and gender balance were also important criteria in the selection process.<sup>52</sup>

In my discussions with THARS in late 2012, I discovered that they were unaware of the existence of FONAREC/JT until I, an international researcher, introduced them to the local FONAREC community facilitator who had been trained by the UN TJU in transitional justice. My research also suggested that other NGO members of the GRJT were not included in the outreach efforts of the UN to establish a network of community facilitators throughout Burundi. I have not been able to ascertain if this was a deliberate policy of the UN TJU to bypass civil society members already active in transitional justice for training as community facilitators, but it does seem strange that it appears they were not consulted. On the other hand, it could reflect the widely acknowledged reluctance of civil society actors in Burundi to communicate, cooperate and coordinate their activities, whether due to alleged cultural predispositions or simply the inevitable result of the need to compete for funds in the NGO sector.

The FONAREC guide lists under each pillar ‘key messages to memorise’. This approach reflects an extremely prescriptive attitude towards training, which confirms the UN and international experts as the source of knowledge about transitional justice. This has been introduced as an alien concept unrelated to existing Burundian concepts and processes, and fails to foster any meaningful sense of local ownership or participation in the transitional justice process. The guide maintains that ‘since transitional justice is something new which is not known by the Burundian population, FONAREC/JT deems it necessary to organise training, information, sensitisation and social mobilisation activities in order to build the capacities of the Burundian population so that it can participate in that process’.<sup>53</sup>

The FONAREC community facilitators have been empowered with information to help them ‘to better understand the basic notions related to transitional justice’,<sup>54</sup> but it seems they have not been invited to contribute their own ideas about transitional justice nor gather the opinions of others in local communities throughout Burundi. The guide aims to enable the community facilitators to ‘fulfil their role by providing clear, accurate and precise pieces of information’.<sup>55</sup> Admittedly, elicitive approaches to training and inclusion of inreach as part of this outreach exercise would require a greater investment of time and facilitation skills, as well as analysis, communication and application. However, I argue that such an investment could be worthwhile if it promotes capacity-building and local initiatives to foster ongoing involvement in transitional justice and peacebuilding, whatever that might look like. It could also do more to foster a civil society empowered to influence the national government in its policies and practice.

This is indeed the outcome that I have witnessed unfolding as a result of my small scale, individual effort to run one training workshop in a more elicitive style with 20 Burundian Quaker

---

<sup>52</sup> Forum National des Relais Communautaires pour la Justice de Transition (FONAREC/JT), *Le Guide du Relais Communautaire en Justice de Transition* (OHCHR September 2012) 9–10.

<sup>53</sup> Ibid 5.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

community leaders.<sup>56</sup> Not only are they developing their own locally contextualised model of transitional justice, but they are also taking aspects of this model into their own work, including advocacy through the GRJT, endeavouring to play a more significant role in influencing government plans for the CVR and other aspects of transitional justice.

## V TRAUMA HEALING AND THE TRUTH AND RECONCILIATION COMMISSION

In addition to involvement in the GRJT, civil society actors in Burundi have focused on preparing the local population for the planned CVR, including psychosocial sensitisation and addressing the legacies of psychological trauma. It was evident that, while a peace agreement had been reached and armed conflict had ended, Burundians faced many peacebuilding challenges in the context of extreme poverty and political indifference at the national level, as well as the psychological scars and social breakdown resulting from 15 years of civil war and mass population displacements. Despite intensive involvement of the UN in peacekeeping and peacebuilding, the focus on political and economic development has failed to address the psychosocial impacts of genocide and cycles of trauma on individual and community well-being and ability to engage constructively across the ethnic and political divide.

At the macro-level of UN-led peacebuilding and transitional justice, limited attention is paid to the role of trauma healing and psychosocial services.<sup>57</sup> Processes of healing, forgiveness and reconciliation are associated with personal, spiritual transformation, which is rarely considered appropriate to include in the political or legal spheres of transitional justice at national or international levels. Despite being a priority of the South African TRC, forgiveness, healing and reconciliation have not featured prominently in the goals of other truth commissions, and even those which were modelled on the South African example (such as Liberia's TRC) have not followed such a path so explicitly.<sup>58</sup>

At the micro-level, however, faith-based civil society actors recognise the critical role of individual and collective healing for transitional justice and peacebuilding. Especially in African contexts such as Burundi, where religion and spirituality play a prominent role in individual beliefs and community life, healing and reconciliation are identified as priorities. THARS, for example, has focused its work on healing linked with capacity-building in order to foster peace and reconciliation in local communities, and has connected this work with the national and international transitional justice and peacebuilding agenda. Such localised approaches to reconciliation and community development based on individual and collective healing can contribute to the prevention of further violence and a more sustainable peace through an experience of transformation that goes beyond the traditional confines of transitional justice and

---

<sup>56</sup> The three-day workshop 'Transitional Justice: Theory and Practice' was organised by the Quaker Peace Network ('QPN') Burundi in conjunction with Trauma Healing and Reconciliation Services ('THARS') and conducted by Dr Wendy Lambourne, Centre for Peace and Conflict Studies, University of Sydney. It was held at the THARS Training Centre in Gitega, Burundi, on 9–11 July 2013. Twenty leaders of Quaker-based civil society organisations (CSOs) in Burundi participated in the workshop.

<sup>57</sup> Wendy Lambourne and Lydia Wanja Gitau, 'Psychosocial Interventions, Peacebuilding and Development in Rwanda' (2014) 8(3) *Journal of Peacebuilding and Development* 23, 23–36.

<sup>58</sup> James Tonny Dhizaala, *The Liberian Truth and Reconciliation Commission: Contribution to Peace and Reconciliation* (unpublished PhD thesis, University of Sydney, 2013).

peacebuilding in the political, economic and legal spheres. These understandings and priorities are reflected in the local model of transitional justice being developed by the Quaker Peace Network in Burundi, which adapts and challenges the UN model and its definition of the key pillars of transitional justice.

The work of THARS in Burundi is also aiming to learn from past experiences of transitional justice processes in other countries (such as the South African TRC), where there has been minimal recognition of trauma, its impact on participation in transitional justice, and the impact of transitional justice on trauma. By focusing on the importance of psychosocial accompaniment, THARS is seeking to reduce the chances of retraumatisation as a result of the CVR, and to combine this approach with sensitisation, trauma healing and reconciliation programs in local communities. THARS has produced a brochure and a training program on transitional justice which include an emphasis on healing, forgiveness and reconciliation in addition to the four pillars of transitional justice identified by the UN and promulgated by FONAREC/JT. THARS is also playing a leading role as part of the Quaker Peace Network Burundi in developing a localised and more contextually sensitive model of transitional justice.

## VI WHAT ARE THE PILLARS OF TRANSITIONAL JUSTICE?

The four pillars of transitional justice as defined by the United Nations and taught to civil society in Burundi through the FONAREC/JT program comprise: prosecution initiatives, truth-seeking processes, reparations programs and institutional reform.<sup>59</sup> This training in a fixed model of four pillars contradicts the UN's third guiding principle which 'eschews one-size-fits all formulas and the imposition of foreign models' and calls for the 'identification, support for and empowerment of domestic reform constituencies to develop and implement their own transitional justice and rule of law agenda'. It seems, however, that the UN through the BNUB TJU and FONAREC program has not pursued this approach, as the process of national consultations had already been carried out.

My interviews with FONAREC local facilitators in Bujumbura and Gitega revealed that training had been provided by UN 'experts' on transitional justice and that they had not provided any information about alternative models. Instead, they appeared to be following a limited concept of outreach as the dissemination of information rather than gathering of opinions or solicitation of input, in direct contradiction to the fifth pillar of national consultations calling for 'meaningful public participation', 'allowing states to craft an appropriate context-specific transitional justice programme' and helping 'victims and other members of civil society to develop local ownership of the resulting programme'.<sup>60</sup>

Other models of transitional justice illustrate the lack of consensus over what constitutes the key pillars and how they should be defined, and in particular, place more emphasis on accountability rather than the more narrow focus on prosecutions. They often include reconciliation or

---

<sup>59</sup> As previously mentioned, the UN Secretary-General's Guidance Note included national consultations as a fifth pillar, while the FONAREC guide instead added reference to the importance of popular participation.

<sup>60</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010).

relationship transformation as an additional pillar (see Table 1). Stephan Parmentier, for example, proposed Truth, Accountability, Reparations and Reconciliation ('TARR') as the four key components of his model of transitional justice.<sup>61</sup> Based on his experience with the South African TRC, Alex Boraine proposed a model of transitional justice that also includes accountability rather than prosecutions, and reconciliation rather than national consultations as the fifth pillar.<sup>62</sup> Boraine also emphasises the importance of including the four types of truth as defined by the South African TRC: factual/forensic, personal/narrative, social/dialogical and healing/restorative truth.<sup>63</sup>

TABLE 1  
KEY PILLARS OF TRANSITIONAL JUSTICE

UN/FONAREC	Parmentier	Boraine	Lambourne	Quaker Peace Network
Prosecutions	Accountability	Accountability	Accountability	Accountability
Truth-seeking	Truth	Truth recovery	Truth: knowledge and acknowledgement	Truth daring
Reparations	Reparations	Reparations	Socioeconomic justice	
	Reconciliation	Reconciliation	Relationship transformation	Positive relationships
Institutional reform		Institutional reform	Structural transformation Political justice	Leadership development
Popular participation			Local ownership and capacity-building	Community empowerment

In my model I propose the concept of transformative justice which comprises four types of justice as goals and a set of principles which I argue are important to accompany the design and implementation of transitional justice.<sup>64</sup> I include accountability, comprising both restorative and

<sup>61</sup> Stephan Parmentier, 'Global Justice in the Aftermath of Mass Violence: The Role of the International Criminal Court in Dealing with Political Crimes' (2003) 41(1) *International Annals of Criminology* 203, 203–223.

<sup>62</sup> Boraine, above n 11, 26–31.

<sup>63</sup> Ibid 28–9.

<sup>64</sup> Wendy Lambourne, 'Transformative Justice, Reconciliation and Peacebuilding' in Susanne Buckley Zistel, Teresa Koloma Beck, Christian Braun and Friederike Mieth (eds), *Transitional Justice Theories* (Routledge, 2014) 19, 19–39.

retributive justice, rather than just prosecutions; knowledge and acknowledgement as a category including the four types of truth, as a form of psychosocial justice; socioeconomic justice for the future rather than just reparations for the past; political justice and structural transformation (instead of institutional reform); relationship transformation which incorporates reconciliation; as well as procedural, symbolic and ritual aspects and principles of local ownership and capacity building. I emphasise the importance of a holistic, comprehensive and integrated approach to transitional justice, which addresses root causes and aims to promote a transformative peace. My model was developed as a result of field research interviews conducted in four countries recovering after mass violence — an inductive approach combined with an application of peacebuilding and conflict transformation theories. By contrast, the assumption that prosecutions and rebuilding the rule of law are essential components of transitional justice reflects a human rights approach, which can sometimes be antithetical to peacebuilding. I therefore argue that the assumptions of the UN legalistic human rights approach deserve interrogation and potential adaptation rather than automatic application without regard for local context.<sup>65</sup>

The UN's approach to supporting civil society in Burundi has failed to take into account the contested nature of transitional justice, and the manner in which it has imposed its model of key pillars runs counter to its own guidelines and is inconsistent with recent scholarship advocating the importance of local ownership, civil society participation and inreach as well as outreach. National consultations do not equal local participation, and training Burundians in the UN model of transitional justice is not the most effective strategy for fostering local ownership.

A restricted definition of outreach is also reflected in the UN's Guidance Note: 'the impact and sustainability of transitional justice will depend significantly on ensuring that they are understood and communicated coherently during and after their implementation'.<sup>66</sup> There is no mention here of gathering feedback or input to improve the functioning of the transitional justice mechanisms, far less adapting them to address the needs and priorities of affected communities as advocated by scholarship in the field.<sup>67</sup> On the other hand, the FONAREC guide does suggest that community facilitators were expected to collect views and hear concerns of victims in relation to the transitional justice process.<sup>68</sup> So it seems the UN's intention was to support inreach as well as outreach, but at the same time it seems to be promoting the active participation of the population in a rather controlling manner: participation in a way that accepts and supports the CVR or whatever other mechanisms are established. Similarly, the idea of inreach is included in the mandate of the International Criminal Court, but this aspect of outreach has not received much attention in the ICC's work to date and, as mentioned earlier, the local affected population has no say in whether or not the ICC is involved.<sup>69</sup>

---

<sup>65</sup> Sriram, above n 12, 121–3. I am not arguing that local approaches to transitional justice might not also favour prosecutions and the rule of law, but rather that these priorities should not be assumed and imposed by external actors without regard for their impact on peacebuilding.

<sup>66</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010).

<sup>67</sup> See, for example Crocker, above n 1, 99–121; Lundy and McGovern, above n 3, 99–120; Lambourne, above n 3, 235–261.

<sup>68</sup> Forum National des Relais Communautaires pour la Justice de Transition (FONAREC/JT), *Le Guide du Relais Communautaire en Justice de Transition* (OHCHR September 2012).

<sup>69</sup> Lambourne, above n 3, 235–261.

As discussed, when the UN TJU in Burundi pursued its engagement with local communities, it did so by training civil society leaders in its predefined key pillars of transitional justice, thereby imposing a restricted view of what transitional justice could entail. By contrast, in the training workshop I conducted in July 2013 in Burundi, I sought to enable a Habermasian dialogical process of engagement, by facilitating a mutual learning experience from which local Burundians emerged with the beginnings of their own hybrid model of transitional justice with five pillars adapted to their specific conflict and cultural circumstances and priorities (see Table 1). The group subsequently took the initiative to meet again in December 2013 to further consult with others inside and outside the Quaker Peace Network in order to develop the model. QPN Burundi was planning to publish the model for the Burundian community with a view to promoting a more effective approach to transitional justice consistent with supporting national cohesion, peace and development in their country.

All of this activity by local civil society, the UN and other international non-government actors has been occurring in the vacuum left by the Burundian government's lack of action in setting up the proposed Truth and Reconciliation Commission. Assumptions within the UN framework about national consultations as being equivalent to local consultations are clearly not substantiated in Burundi. The national government has ignored the recommendations arising from the national consultations, as it made changes to the draft legislation for establishing the CVR, so the standard mechanism promoted by the UN and agreed to by the government has been looking less and less like something that is addressing the needs and priorities of the local affected communities. Most importantly, the idea of promoting dialogue, participation and local ownership is not being fulfilled, except in the sense that the national government is maintaining a tight control over ownership of the internationally mandated, national transitional justice process.

It seems that respect for state sovereignty leaves the UN no choice but to regard national ownership as local ownership, which goes some way to explaining the tensions evident in the UN Guidance Note. This respect for state sovereignty creates a significant gap in principles of democratisation and participation when the government is not open to the views of civil society and local communities. The UN guiding principle that calls for the 'centrality of victims in the design and implementation of transitional justice processes and mechanisms' is reduced to empty rhetoric if the government is not responsive.<sup>70</sup>

As argued by Kora Andrieu, there is a danger in the international community's 'technocratic, one-size-fits-all approach' to transitional justice in the context of fragile, newly created post-conflict governments where excessive legalism or focus on supporting national processes can seem 'distant and remote to those who actually need it'.<sup>71</sup> This was the criticism levelled against the early ad hoc international and hybrid tribunals set up by the UN, but has continued to be a factor in the era of the ICC despite research, policies and mandates advocating a more localised approach. The fact that Burundi has until now had no tribunal or truth commission is a function of the national ownership afforded by the UN, rather than the expressed wishes of the population for both accountability and truth-telling.

---

<sup>70</sup> *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*, DPA/UNSG/2010-00904 (10 March 2010).

<sup>71</sup> Kora Andrieu, 'Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm' (2010) 41(5) *Security Dialogue* 537, 537–558.

The Burundi experience highlights the tensions inherent in relationships between local communities, national governments and international organisations in the design and implementation of peacebuilding, as well as in transitional justice where the liberal democratic model is being imposed without consideration for local cultural alternatives. On the other hand, accountability or prosecutions should not be denied merely on the grounds of rejecting Western institutions of international law; as my research and that of others has revealed, retributive justice is a legitimate demand of victims and others who have experienced mass atrocity crimes.<sup>72</sup>

## VII CONCLUSION: WHOSE JUSTICE?

Civil Society is the key. It pulls the divergent time scales and dimensions of political and economic reform together. It is the ground on which both need to be anchored in order not to be blown away. The hour of the lawyer and the hour of the politician mean little without the hour of the citizen.<sup>73</sup>

Based on an analysis of the transitional justice process in Burundi, this article has highlighted the challenges and tensions involved in determining whose justice will be addressed. The national consultations supported by the UN did not provide real choice or flexibility in how transitional justice might be designed or implemented. Despite the UN's intention to prioritise victims' needs and civil society participation, the implementation of transitional justice remains firmly in the hands of the Burundian government which is comprised of former rebel leaders who are understandably resistant to being held accountable for the past. At the same time, local, culturally contextualised and conflict sensitive approaches to transitional justice are being developed by civil society independent of the UN and national government.

The UN's guiding principles for transitional justice implementation clearly define its primary interest in strengthening national capacity and promoting compliance with international norms and standards, which in practice can stand in tension with its aim to ensure the centrality of victims and expressed commitment to local ownership or participation. As argued by Richmond in the context of peacebuilding more generally, 'international actors should make sure that their support of any formal institutions, whether state or peace infrastructure, are clearly based on a partnership with local dynamics of peace formation'.<sup>74</sup> Curtis has found similarly that the UN's emphasis on peacebuilding as stabilisation and control created a paradoxical outcome in Burundi in contradiction with its rhetoric of liberal governance and inclusive participation.<sup>75</sup>

I have discussed how trauma healing interventions, such as those conducted by THARS in local communities in Burundi, which specifically focus on the individual psychological as well as relational aspects of micro-level peacebuilding, can be seen as contributing to transitional justice.

---

<sup>72</sup> Sriram, above n 12, 122–123.

<sup>73</sup> Ralf Dahrendorf, *Reflections on the Revolution in Europe: In a Letter Intended to Have Been Sent to A Gentleman in Warsaw* (Random House, 1990).

<sup>74</sup> Oliver P Richmond *Peace Infrastructures and Peace Formation* [2012] No 10 *Berghof Handbook Dialogue Series*, 27.

<sup>75</sup> Devon Curtis, 'The International Peacebuilding Paradox: Power Sharing and Post-conflict Governance in Burundi' (2012) 112(446) *African Affairs* 72, 72–91.

Combining such inner transformation and relational transformation with macro-level political, economic and legal structural transformation, as I have argued elsewhere, provides the foundation for transformative justice.<sup>76</sup> LeBaron similarly emphasises the importance of engaging people in post-conflict societies in ways that address their psychological, spiritual, emotional, and physical needs — a holistic approach to peacebuilding.<sup>77</sup>

I extend these arguments in relation to peacebuilding to the dynamics of engagement and partnership also required in the context of the ‘local turn’ in transitional justice: the need to conceptualise localisation in transitional justice as a dialogical process of co-creation rather than a geographically or culturally pre-defined idea of the ‘local’ and ‘informal’ versus the ‘Western liberal international’ and ‘formal’. My previous research in a number of post-mass violence contexts has revealed how these ideas and preferences are hybridised and co-exist in the imaginations and practices of local affected communities. In Burundi, this finding was confirmed as I observed the unfolding of a hybridised, ‘local’ model of transitional justice developed by the local Quaker Peace Network.

The work of THARS and other Quaker organisations in Burundi illustrates the significance of a psychosocial approach to ending cycles of violence through culturally appropriate trauma healing programs at individual and community levels, and reinforces the critical role of psychosocial interventions in a transformative holistic approach to transitional justice and peacebuilding. The model of transitional justice developed by the Quaker Peace Network in Burundi directly challenges the automatic application of external models of transitional justice in countries recovering from mass violence. This research exposes the inappropriateness and inadequacies of imposing assumptions about the key pillars that underpin transitional justice as advocated by the UN and driven by the justice cascade which dominates the theory and practice of transitional justice. Instead, a more locally driven, holistic and comprehensive approach to transitional justice which links the various spheres of community life can promote conflict transformation and a more sustainable impact on building peace.

The experience in Burundi highlights the potential capacity of civil society in the aftermath of mass violence to play a significant role in determining how the past is dealt with in order to support a peaceful future. It also illustrates the newly evolving efforts of the UN to support civil society participation as an important ingredient in successful transitional justice. But at the same time, the relative impotence of both civil society and the UN to influence the form and timing of transitional justice in Burundi brings into sharp relief the power and control exerted by the national government in the process (see Table 2). This in itself is nothing new in international relations, nor is it the only case where the transitional justice needs and priorities of civil society have been sidelined. However, it is perhaps the first time we can observe this phenomenon in the context of high levels of UN involvement and support for civil society participation.

---

<sup>76</sup> Lambourne, above n 64, 19–39.

<sup>77</sup> Michelle LeBaron, *Bridging Cultural Conflicts: A New Approach for a Changing World* (Jossey-Bass, 2003) 168–169.

TABLE 2  
WHOSE JUSTICE? ACTORS AND THEIR LEVEL OF INFLUENCE

High influence	State/national government
Medium influence	United Nations Human rights advocates and international lawyers Transitional justice experts/consultants
Low influence	Other international civil society Local civil society: urban, elite, men, adults, able-bodied Survivors/victims
Minimal influence	Local civil society: rural, grassroots, women, youth/children, disabled IDPs, refugees and diaspora

Only time will reveal the final outcome of this battle for influence and control of transitional justice in Burundi, but in the meantime an analysis of the process suggests new ways of conceptualising the scope of methods for supporting transitional justice. Burundians have been able to express their views about transitional justice in various fora, and psychosocial interventions are promoting healing and reconciliation at a local community level. The danger remains that this progress with localised peacebuilding may be undermined if the national transitional justice process fails to meet people's expectations. This seems even more likely now that the law to create the long-awaited CVR has finally been passed by the Burundian government, given its failure to take into account the wishes of the population as expressed in the national consultations.

This article concludes, therefore, that in order to avoid such frustrations and possible return to violence, international donors, the UN and international civil society, could support additional means of pursuing transitional justice at the local community level rather than relying solely on a politically manipulated and flawed TRC process to deliver social transformation. These additional programs could build on the trauma healing, reconciliation and peacebuilding work already being conducted by local NGOs, as well as use of media strategies designed to reinforce the value of these localised approaches.

Such opportunities include, for example, support for members of the local population to participate in the CVR, through provision of psychosocial services and adequate resources for reparations. They also include creation of alternative avenues for local affected communities to achieve some of their transitional justice goals, such as traditional informal justice and reconciliation processes, as are occurring in Sierra Leone through the Fambul Tok project, after

the TRC failed to impact local reconciliation in that country.<sup>78</sup> Another method could involve local exhumations, construction of memorials and documentation of human rights violations (as occurred in Cambodia prior to the establishment of the Khmer Rouge Tribunal) in a way that brings together different ethnic memories to create a socially and politically inclusive truth of what has happened. This bottom-up approach to creating a shared history could proceed even in the absence of a meaningful government-led top-down process of truth-telling and truth recovery. In order to support the peace and reconciliation potential of documenting this shared history, the process could focus not only on responsibilities and events that contributed to the cycles of violence, but also collect evidence of the history of peaceful actions that saved lives and those who refused to participate in the violence.

There are no guarantees in transitional justice and peacebuilding, and no transitional justice process is ever perfect. Burundi is no exception in that political priorities of national elites determine the shape, content and timing of transitional justice. Where current political leaders are implicated in the history of violence and mass human rights violations, then peace and justice compromises are inevitable, as we have seen in the faltering transitional justice journey undertaken in Burundi. However, as this article argues, the UN and civil society can play a critical role in supporting a localised, transformative notion of transitional justice that goes beyond the confines of formal national or internationally driven processes to build a more sustainable community-level peace.

\*\*\*

---

<sup>78</sup> See the Fambul Tok website for further information: <[www.fambultok.org](http://www.fambultok.org)>.