

BUJUMBURA, 7-9 NOVEMBER 2005



**THE ROLE OF PARLIAMENTS IN THE NATIONAL
RECONCILIATION PROCESS IN AFRICA**



REGIONAL SEMINAR ORGANIZED JOINTLY BY THE PARLIAMENT OF BURUNDI, THE INTER-PARLIAMENTARY UNION AND THE INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE



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Foreword

In 2005, the Inter-Parliamentary Union (IPU) and the International Institute for Democracy and Electoral Assistance (International IDEA) published a handbook on *Making reconciliation work: the role of parliaments*. The guide provides insights into the particular role played by parliaments in countries that have experienced or are going through a transition from conflict, and highlights the pitfalls to be avoided on the road to reconciliation.

The handbook focuses on one particular challenge facing most post-conflict societies: how to deal with a legacy of extensive human rights abuse. It explores how the use of transitional justice mechanisms, such as truth and reconciliation commissions, trials, reparation programmes and justice reforms, can provide an effective response.

In order to raise awareness about the role of parliaments in the field of transitional justice and put the recommendations of the handbook to the test, the IPU and International IDEA organized, at the invitation of the Parliament of Burundi, a seminar for parliamentarians from Africa, a region particularly scarred by internal conflict. The venue of the meeting was highly symbolic. Indeed, Burundi has made important strides on the road to reconciliation and the crossroads at which it finds itself became the point of departure for a significant part of the discussions.

The present publication contains an abridged version of the presentations made at the seminar and the concluding observations of the Rapporteur of the seminar.

We would like to express our sincere gratitude to the Burundian parliamentary authorities for their efficiency and hospitality, which greatly contributed to the event's success. The organizers would also like to thank the resource persons for their invaluable input. Their contributions provided a wealth of information and clearly brought home the need for a representative parliament and its inclusion in any reconciliation process worthy of the name.



Vidar Helgesen
Secretary-General
International IDEA



Anders B. Johnsson
Secretary General
Inter-Parliamentary Union



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PROGRAMME OF THE SEMINAR



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PROGRAMME OF THE SEMINAR

CHAIRPERSON: MR. ONÉSIME NDUWIMANA, FIRST VICE-PRESIDENT OF THE NATIONAL ASSEMBLY OF BURUNDI

MONDAY, 7 NOVEMBER 2005

08.00 - 10.00	Registration of participants and distribution of documents
10.00 - 10.30	Inaugural session: <ul style="list-style-type: none">- Mr. Anders B. Johnsson, Secretary General of the IPU- Mr. Goran Fejic, Head of Programme, Democracy Building and Conflict Management, International IDEA- Ms. Immaculée Nahayo, President of the National Assembly of Burundi
10.30 - 10.45	Procedural matters: Election of the Rapporteur of the seminar, adoption of the agenda and the rules of procedure
10.45 - 11.00	Coffee break
11.00 - 13.00	▶ Session I: The need to address the scars of the past <ul style="list-style-type: none">- Reconciliation as a goal and a process, Mr. Goran Fejic
14.30 - 16.00	▶ Session II: Parliament in the aftermath of conflict <ul style="list-style-type: none">- The relationship between national parliaments and locally elected bodies, Mr. Sylvestre Ntibantunganya, Senator and former President of Burundi- Cooperation between parliament, civil society and the media in the promotion of reconciliation, Mr. Louis-Marie Nindorera, Global Rights, Burundi Programme Director
16.00 - 16.15	Coffee break
16.15 - 17.30	▶ Continuation of Session II
18.00	Reception

TUESDAY, 8 NOVEMBER 2005

09.30 - 11.00	▶ Session III: Women and gender in post-conflict situations <ul style="list-style-type: none">- Ensuring women's involvement in the full reconciliation process, Ms. Megan Bastick, Special Programmes Coordinator, Geneva Centre for the Democratic Control of Armed Forces (DCAF)
11.00 - 11.15	Coffee break
11.15 - 13.00	▶ Session IV: Truth and Reconciliation Commissions <ul style="list-style-type: none">- The role of Truth and Reconciliation Commissions in the struggle against impunity: Presenting a realistic vision of what they can achieve, Mr. Jean-Marie Ngendahayo, Member of the National Assembly of Burundi



TUESDAY, 8 NOVEMBER 2005 (contd.)

- 11.15 - 13.00 ▶ **Session IV: Truth and Reconciliation Commissions (contd.)**
- The importance of an inclusive and consultative approach to commissioner selection, and of ensuring follow-up to commission recommendations, Ms. H.C. Mgabadeli, Member of the National Assembly, South Africa
- 14.30 - 16.00 ▶ **Session V: Trials**
- The functioning of the *gacaca* system and the experiences gained thus far, Mr. Augustin Iyamuremye, Senator, Rwanda, Vice-President of the Committee on Political Affairs and Good Governance
 - The International Criminal Court or the creation of hybrid national-international courts as an alternative, Judge Mandiaye Niang, Special Assistant to the Registrar at the International Criminal Tribunal for Rwanda (ICTR)
- 16.00 - 16.15 Coffee break
- 16.15 - 18.00 ▶ **Session VI: Justice versus amnesty**
- The issue of amnesties revisited: What has been their long term effect? Ms. Hope Kivengere, Member of the Great Lakes Institute for Strategic Studies
 - Amnesties as a last resort? Judge Mandiaye Niang

WEDNESDAY, 9 NOVEMBER 2005

- 09.30 - 11.00 ▶ **Session VII: Reparations**
- Providing reparation: The Moroccan experience, Mr. Belhaj Dermoumi, Member of the House of councillors, Morocco
 - The challenge of determining appropriate compensation, Ms. Hope Kivengere
- 11.00 - 11.15 Coffee break
- 11.15 - 13.00 ▶ **Session VIII: Institutional reforms**
- Ensuring an effective justice system, Mr. Didage Kiganahe, Second Vice-President of the National Assembly of Burundi, former Minister of Justice
 - Security sector reform and parliamentary oversight, Mr. Anders B. Johnsson
- 14.30 - 16.00 ▶ **Session IX: International initiatives in support of reconciliation**
- What role for the international community? Mr. Goran Fejic
 - The example of the AMANI Forum - The Great Lakes Parliamentary Forum on Peace, Mrs. Victoire Ndikumana, Member of the National Assembly, Burundi, Treasurer of the AMANI Forum
- 16.00 - 16.15 Coffee break
- 16.15 - 18.00 ▶ **Concluding session**
- Summing-up by the Rapporteur
 - Mr. Goran Fejic
 - Mr. Gervais Ruyikiri, President of the Senate, Burundi
- 18.00 Reception
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SUMMARY AND RECOMMENDATIONS PRESENTED BY THE RAPPORTEUR OF THE SEMINAR



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SUMMARY AND RECOMMENDATIONS PRESENTED BY THE RAPPORTEUR OF THE SEMINAR

Mr. Tsietse Setona, Member of the National Council of Provinces of South Africa

We have met here at the invitation of the Burundian parliament, the Inter-Parliamentary Union and the International Institute for Democracy and Electoral Assistance (International IDEA) to discuss a theme of fundamental importance to African societies.

We started with a simple question: Why do we need to address the scars of the past? As we heard, many African countries coming out of conflict are faced with a multitude of economic and social challenges. The fight against poverty and HIV/AIDS often feature prominently on the list. In the face of this reality, the authorities may be tempted to discard a serious consideration of the past. Some may even consider that by recalling it, old wounds will be reopened that would have otherwise faded away with time.

Why then, should we look back? One convincing response comes from Archbishop Desmond Tutu: "examining the painful past ... is the best way to guarantee that it does not - and cannot - happen again". Of course, this does not mean that we should stay and live in the past. Rather, by addressing its scars, we can move from a divided history to a shared future. It implies an active search for reconciliation. It also requires us to caution against interpreting the end of hostilities and the general sentiment of fatigue which dominates the population after a conflict as a sign of reconciliation. Instead, reconciliation is a goal which requires us to strive actively for a harmonious, reconciled society, in peace with itself and with its neighbours. The main question is how to make this a

reality. Reconciliation as a process is highly complex and involves many different aspects, contexts, stages and actors. There is no one-size-fits all success model, nor a quick-fix solution. Instead, reconciliation is a time-consuming process which, as several participants have said, affects the lives of several generations. Perseverance is therefore essential.

On the first day of the seminar, the painful history of the Burundian people was shared with us, and the reconciliation process in Burundi became the point of departure for our discussion. Many of the public institutions broke down during the crises which have hit Burundi since independence. Nevertheless, we were told of the conducive role played by the Burundian parliament in unblocking the political stalemate which was triggered by the events of 1993. With a view to avoiding a repeat of the past, today's Burundian Constitution fixes a minimum and maximum number of seats in the National Assembly for Burundi's main ethnic groups. A Burundian Senate was created to give equal weight to the voices of the two dominant ethnicities. Some participants, who themselves have been confronted with ethnic strife in their countries, expressed reservations about the use of quotas based on ethnicity, arguing that they may exacerbate rather than reduce tension, and that parliamentarians should represent the entire people rather than an ethnic group. Others considered that such measures could be useful in helping ensure an environment of trust and stability, after which such quotas would no longer be needed.

Many of us highlighted the role of parliament in reconciliation processes. Parliament adopts legislation on reconciliation and oversees the executive branch when it comes to implementation. An effective parliament itself is a clear sign to the people that the democratic order which broke down during a conflict is being mended and that there is reason to place one's trust again in the country's public institutions. Though parliament itself often reflects the very divisions in society, its members, given the trust placed in them by the electorate, should act as role models in promoting the values of tolerance and advocating the resolution of conflict through peaceful means. Moreover, thanks to their direct contact with constituents, members of parliament, rather than the government, are ideally placed to initiate, lead and help implement the conclusions of a national debate on reconciliation.

All too often political leaders decide, without any further consultation, on the course and form of reconciliation through deals in which they are both judge and party. Clearly, such practices do not help to bring about any reconciliation in the population. One recurring theme of the seminar therefore centered on the need to involve all segments of society in any reconciliation process worthy of the name. It is essential that parliament work hand in hand with other actors, such as civil society organizations, community leaders, universities and churches, to create a culture of reconciliation which goes beyond the mere establishment of reconciliation mechanisms. The media has a special responsibility to be accurate and objective in its reporting and analysis of the process. It is crucial that all those concerned be part of the process from the very beginning and that grass-roots initiatives be strongly encouraged. For such wide-ranging consultation and cooperation to be effective,

several conditions must be met. Firstly, all actors need to accept and recognize each other's roles in the reconciliation process. Moreover, they should support each other in playing that role, and look beyond the immediate interests of their groups. The debate on the law on the establishment of the truth and reconciliation commission in Burundi was mentioned as a good example of extensive and successful consultation.

We underlined that the inclusion of women in reconciliation processes is a must for at least three reasons. Firstly, any process that excludes half of the population lacks democratic credibility. Secondly, it is a woman's right to have a say in the future of her country. Lastly, the involvement of women is essential for reconciliation to "work". In this regard, women are often said to be particularly capable of building bridges, as they share concerns across communities. The first cross-party parliamentary caucus formed by women in Rwanda is a shining example.

Africa has been leading the way in designing and implementing women's involvement in post-conflict situations. Nevertheless, a number of barriers exist to women's inclusion in reconciliation efforts, such as their limited representation in parliament, courts and truth commissions, and the insufficient consideration of women's needs and conflict experiences. Often, crimes affecting women during and in the aftermath of conflict, in particular sexual violence, are not penalized, and little is done to tackle the stigma which they suffer when coming forward to denounce their plight. Parliament has a clear role to play in removing these barriers. Several participants highlighted, however, that the situation of women after conflict could not be easily separated from the day-to-day struggle of women in highly patriarchic societies. In



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contrast, it was mentioned that in times of conflict, women had often been successful in challenging deep-seated patterns of male dominance. It was important to sustain this momentum once the conflict was over.

We have spent a large part of the seminar discussing the use of transitional justice mechanisms. No doubt, a truth commission, as one such mechanism, can make an essential contribution to reconciliation. Nevertheless, the success of such commissions is certainly not guaranteed from the outset. There are many pitfalls on the way, and questions to be answered, the first of which concerns the timing for creating such a commission. Will it at present unify, or divide? Are the former oppressors capable of frustrating the entire exercise, including by putting those who choose to tell the truth at risk? Will the new authorities use the commission to take revenge? What kind of truth are we looking for? Which period of abuse should the commission look into?

The creation of a truth and reconciliation commission should be a nationwide endeavour. In this regard, the South African Truth and Reconciliation Commission's experience has shown the importance of ensuring an inclusive and consultative approach by allowing for all segments of society to take part in its work. Its Commissioners, each from a different province, were in close contact with their "constituents", who were thus able to feed their observations into the overall process. The many thematic committees set up under the Commission ensured that its deliberations touched on a large number of issues affecting reconciliation. The impact of the Commission was greatly helped by the moral authority of its chairman, Archbishop Desmond Tutu, and of President Nelson Mandela. Nevertheless, even in the presence of such leading figures, it is

important that the functioning of any truth and reconciliation commission itself be regularly monitored and assessed. Its work should be seen as a long-term process, all the more so given that its recommendations are often far-reaching. It is crucial that its recommendations be clear, that a time-line be in place for their implementation and that those responsible for implementing them be clearly identified.

We listened to the challenge of determining appropriate compensation for victims, and heard of interesting examples, such as those in Morocco and Uganda. Often, the challenge is one of sheer numbers: in the event of massive violations, how does the State provide redress, and how does it obtain the resources? Also the concept of redress requires a definition. Restitution of the victim's rights is possible in some cases, such as those involving the return of stolen land. Monetary compensation is a possibility when the damage is simply material in nature and is easily quantifiable. However, in situations where lives have been lost or bodies have been maimed, financial compensation will not undo the suffering. It can, however, help to alleviate the pain, together with other forms of assistance, such as the provision of medical care and counseling. We also heard of an interesting example in one of the rural areas in Burundi in which victims and perpetrators met face to face to discuss the issue of reparation.

It was mentioned that reparation should not only be provided to the direct victims or their families. When a country is in conflict, most of the population, if not all of it, is affected. It was also underlined that even when the State is not directly responsible for abuses, it has a moral responsibility to show solidarity with the victims. In this regard, reparation is also about making

sure that the “memory” of the past stays alive, including by setting up memorials for victims and by ensuring adequate presentation of their suffering in educational tools. The goal is “to forgive, but not forget”.

We have dealt substantively with the controversial issue of amnesties. Clearly, the quest for justice and the granting of amnesties are at odds. We heard about the opposing views on the purpose and effects of amnesties. Proponents invoke the argument that amnesties can help society to turn the page and bring people closer, and are simply the only realistic option when justice systems are unable to process large-scale abuses. Opponents claim that amnesties encourage a culture of impunity, revenge and undermine the rule of law. An international consensus has clearly developed in favour of the latter position in respect of genocide, crimes against humanity and war crimes. A number of international treaties stipulate that amnesties for such crimes are null and void. That being said, in practice, the question of amnesties is not clear-cut. The choice between pursuing justice and opting for the adoption of an amnesty depends heavily on the circumstances of each situation. When the perpetrators of the crimes of the past continue to hold power or are in a position to jeopardize the stability of the country, a provisional amnesty, though deeply regrettable from a moral point of view, may be the only realistic option. Another critical factor which comes into play when taking a decision on this question is the role of the international community. In the absence of any international involvement or pressure, the parties to the conflict are more likely to opt for an amnesty.

When a country does decide to prosecute the perpetrators of abuses, a number of challenges may arise. Sometimes, the magnitude of the violations

makes it impossible for the ordinary justice system to respond. We have heard about the use of *gacaca* courts in Rwanda, which aim to provide an answer to this challenge. These courts also have the advantage of involving society in the administration of justice at the grass-roots level, and may thus help foster reconciliation. Moreover, convicts have the option to convert half of their prison sentence into community work, thereby helping to rebuild the fabric of society.

In post-conflict situations, the justice system is often poorly equipped to fulfill its role. All too often, judges are poorly trained, and corruption may thwart any prospect of true and impartial justice. A thorough reform of the justice system is therefore frequently one of the main priorities for post-conflict societies. Guarantees need to be in place to ensure the right of defence. Safeguards are needed to ensure that the courts are indeed independent and that their composition and work leave no doubt about their impartiality: “Justice must not only be done: it must be seen to be done.”

The pursuit of justice also raises another important question. Where should it take place? Should prosecutions and trials be led by national courts, or should the International Criminal Court or a hybrid national-international tribunal be entrusted with this task? In principle, a justice system which is close to those whom it is meant to serve is preferable. This is not only a question of geographical distance, but also of cultural proximity to the context in which the violations took place. However, often the national justice system is very weak, and cannot live up to its responsibility to dispense justice. In such situations, involving the International Criminal Court may sometimes be an option, if the necessary admissibility criteria are met, though its handling of cases is often



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very expensive and slow. A mixed national-international court, if it takes in the advantages of both domestic and international justice mechanisms, can also be an interesting alternative.

Security-sector reform should be a key element of any reconciliation process. It is crucial to embed the security sector in a democratic structure and to provide it with a clear mission. Moreover, the army, police and other state forces need to be inclusive, and their membership needs to reflect the composition of society. It is equally important that security sector officers be inculcated with the principles of human rights. Parliament has a significant role to play in this regard in the areas of legislation, in particular in the adoption of the defence budget and in overseeing the government.

We ended our deliberations with an analysis of the role of the international community in national reconciliation processes. Most post-conflict societies lack the necessary resources to initiate substantive reconciliation efforts. Outside assistance can therefore be extremely useful as a source of finance and expertise in bringing local and regional actors together and in helping support reconciliation initiatives in the peace process. Yet it is important to highlight that the involvement of the international community is not without pitfalls. Countries that have come out of conflict are faced with a multitude of international actors that do not necessarily speak with one voice, and may even contradict one another. The international community's predominant focus on direct and concrete steps and results may fail to take account of the pace and

direction which the people concerned want to give to their reconciliation process. Clearly, international actors should not be the ones to decide what is the right moment and which are the most appropriate mechanisms. If they do, they may not only harm any prospect of reconciliation, but may also put at risk the lives of those on the ground who commit themselves to the cause of truth and justice. Long-lasting reconciliation needs to be home-grown. It is absolutely essential that in all of its stages it reflect the will of those who are directly concerned. At the end of the seminar we learned about the AMANI Forum, which brings together parliamentarians from the countries of the Great Lakes region and which is an interesting example of a regional parliamentary initiative taken by those directly affected.

These are but some of the experiences and ideas that were presented in the last three days. Needless to say, it is impossible for me to do full justice to the richness of the presentations and debate.

There is one thing we should bear in mind. While many of the topics that we touched on concern society at large, we always spoke from the perspective of what we can do as parliamentarians to stay the course of reconciliation and help eliminate any obstacles to it. International parliamentary solidarity is essential in our pursuit of this goal. I hope that this seminar has been helpful in providing some answers to the challenges ahead, and that we will go back to our countries with a renewed sense of commitment to our own reconciliation processes. ■

Inaugural session

Mr. ANDERS B. JOHNSON, Secretary General, Inter-Parliamentary Union

The place where we have gathered for the next three days is very symbolic. As you know, the theme of reconciliation that brings us together has made considerable progress in Burundi. First of all, the adoption of a new Constitution, approved by the people of Burundi, which provides a vision for the future of the country based on mutual respect and the inclusion of all is a significant step indeed. The end of the transition period, the setting up of a democratically elected parliament and the election of a Speaker are major developments in their own right. Last but not least, we are following with keen interest the efforts currently under way to establish the truth commission and any other initiative aimed at reconciliation.

Why is the IPU committed to assisting reconciliation initiatives in countries where internal conflicts abound?

To begin with because the principles upon which the IPU was founded are intricately linked to all forms of reconciliation, namely: personal dignity, respect for others and the need to resolve disputes through dialogue. The Union is dedicated to defending democracy and the values that inspire and recall respect for the rule of law at the national level and between States.

Next, because the IPU is convinced that the presence of a parliament that is truly representative of all sectors of society and one that provides a national forum for the free and open exchange of views is in itself evidence enough that a process of reconciliation is taking place. It is also a determining factor in strengthening the reconciliation process.

Nevertheless, in many post-conflict situations, parliament as an institution no longer exists or has only been recently re-established. In the latter case, its capacity to overcome the enormous difficulties brought about by reconciliation is generally limited. Hence the reason why the IPU has worked towards building parliamentary capacity in several countries facing conflicts, notably: the parliaments of Cambodia, Rwanda and Timor-Leste, to name but a few. We have also worked with the former transition parliament of Burundi and this seminar attests to the fact that such cooperation is being deepened with the new authorities.

The modalities of each transition process determine in large measure the prospects for democracy or peace and, subsequently, the likelihood of advancing reconciliation. Having said that, it would be irresponsible to make generalizations. Each transition process, like each country, is unique.

“A critical lesson can be learned from past experience: the most successful transitions have been those where successor governments - in spite of risks and against all odds - have attempted in good faith to deal with violations of the past.”

Anders B. Johnson, Secretary General of the IPU

Nevertheless, despite their differences, successive governments come up against the same moral, legal and political problems. The question of how to manage the past is often at the top of the slate. The common denominator of countries emerging from a conflict situation is the fact that they have suffered violations of human rights and humanitarian precepts.

They have to face the inevitable temptation of “swift justice”. Often transition governments are, in fact, obliged to choose between justice and keeping the peace and justice and preserving democracy. Nevertheless, a critical lesson can be learned from past experience: the most successful transitions have been those where successor governments - in spite of risks and against all odds - have attempted in good faith to deal with violations of the past.

Over the next three days we shall elaborate on this theme. We shall hear several experiences from Africa and other parts of the world. More specifically, presentations will focus on the scope of “transitional justice” that has been developed in response to the consequences of repeated violations. The aim of transitional justice is to manage the consequences of those violations in a broad and comprehensive manner by simultaneously incorporating all facets of justice, notably its criminal, corrective, social and economic aspects.


Africa has been devastated by numerous conflicts. However, several initiatives taken on the continent with a view to achieving peace and development give us reason to hope. In that regard, the domino effect of the work conducted by South Africa’s Truth Commission should be underscored insofar as it has encouraged other African countries to set up similar commissions and undertake reconciliation initiatives.

It is our hope that this Seminar will foster a greater understanding of transitional justice, which brings together a host of mechanisms that favour reconciliation. In more general terms, it is our hope that this Seminar will help in allowing parliaments to play a more substantial role in making reconciliation processes work and in identifying the pitfalls that need to be avoided.

Mr. GORAN FEJIC, Head of Programme, Democracy Building and Conflict Management, International Institute for Democracy and Electoral Assistance (International IDEA)

First of all, allow me to give you a brief introduction to the organization that I represent. Founded in 1995, International IDEA is an intergovernmental organization with a membership of 23 countries from all the continents. IDEA is based in Stockholm, Sweden. It is unique in that it is the only intergovernmental organization with the singular mandate of promoting democracy throughout the world. IDEA’s work covers essentially three areas, namely: electoral processes, political parties, and democracy building and conflict management.

I have the honour of coordinating one of the Institute’s programmes, Democracy building and conflict management. I am often asked why we use the term “conflict management” and not conflict “resolution”. The reason is that we base our work on the premise that conflicts are innate to all societies because society is made up of individuals and groups with different, sometime opposing interests and views. We believe that it would be illusory to want to simply eliminate conflicts. Rather than wanting to eliminate them, the idea is to manage them peacefully through democratic processes. Finally, conflicts are not as dangerous and deadly as violence, and simple conflicts of interest in societies where democratic institutions exist and function do not necessary have to become violent.



“Parliamentarians have a very special role to play in the reconciliation process. They can open and set the tone of important debates on reconciliation in their own countries, influence public opinion and voters, and draft and pass laws on different tools of reconciliation.”

Mr. Goran Fejic, Head of Programme, International IDEA

Unfortunately, they do often end up being violent. That violence is sometimes due to injustice, discrimination and poverty but may also well be due to the bad faith of certain leaders who do not hesitate to use force to remain in or gain power.

In principle, having a solid and properly functioning framework of democratic institutions should help to manage conflicts in a peaceful manner and prevent them from degenerating into violence.

The problem is that no democratic framework can function well unless it is buttressed by proper human relations, open channels of communication between the people behind the democratic machinery and a minimum level of trust among citizens and between citizens and the State. That is why, following a violent conflict, civil war or years of repression, it is not enough to reconstruct State institutions and impose democratic rules for them to operate. Relations between persons and the various communities that make up a society deeply divided by war also need to be rebuilt. It is this rebuilding of human relations that we call reconciliation. And that is why IDEA, whose main mission is to support democratic processes, is now also concerned with reconciliation – an indispensable ingredient of democracy.

Africa, a continent marked by decades of violence, is also a continent of age-old wisdom and deep-rooted knowledge in the field of human relations and harmony between the individuals and the community that embraces them. It is a continent in deep need of reconciliation with untold resources to do so. As we shall see throughout the Seminar, there is no ready-made model or fool-proof recipe for reconciliation; nor are there any lessons to be taught on reconciliation, only very rich experiences that are worth telling and sharing.

It goes without saying that parliamentarians have a very special role to play in the reconciliation process. They can open and set the tone of important debates on reconciliation in their own countries, influence public opinion and voters, and draft and pass laws on different tools of reconciliation that can be applied in their countries. Last but not least, they are the guardians of democracy and the overseers of their government. They can demand that governments honour the commitments they have made in the area of reconciliation and transitional justice.

At IDEA, our work in the field of reconciliation is encapsulated in essence in a volume entitled *Reconciliation after Violent Conflict*, which was published in 2003 in English and more recently in French. We are pleased to work in close collaboration with the Inter-Parliamentary Union, the fruit of which is a small volume which, it is hoped, you will find interesting. It is entitled *Making reconciliation work: the role of parliaments*.

You are best-placed to ascertain the usefulness of our work in the area of reconciliation and if at the end you find that this publication and this Seminar have been useful for your work as legislators and representatives of your people, then I and my colleagues at IDEA would feel that our work has not gone in vain.

Ms. IMMACULEE NAHAYO, President of the National Assembly of Burundi

Following democratic elections, the people of Burundi can look proudly towards the future to face the challenges that fall to them in their duty to consolidate peace, national reconciliation, economic and social reconstruction and combat poverty, HIV, and enforce institutional reform in areas such as the judicial system and the defence and security forces.

Aware of the pressing need to resolve these problems, the elected political officials have not wasted any time in taking up certain challenges. The first, which is currently mobilizing all our political and social resources, is education for all. The second challenge being taken up by our current leaders is peace-building. In fact, although there is genuine peace in over 90 per cent of the country, no one can ignore the fact that there are still some areas, especially those in the outskirts of the capital, Bujumbura, where a last rebel movement continues to undermine the security of inhabitants, the Palipehutu-FNL movement. In this regard, all the efforts of the local population and the international community are aimed at asking the group to bury the hatchet as soon as possible, for the people of Burundi are weary of the acts of violence they have been enduring since October 1993. Doubtless, we still have to make this final step towards peace but there is every reason to hope since the national authorities have promised to make the restoration of peace throughout the country their top priority.

Therefore, we can continue to look to the future with optimism. However, that optimism should not let us forget that there are many other significant challenges that our country must face, such as combating poverty and HIV/AIDS, reforming the judicial system and achieving national reconciliation.

Combating poverty is at the top of our government's agenda. Our country has suffered from a dozen years of war and destruction of its economic and social infrastructure in their entirety: small and medium-sized enterprises, schools, hospitals and health centres, houses, roads and forests. Precisely because of war animal rearing has also been devastated, fields have been deserted and thousands of Burundians are still living either outside the country - exiled in various African countries and elsewhere, the majority of whom are in the United Republic of Tanzania - or inside the country in dilapidated camps for displaced persons. This crisis has made 80 per cent of our population more vulnerable, by living below the poverty line.

It is, therefore, with a view to meeting all of these challenges that our government has recently presented to the Bretton Woods institutions a "comprehensive poverty reduction plan". It has notably undertaken before them the necessary procedure for the cancellation of its debt under the PPTE programme. That request is being approved by the IMF and the World Bank. Once it becomes reality, debt relief will allow our country to allocate the lion's share of its earnings to fighting poverty through a multisectoral programme of national reconstruction.

"In a country paralyzed by impunity, the endemic corruption of certain judicial agents and the absence of a truly independent judiciary, reforming the judicial system is of paramount importance for national reconciliation and restoration of peace."

Ms. Immaculée Nahayo, President of the National Assembly, Burundi

From now on the National Assembly and Senate of Burundi can assure the Government of Burundi and our country's partners of their total support for any initiative aimed at reducing poverty in Burundi and are at their entire disposal to support them using the ways and means available to Parliament.

The second significant challenge the country is already facing and will continue to face in the near future is how to combat HIV/AIDS. It is common knowledge that Africa is the continent most affected by the AIDS pandemic in the whole world. Unfortunately, our country falls under the same category. In fact, between 8 and 13 per cent of the population is affected, in both rural and urban areas. Local AIDS experts have indicated that over 350,000 Burundians are HIV carriers, of whom large numbers die every year. That is why our government has established a ministry with responsibility for HIV/AIDS, which is in turn supported by a national agency, the national AIDS Council.

The third considerable challenge facing Burundians in the short term is reforming the judicial system in terms of both its structure and its functioning. As you all know, in our country reforming the judicial system is high on the political agenda, particularly following the Arusha Accords for peace and reconciliation in Burundi. Indeed, in a country paralyzed by impunity, the endemic corruption of certain judicial agents and the absence of a truly independent judiciary, reforming the judicial system is of paramount importance for national reconciliation and restoration of peace. In this regard, all citizens of Burundi call for sound and fair justice for all. That will require drastic internal and external measures to reform the justice system - a sensitive area in which we cannot afford to make any mistakes.

Lastly, another important challenge before us that is partly linked to the one mentioned earlier is national reconciliation. Indeed this regional seminar has been organized for the very purpose of looking into the ways and means of resolving the problem of national reconciliation in this post-conflict period. ■



THE ROLE OF PARLIAMENTS IN THE NATIONAL RECONCILIATION PROCESS IN AFRICA

REGIONAL SEMINAR ORGANIZED JOINTLY BY THE PARLIAMENT OF BURUNDI, THE INTER-PARLIAMENTARY UNION AND THE
INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE **BUJUMBURA, 7-9 NOVEMBER 2005**

THEMATIC SESSIONS

SESSION I

The need to address the scars of the past

► RECONCILIATION AS A GOAL AND A PROCESS

Mr. Goran Fejic, Head of Programme, Democracy Building and Conflict Management, International IDEA

“Why do we need to address the scars of the past?” Why do we need to think of the past, to recall and remember some of the most difficult and most disturbing moments of our own lives and of the recent history of our country? Sometimes, we may prefer to forget it altogether and to look at the future as we start building a new democratic system, new institutions etc.

The first problem with such an attitude is that the best institutions and the best democratic system will not work if the population remains deeply divided and if human relationship is plagued with fear, mistrust and suspicion.

The second problem is that we cannot forget. And even if we tried to forget, since we continue to live in the same city, in the same country, with other people, sometimes the same people who caused our suffering, we would constantly be reminded of the past. And we would continue to live with fear and with hate, with the feeling that the terrible things we suffered can occur again. This fear and insecurity will be a burden and an obstacle on the way towards building a new future.

In other terms, we cannot simply forget the past because the past is part of ourselves and of the history of our country. It will stay with us whether we want it or not. But, if we explain it, if we find out what really happened during those years of violent conflict, if justice is done to the victims, if they receive proper reparation, things might change. Individuals and the society as a whole might start to live with the feeling that violence is gone for good.

Let me here quote a very distinguished citizen of Africa, Archbishop Desmond Tutu who wrote, in his foreword to IDEA's handbook “Reconciliation After Violent Conflict”: “Examining the painful past, acknowledging and understanding it, and above all, transcending it together, is the best way to guarantee that it does not - and cannot - happen again.”

“Transcending it together” says Archbishop Desmond Tutu and the word “together” brings us closer to understanding better what reconciliation is about: a process through which society moves from a divided past to a shared future.

Yet, reconciliation is still a word and a concept that often raises misunderstandings and doubts and has different connotations in different countries, languages and cultures. My organization - International IDEA has published books and organized seminars on reconciliation in many parts of the world. In some places, we noticed that reconciliation was understood as meaning simply a deal, an agreement between political leaders to stop fighting and share the power. In other countries, people thought that reconciliation was only about forgetting the past and forgiving the killers and perpetrators what they have done. In other terms, they thought reconciliation was an excuse for impunity. In one Latin American country, a non-governmental organization with which we worked on the publication of a book on reconciliation

did not even want the word “reconciliation” to appear in the title. So we used another work which in our view meant something similar - we used the words “social coexistence”.

Therefore, it is always very important to explain clearly what we mean by reconciliation and what it involves. One of the reasons why reconciliation is sometimes difficult to understand lies in the fact that it is at the same time a goal - something to achieve, and a process - a means to achieve that goal. The goal, of course is an ideal - a harmonious, reconciled society, in peace with itself and with its neighbours.

Yet, what is even more important is the process - how do we move, what do we do to come closer to a harmonious society, capable of managing its differences through peaceful, democratic means.

When we look at reconciliation as a process, as a means to build a better future, we see that it is even more complex than we had imagined:

- First, it involves many different aspects: seeking the truth, seeking justice, helping the victims to heal from what they suffered, providing for proper reparations etc.
- Second, it occurs in many different contexts and many different cultures; after different types of conflict; all these circumstances are important to determine the kind of reconciliation process that is most suitable for a particular society.
- Third, it occurs at many levels: at the level of individual victims and perpetrators, at the level of families and entire communities (and the community level is particularly important because after a violent conflict, our understanding of who is the “enemy” is rarely limited to individuals and tends to embrace the whole community - Palestinians, Irish Protestants, Serbs, Croats, Tutsis, Hutus etc..)
- Fourth, it is also a long-term process; it is very important to understand that there are no quick fixes and that the process may take years, sometimes decades;
- Fifth, it is also a deep process: it sometimes demands changing our deep feelings, or attitudes, our way of thinking.
- Sixth, it has a very important gender dimension: this requires understanding how violent conflict affects women, as victims of sexual violence, as widows and sole family providers etc.

Now we can see better why there are no general recipes and quick fixes for reconciliation and why it is important to consider each case in its own context. We said that reconciliation was a process of dealing with the divided past in order to build a common future. Another way of defining it would be to say that it is a long process that ideally, once and for all, will prevent the use of the past as the seed of renewed conflict.

We can understand a process better when we divide it into stages: Some results may be achieved in a relatively short period others will take a longer time.

- The first stage of reconciliation is when fear is replaced by non-violent coexistence: when the shooting stops, the first immediate goal is to make it possible for former enemies to coexist, to live alongside each other without violence and without fear of violence. This is still far from dialogue, from mutual trust and from cooperation. It is like two persons walking on two opposed sides of the street. They don't fight, but they don't come closer to each other. But, this first stage too requires a minimum of communication, signals between the two sides that they are ready to talk and to look for other means than war to resolve their disputes. It also requires a minimum of security.

“Healing, truth-telling, restorative justice and reparation are important ingredients of a reconciliation process. None of these ingredients, if applied alone will give satisfactory results. But it is impossible to say which of them should have the priority in a specific country and in a specific situation. There is no one road to reconciliation, no perfect model that can simply be imported from one country to another.”

Mr. Goran Fejic, Head of Programme, International IDEA

- The second stage is when relations of trust begin to appear between former enemies. This stage requires recognition that those who belong to the other side, the former enemies, are also human and should be respected as human beings.
- The third stage is when the victims and the perpetrators are ready to listen to each other and make an effort to understand the reasons given by the other side. At that stage we have a clear separation between facts and myths, the state is able to do justice to the victims and to offer reparation programmes. Common interests are gradually becoming stronger than the feelings of anger and the desire of revenge. There is what we call empathy between the two sides of the divided society.

These three stages of the process do not happen naturally, by themselves. They are the effect of a deliberate strategy and continuous action, of perseverance of many actors in society: governments; political parties; the civil society, different professional associations, religious institutions and other groups and of course - parliamentarians. The role of the international community is also important and we shall come back to it in another session.

What is the concrete type of activities this strategy typically involves? Experiences from different conflicts in different parts of the world show that there are many techniques of reconciliation, but they can be presented in four main groups:

- Healing the wounds of the survivors;
- Some form of retributive or restorative justice;
- Historical accounting via truth-telling;
- Reparation of the material and psychological damage inflicted on the victims.

It is very important also, that reparations provided to some members of the community are not perceived by other members or by neighbouring communities as a new kind of discrimination. If this occurs it will, of course, not facilitate reconciliation but make it even more difficult.

To conclude:

- First, all these elements - healing, truth-telling, restorative justice and reparation are important ingredients of a reconciliation process. None of these ingredients, if applied alone will give satisfactory results. But it is impossible to say which of them should have the priority in a specific country and in a specific situation. There is no one road to reconciliation, no perfect model that can simply be imported from one country to another. What has worked in South Africa, may not work in Peru or in Cambodia. In every new context a new process must be designed.

- Second, we should not judge an entire reconciliation process as a success or as a failure. Often, the process consists of many small successes and many small failures.
- Third, reconciliation is necessarily a long-term process. It is pointless to think that “reconciliation can “be done” and that immediately after that, we can move on to justice, economic reform or constitutional reform.
- But, it is counterproductive to delay reconciliation because there are more urgent problems. It is important to start the process as early as possible after the conflict. If the problems that have caused the deep divisions, frustration and fear in society are not addressed they may well become even more deeply entrenched with time and remain as a source of a new conflict. That is why it is necessary to see reconciliation as part of the peace-building and democratization process. It should be implemented in parallel with other activities of reform and reconstruction.
- The reason is that state institutions, regardless of how perfectly and democratically they are designed will not be able to work properly if they are not supported and underpinned by good relations among different social groups and between the state and its citizens.

SESSION II

Parliament in the aftermath of conflict

► **THE RELATIONSHIP BETWEEN NATIONAL PARLIAMENTS AND LOCALLY ELECTED BODIES**

Mr. Sylvestre Ntibantunganya, Senator and former President of Burundi

1. The national Parliament and local authorities in Burundi: a painful and turbulent history

Between 28 November 1966 and 1982 Burundi was without a parliament. Again, between 1987 and 1993, Burundi was without a parliament. It was the Constitution of 13 March 1992 that paved the way for fresh legislative elections that were held on 29 June 1993. The elected parliament was largely dominated by the Sahwanya-FRODEBU Party, represented by 65 deputies, while the UPRONA Party had 16. From an ethnic perspective, Hutus accounted for over 75 per cent of members of parliament. In the same democratic dynamics, the Sahwanya-FRODEBU Party candidate running in the presidential elections had promised that, if elected, he would move to have the Constitution amended so that local councillors could be elected by direct universal suffrage in a multi-party competitive framework. As the Constitution was on the verge of being amended the attempted coup of 21 October 1993 occurred. It plunged the country into its longest and most destructive crisis in all its history.

Attempts to resolve the crisis were marked by the particular role played by the National Assembly, which passed the constitutional amendments needed to deal with the institutional void left by the assassination of the president of the Republic and some of his collaborators, including the Speaker and deputy Speaker of the National Assembly. Later on, the National Assembly would play a crucial role in setting up a “domestic political partnership”, a kind of makeshift arrangement devised to deal with the expiry of the

mandate of the elected National Assembly on 29 June 1993. The house was obliged to “expand” in order to co-exist with the Executive that had come into power following the coup d’état of 25 July 1996. It was the “domestic political partnership” institutions that would engage in the Arusha negotiations for peace and reconciliation in Burundi. They would lead to the signing of the Arusha Accord, and subsequently, followed by the establishment of “transitional institutions”, including a National Assembly once again enlarged to accommodate the “small political parties” and “armed political movements” that were signatories of the Accord. Later, the comprehensive cease-fire agreement would be signed by the transition government of Burundi and the CNDD-FDD armed political movement. Incorporation of the latter into the transitional institutions would lead to a further enlargement of the National Assembly, which would participate as best as it could in the drafting and adoption of the Constitution of Burundi, which would pave the way for the recent elections held between June and September 2005. Those elections were responsible for Burundi’s enjoyment today of a bicameral parliament, local government councils and elected district councils.

2. The national parliament and local authorities in Burundi: Composition and mandate designed to foster national reconciliation

The current Parliament is the result of the Arusha negotiations. Its composition was envisaged to avoid the setbacks and failings of the institution over the past forty years. The Arusha negotiators envisaged an ethnically inclusive parliament with significant female representation. The reasoning behind this must no doubt have been based on the premise of ethnic balance that must prevail in the defence and security forces. Hence, “During a period determined by the Senate, the defence and security corps shall not be composed of over 50 per cent of members of any one ethnic group, given the need to ensure ethnic balance and to prevent acts of genocide and coups d’état”. Although the Constitution expressly provides that the Senate shall ensure balance in the defence and security forces, it is, on the contrary, silent as to which body should ensure the various types of balance required within the institution of our bicameral parliament, composed of the National Assembly and the Senate.

The National Assembly is made up of 100 deputies elected by direct universal suffrage and 18 co opted deputies to guarantee the ethnic and gender balance stipulated by the Constitution. In fact, the Lower House may comprise a maximum threshold of 60 per cent of Hutu deputies, while Tutsis must be ensured a minimum representation of 40 per cent. Women must be ensured representation of at least 30 per cent while Batwas are represented by three deputies, also co opted.

The establishment of the Senate as a Burundian institution was born from the will to ethnically balance a National Assembly considered by some as an institution where Hutus inevitably made up the overwhelming majority. The Senate or Upper House is composed of 34 senators indirectly elected by local community councils on the basis of two senators per province (one Hutu and one Tutsi) and also ethnically balanced, four former heads of State who, under the Constitution, are senators for life; three Twa senators and eight other co-opted women senators to meet the 30 per cent quota of women stipulated in the Constitution.

The current parliament was designed to serve as a factor of conflict prevention, given the country’s history of the past 40 years. Its composition was envisaged and regulated in a largely inclusive manner in terms of ethnic groups and gender. Today, no ethnic group, no region and no gender could justifiably say that it is excluded from the legislature although some do question the objectivity of applying ethnic quotas to the National Assembly that is supposed to be elected by direct universal suffrage in a general

“To date, the debate on the setting up of national reconciliation mechanisms has been an issue for political summits, held at the level of political parties and State institutions... If reconciliation should be conceived and achieved for the people and by the people, then how should they be involved in the debate prior to the establishment of reconciliation mechanisms and subsequently for the smooth running of the reconciliation programme? This is where officials elected by Burundians, at the various levels, should be involved to help Burundians take ownership of the reconciliation mechanisms and take into account activities already conducted, under way or envisaged to bolster and strengthen national reconciliation.”

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framework of freedom, transparency, justice and equity, upholding the principle of “one man, one vote” and based on the premise that all candidates are on an equal footing. The debate on this question is not over. Even heads of State, at the end of their term of office, can take advantage of this institutional loophole to continue to work and serve their country while being sheltered, I hope, from the temptation of anti-democratic tendencies.

3. The role of parliament and local authorities in national reconciliation

There are no constitutional provisions or legal stipulations governing these relations. What can be said is that the local community councils actually elect senators. It should also be noted that virtually all elected deputies or senators are simultaneously members of community councils, of which a great many are chaired by elected members of parliament. This fact may be useful in conceptualizing and shaping relations between elected members of parliament, community councils and district councils given their duty to be involved in the establishment and functioning of mechanisms to achieve national reconciliation.

Two mechanisms had been agreed at Arusha to foster national reconciliation: a national truth and reconciliation commission and an international commission of inquiry on genocide, war crimes and crimes against humanity.

Both commissions were supposed to be established during the transition period, but none was set up. The United Nations Security Council has since suggested to merge the two bodies into one, calling it the “Truth Commission”, whose mandate would consist of investigating and establishing facts, identifying them and determining responsibility during Burundi’s painful past, in particular concerning the crises the country underwent between 1972 and 1973 and in 1993. Furthermore, the conclusions of the United Nations, which were discussed with the transitional government of Burundi, propose the establishment, within the Burundian judicial system, of a specialized body to try perpetrators of crimes that have been identified. It had been envisaged that this truth and justice mechanism would be set up before the end of September 2005. That did not happen for reasons we can only imagine. The country started to set up the national institutions that resulted from the elections, including the government which, no doubt, will have to once again discuss with the United Nations the putting in place of these national reconciliation mechanisms. What then could be the role of parliament, communal councils and *colline* (administrative unit) councils elected to initiate and follow through the process of truth and national reconciliation?

To date, the debate on the setting up of national reconciliation mechanisms has been an issue for political summits, held at the level of political parties and State institutions. While it is true for some time now that civil society has been involved in the discussions, its participation has been very limited. If reconciliation should be conceived and achieved for the people and by the people, then how should they be involved in the debate prior to the establishment of reconciliation mechanisms and subsequently for the smooth running of the reconciliation programme? This is where officials elected by Burundians, at the various levels, should be involved to help Burundians take ownership of the reconciliation mechanisms and take into account activities already conducted, under way or envisaged to bolster and strengthen national reconciliation. The following measures could be taken by the Burundian Parliament together with its locally-elected officials.

First measure

Based on the current stage of the debate, elected parliamentarians could organize at the level of their respective constituencies exchanges with local councillors on the problem of national reconciliation. They could start with communication and compilation of information on what has been done to date regarding the design and putting into place of national reconciliation mechanisms. At these meetings with local councillors, parliamentarians will have an opportunity to gather various experiences of reconciliation, either on their own initiative or through third-parties, through *colline* and district residents.

Second measure

Next, elected parliamentarians will draw up a report on the aspirations of the people regarding reconciliation mechanisms and measures. During discussion of the reports brought in from different provinces, parliament will make time to listen to other interested parties, notably human rights organizations, churches and universities. On the basis of this data, parliament will prepare a report and submit it to the government, which in turn will serve as a basis for developing and adopting a national reconciliation policy, which external partners, including the United Nations, will be urged to support.

Third measure

The policy thus defined will then be transposed into a law, which will be passed by Parliament, promulgated by the President of the Republic and translated into concrete action.

Fourth measure

During the implementation phase of this law, parliamentarians should ensure that there is wide dissemination and assimilation by the public by seeking the services of local elected officials. Next they should see to it that the different agreed mechanisms can function freely and independently and that they dispose of adequate material, financial and human resources needed to carry out the tasks with which they have been entrusted.

► **COOPERATION BETWEEN PARLIAMENT, CIVIL SOCIETY AND THE MEDIA IN THE PROMOTION OF RECONCILIATION**

Mr. Louis-Marie Nindorera, Global Rights, Burundi Programme Director

1. **Relations, perceptions, memory: defying the impenetrable**

The need for reconciliation between peoples or communities flows in part from the desire to create a positive social atmosphere for the post-conflict political systems now in place, an atmosphere characterized by trustful relations among citizens, true mutual acceptance, and shared visions of the past and future - a source of stability and progress for the entire reconstruction and development process. It is true that wars inexorably exhaust themselves, leading almost always to convergence among the actors and communities concerned toward agreements marking a return to peace. But the unspeakable loss and suffering caused by war also leave their mark on a traumatized, deeply resentful populace. These emotions are often held in check only out of a stronger and more urgent desire to end the cycle of violence. Witnessed from the outside, this spirit of pacification appears to transcend national divisions - but it does not erase them. These divisions often persist and manifest themselves in ways that can be as difficult to comprehend and define as are social relations, perceptions, and memories among individuals. Persistent divisions within a society weigh heavily on its future, making it vulnerable to numerous stresses during reconstruction.

2. **Essential ties of cooperation**

The reconciliation process nearly always takes place in societies where years of violence and suffering have created relationships of deep fear, distrust, and resentment among communities and individuals, enormously complicating the choice and application of solutions. When latent distrust among individuals and communities manifests itself during a post-conflict period it can take the form of systematic attacks on the legitimacy of those in power, their acts, and their decisions. Cooperation among a certain number of actors, including parliament, civil society, and the media, is an essential condition for identifying and applying solutions, while at the same time restoring the trust among individuals and communities that is essential to reconciliation.

3. **Cooperation among parliament, civil society, and the media: principles, objectives and modalities**

Taking into account the respective roles played by parliament, civil society, and the media, as mentioned above, a first step is to identify the principles and objectives of cooperation among these actors, and then to examine the question of modalities.

- A major principle: mutual acceptance and recognition

It sometimes happens that cooperation among a country's parliament, civil society, and media deteriorates because one of these actors underestimates or questions another's role, or even existence. This situation could be the result of recent events or past history in the country. For example, the media may snipe at a parliament's timid role in recent years past - just as parliaments and civil society may be tempted, through old political habits, to treat the media as a simple propaganda tool (for the State or NGOs). Gaining mutual acceptance and recognition between such actors calls for collaboration and solidarity,

particularly in terms of protecting one another against external threats to their existence and ability to function. Acting in solidarity, parliaments should, for example, consistently oppose laws that seriously threaten freedom of the press, or conversely, that incite civil society and the media to oppose oppressive legislative measures. The spontaneous and natural character of this solidarity will depend largely on the capacity of each of these actors to assume its responsibilities freely, rigorously, and independently.

- The primary objectives: information, dialogue, and action

Objective N° 1: Contribute to a consistently well-informed reconciliation process, with respect to facts and painful events from the past as well as the circumstances and motivations behind political decisions, or that might justify political alternatives to stalemate situations.

In post-conflict societies, reconciliation comes nearly always after a painful moment of truth, and the various decisions, risks, tensions or outright crises that may ensue. Decisions themselves can cause crises and tension, particularly when they leave societies without hope, or result in sacrifice and moral or material suffering. These are the stumbling blocks on the road to reconciliation, and when facts or decisions are manipulated and exacerbate the conflict, they can become insurmountable. Conflicts started or deepened by such information are in part a reflection of the divergent interests at stake and are very difficult to prevent. Many other conflicts, however, could be avoided if the institutional actors, civil society, and media could better grasp the importance of information in preventing such conflicts. In their respective roles, parliaments, civil society, and the media produce vast quantities of information. How that information is selected, exchanged, processed, and disseminated, can incline thousands if not millions of individuals toward mutual acceptance or further repudiation. Cooperation among these three actors can result in formal or tacit agreement to: (a) use information in the service of reconciliation; and (b) conversely, prevent its irresponsible manipulation.


Objective N° 2: promote tolerance through dialogue

Parliaments, civil society, and the media play a decisive role in promoting dialogue, and thereby tolerance and cooperation. Logically, their first challenge is to establish dialogue internally, given the conflicting and divergent interests within all segments of society. After all, parliaments, civil society, and the media are not monolithic, and opinions within each are far from uniform. Within parliaments, different political groups generally have different political beliefs and aims. Civil society is a looser grouping of movements and associations that find it even harder to coalesce around shared objectives or projects. With respect to the media, internal dialogue is a search for consensus in support of shared ethical rules concerning their role as information providers during reconciliation processes and can entail open and regular debate on the respective roles of different media branches. None of this is particularly evident.

Beyond such internal dialogue, parliaments, civil society, and the media can cooperate in promoting community dialogue as a joint endeavour.

Objective N° 3: act, monitor, and evaluate

At one stage or another, all reconciliation processes require actions or initiatives to be taken - be they public or private. These actions or initiatives, whether they originate from parliament, civil society, or the media, consciously or unconsciously pursue objectives and results, and seek to impact opinions, attitudes, rights, freedoms, etc. In pursuit of reconciliation, a parliament can approve laws, establish investigative committees, publicly interrogate government authorities, and organize and conduct high-



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Global Rights, Burundi Programme Director

impact forums for dialogue. Civil society can conduct public information campaigns on truth and reconciliation commissions, help to raise funds to support them, or call for investigations into past crimes. The media can take the initiative to investigate specific matters and provide special settings for dialogue or commentary on government policy. At one time or another each of these three actors -parliament, civil society, and the media - clearly needs each of the others.

4. Conclusion: power in the service of leadership

In their respective roles, it is clear that parliament, civil society, and the media can play an important role in determining: (a) how major steps in the reconciliation process are publicly received; and (b) the extent of popular support for and participation in the process. For all three actors, the greatest challenge is to embrace a spirit of tolerance and openness, which they in turn must promote among their citizens and within their shattered communities.

Like these shattered communities, parliament, civil society, and the media have been shaped and influenced by decades of division and brainwashing. They, like others, can be tempted to defend self-serving positions and sectarian interests, and to resist compromise. As leaders and potential “role models” they must resist such baser impulses, including the excesses of electoral politics and the influence of special interests. Succumbing to the lure of petty and populist vendettas, pretending to “represent” their constituents by repudiating some while pandering to others: this is not how parliamentarians are supposed to represent their electors, nor how civil society is supposed to “speak” for the disadvantaged.

The strengths and assets that parliament, civil society, and the media can each bring to the reconciliation process can be combined, to give voice to the multitude and provide leadership that transcends sectarian interests through tolerance and the courage to take difficult decisions and actions for the sake of reconciliation.

SESSION III

Women and gender in post-conflict situations

► ENSURING WOMEN'S INVOLVEMENT IN THE FULL RECONCILIATION PROCESS

Ms. Megan Bastick, Special Programmes Coordinator, Geneva Centre for the Democratic Control of Armed Forces (DCAF)

1. Why including women will help reconciliation work

The best reason to include women in peace processes is that their involvement is essential for reconciliation to 'work'. Any reconciliation process that ignores the needs and roles of women is unnatural, and therefore inherently unstable.

Violent conflict involves and affects women and girls differently - women speak with different voices

Women and girls need different things from a reconciliation processes. One that excludes them addresses only half of society and cannot succeed.

For example:

- Women have experienced sexual abuse in the form of gang rape, forced marriages and prostitution, with social stigmatization and marginalization as a consequence. For those women, reconciliation involves offences against them being recognized and punished, illegitimate children being recognized as legitimate with full rights, and resources being allocated to deal with the physical and psychological consequences.
- For war widows, reconciliation would be expected to include compensation and address existing inheritance laws and practices that dispossess them or hinder them in fulfilling their new obligations as family providers.

Democracy and the credibility of reconciliation

Reconciliation is compromised when women do not participate in it. Inclusiveness is necessary to ensure the legitimacy of the reconciliation process, to encourage a broad base of participation and to make sustainable peace and development possible. Including women is necessary to establish and maintain the credibility of new governance structures.

Women are able to build bridges between communities

Women can forge ties between opposing factions. Women's shared concerns on each side of the divide can be effectively utilized in facilitating a reconciliation process. Women's shared interests can be developed into a basis for cross-community cooperation.

In Bosnia and Herzegovina, for example, a group of women from Srebrenica joined forces to provide support to women refugees and returnees, many of them widows. Serb and Muslim women jointly knit clothes for displaced Serbian children.

In Rwanda, women came together to adopt orphaned children - regardless of ethnicity, as a mechanism for reconciliation and a means of moving society forward. Women formed the first cross-party parliamentary caucus, composed of both Hutus and Tutsis, addressing issues of concern to women from all political parties.

Such cooperation between women can be seen as “delicate shoots” in the transition period. Nurturing them can generate a momentum away from the simplistic, binary division that has been fuelled; the violence along one dimension in the past. When they are nurtured, they add a complexity to social life that makes it more difficult to return to the “them-and-us” rivalry of the war. And of course, in the process of such reaching out across the divide, these developing patterns of cooperation lead to the forming of real cross-community relationships. It is those new relationships which lie at the heart of lasting reconciliation.

It is a woman’s right to be included, and have a say in the future of her country

Women have a right - a human right - to full involvement in political and economic decision-making. Africa has gone even further than the rest of the world in recognizing women’s rights to participate in peace processes and decision-making. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa - will enter into force on 25 November 2005.

2. What are the barriers to women’s inclusion?

Limited representation in parliament and in other public offices means that women’s voices are not heard

In systems of power and governance, equal representation of women - with very few exceptions - is a myth. Such limited representation in political bodies prevents women’s voices from being heard, prevents women from giving voice to their grievances. There are similar patterns in many traditional forms of justice and reconciliation - women tend to be absent as decision-makers, judges or prosecutors.

Crimes against women are not included in the reconciliation process - women are not recognized as “victims”

Often the type of harm suffered by women - in particular sexual violence and violence in the home - are seen as “private” - to be dealt with privately, rather than through formal justice and other reconciliation processes. Even where crimes against women, in particular sexual violence, have been tried in courts, they are often not considered with due seriousness. Sentences for rape and other forms of sexual violence are often short (as compared to, for example, an act of torture in police custody).

Women may be reluctant to come forward and identify themselves as victims because of stigma

An even more challenging problem than recognizing sexual violence as a crime is the reality that women who have survived sexual violence are often reluctant to come forward and identify themselves as victims. All over the world, women who have been raped and abused face the risk that if they come forward and name their accusers they themselves will be rejected and stigmatized by their families and communities, even punished, and will bring shame upon their family.

“Including women at every stage of the reconciliation process is necessary to produce a process that meets women’s needs, makes use of women’s contributions and one that works.”

Ms. Megan Bastick, Special Programmes Coordinator, DCAF

Lack of property rights and legal status as a barrier to reparation

Another barrier to women receiving acknowledgment and reparation can be women’s lack of legal rights. Women are victims of displacement and loss of property during conflict. However, women are not always registered as individual citizens, nor are they always registered (and recognized) as owners of land, houses, assets and goods. In a situation of conflict and social upheaval and its aftermath, women may have difficulty protecting their resources and find it almost impossible to make claims for compensation and other kinds of assistance. This adds to their economic and social vulnerability.

Lack of access due to social and economic disadvantage

When reconciliation processes are initiated, women’s comparative economic disadvantage also adds to their exclusion. Women in rural areas especially may have no way of getting to cities, where truth commissions are usually held. They will often be unable to leave their homes to participate, because of their family and other household duties. They are less likely to be able to travel alone, due to safety and cultural reasons.

3. What can parliamentarians do to make sure women are included in reconciliation?

Parliamentary action can be effective in addressing these barriers to women’s exclusion by:

- Recognizing crimes against women as part of the crimes and suffering of conflict,
- Creating an environment in which women feel able and empowered to come forward,
- Making sure that reparation is available to women, and in a form that addresses women’s needs.

Ensure that women are included in parliaments, courts, truth commissions and parliamentary inquiries

Unless women are included as decision-makers, there cannot be a proper understanding of and inclusion of women’s perspectives, skills and talents. In practice, women’s direct involvement in the decision-making process, in conflict resolution and peace-support activities, requires a shift in the traditional paradigm of the respective roles of men and women in society and in conflict situations.

Ensure that women are included in the planning and design of processes

Including women at every stage of the reconciliation process is necessary to produce a process that meets women’s needs, makes use of women’s contributions and one that works.

In Sierra Leone, women’s participation in the design of the truth commission ensured the establishment of a special unit to investigate war crimes from a gender perspective. There is a women’s task force, made up of members of women’s associations, United Nations agencies, the police force, the media and the legal profession, that seeks to create an atmosphere in which women can participate in both the truth commission and the court.

In Timor-Leste's Commission for Reception, Truth and Reconciliation, women's groups were involved in public dialogues regarding the various options for transitional justice, the decision to establish a truth commission and as members of the steering committee overseeing the commission.

In South Africa, women were thoroughly involved in the creation and design of the Truth and Reconciliation Commission (TRC) and made a valuable contribution to promoting public hearings and participation at the community level.

In the design of Rwanda's transitional justice mechanisms, women played a vital role in moving rape from a low-level offence to the most serious 'category one' level (requiring trial by the International Criminal Tribunal for Rwanda (ICTR) or the national courts, rather than *gacaca*). However, because of the overwhelming number of rapes, there is concern that many rape perpetrators will never be tried.

Continue outreach to women through the reconciliation processes

Special measures need to be put in place to allow women to participate - such as going to rural areas for hearings, providing transport and providing child-care areas for children while women testify.

In Peru, the Truth and Reconciliation Commission sponsored a programme that "developed training documents and communication strategies, circulated suggestions for investigators and guidelines for interviewers, ran workshops, produced educational documents for the public, and created a gender working group... These initiatives encouraged integration of gender throughout the commission in a multitrack approach that mainstreamed gender while also treating it as a specific focus area."

In Rwanda, ProFemmes/Twese Hamwe, a grouping of 40 women's non-governmental organizations, has implemented projects to maximize women's participation in *gacaca* - including advocacy for the integration of a gender perspective in implementation of the *gacaca* law, and awareness-raising sessions for 100,000 women leaders, local government representatives and persons held in detention centres.

Recognize women as victims

Legislators must ensure that legal definitions in a reconciliation process do not exclude women by overlooking the type of harm that they suffer or the time frame of women's suffering.

For example, in 1993 El Salvador's Truth Commission did not include reports of rape in its final report because they were seen as outside its mandate to report on "politically motivated acts". But International Criminal Tribunal for the Former Yugoslavia (ICTY) and ICTR have recognized the seriousness of rape as a war crime, a crime against humanity and an act of genocide. In the International Criminal Court (ICC) Statute, other acts against women that are recognized include: forced sterilization and forced pregnancy. In Rwanda, rape is classified as one of the most serious 'category one' level offences (requiring trial by the ICTR or the national courts, rather than by *gacaca* proceedings).

Further, recognition of women as victims must take place under activities to address stigma. Parliament can lead society in fighting stigma against victims of sexual violence.

Consider special processes for women

Protecting women by guaranteeing their safety. In court cases, women coming forward to testify may do so at great personal risk. Protective measures must be put in place to protect women from threats and further violence. Care must be taken to ensure that the processes of reconciliation do not re-victimize women. Processes must be victim-focused (in contrast with adversarial processes such as courts).

The South African TRC introduced programmes to make it easier for women to be heard, namely:

- A special women's hearing;
- Gender training for all the commissioners;
- Preparatory workshops, particularly for rural women;
- Gender-sensitive reparation policies (including compensation for work in the home).

Since then, truth commissions in Sierra Leone and Timor-Leste have held special sessions for women. One might consider 'women only' sessions where women can tell their stories in front of other women alone.

Traditional processes

Some post-conflict societies tend to look within their own culture and traditions for existing, home-grown mechanisms for reconciliation and justice. Women may play a leadership role in traditional forms of reconciliation. In Sierra Leone, women conduct healing rituals for child ex-combatants. By ritually cleansing them of their past deeds they enable the children to return and be accepted into a community.

Adaptation of traditional justice mechanisms may be needed to ensure that "local justice" tools function inclusively and fairly, particularly with regard to women and their interests, experience and rights.

Make sure that reparation addresses women's needs

Reparation policies should be designed to include the types of reparation that focus on the needs and concerns of women, based on consultation with women victims. For example, women may want reparation in the form of access to services, for instance, free of charge or subsidized education or medical assistance.

In Timor-Leste, the United Nations mission convened 500 women to recommend policies on a variety of issues, including reparation for women victims of violence during the conflict. Gender-sensitive reparation policies take into account, for example, the impact on women's lives of the loss of the male breadwinner, the costs of women's unpaid labour in the home and the unquantifiable value of women's care-giving functions. Such reparations might include transporting children to school, contributing financially to meet household needs, providing vocational training and assistance with medical care and counselling.

Reparation for sexual violence: addressing the stigma of rape requires creative community education initiatives, and must be undertaken with a long-term view. Reparation programmes should allow women to access reparation schemes without having to publicly declare their victim status. Reparation for sexual violence can also target the community, for the untold number of women who cannot come forward to claim their rape victim status. These women must not be ignored, even if they remain

unidentified. Reparation may take the form of health services, education and training programmes for women, support for women with children who have no other means of support.

Consider women in decisions regarding amnesty

In any decision made on what crimes may be granted amnesty, the effect on women must be considered. If amnesties are permitted to people who committed acts of sexual violence, a woman may be forced to live in a community with her rapist, in fear of encountering him.

In drafting amnesty provisions, acts of sexual violence must be considered the most serious types of crimes, as they have been in the international criminal tribunals and in the Statute of the ICC.

Recognize women as perpetrators

Women are not only victims in conflicts, but also perpetrators (although generally on a far lesser scale than men).

In Rwanda, approximately 3,000 women (of over 100,000 people accused nationwide) are awaiting trial or have been tried as perpetrators of genocide. In many cases, women participated in lesser crimes and were bystanders, witnesses, accomplices or agitators.

Reconciliation, as a rebuilding of relationships, is about perpetrators as well as victims, and the different circumstances of women and men must be taken into account:

- Women might act with different motives than men.
- As perpetrators women may face greater stigmatization than men.
- If women are imprisoned, they have different needs than men and their imprisonment is likely to have a much greater impact on their children.
- Where there are reintegration processes, women and girls may be excluded. For example, in many countries where there have been programmes to demobilize and reintegrate child soldiers, girls have been overlooked and excluded. Women may also be reluctant to identify themselves for reintegration programmes, because of the stigma they would face if their involvement was made known to their community.

In designing reintegration processes for women and girls, these things must be taken into account. The only way to know what the special needs of women and girls are is to have women involved in designing the processes and to ask the women and girls themselves.

In Sierra Leone, women and girls were not defined as fighters and were therefore not eligible to participate in Disarmament, Demobilization and Reintegration (DDR) programmes or receive benefits packages, including vocational training and stipends, available to their male counterparts.

In El Salvador, however, women leaders at the negotiating table and in implementation committees ensured that the names of female fighters, as well as non-combatant supporters of the opposition movement, were included in beneficiary lists for receiving land. Women's presence made the process more inclusive and ultimately more sustainable, averting a near-certain crisis among the rural population.

4. Support from the international community

The international community is a potential source of finance and expertise to assist in including women in reconciliation. The international community is taking an increasing interest in the gender dimensions of reconciliation, and can provide material and technical support.

Types of action donors may be asked to support:

- Women's preparation for and participation in reconciliation processes through:
 - a) Capacity-building programmes;
 - b) National consultations; and
 - c) National campaigns to raise public awareness about women's right to participate in the reconciliation process.
- Funding or other resources - such as security, housing, food or transport - to facilitate women's involvement.
- Expertise in conducting a capacity and needs assessment to identify the training and support required to increase women's effectiveness in the processes. Implement projects and programmes to address the needs not covered by the assessment.
- Support the creation of a dedicated space, such as a women's resource centre, to enable women to network, jointly strategize, share information and build consensus and a strong coalition.

SESSION IV

Truth and Reconciliation Commissions

- ▶ **THE ROLE OF TRUTH AND RECONCILIATION COMMISSIONS IN THE STRUGGLE AGAINST IMPUNITY: PRESENTING A REALISTIC VISION OF WHAT THEY CAN ACHIEVE**

Mr. Jean-Marie Ngendahayo, Member of the National Assembly, Burundi

Between 1974 and 1990, the world saw the establishment of 21 truth and reconciliation commissions - some, for different reasons, generating more impact than others. In general, all of these commissions were intended to enlighten the nation on historic criminal acts, in the interests of truth, responsibility, just reparation, reform, reconciliation, and the reduction of violence.

It is essential to be plain from the outset in laying out some basic parameters for reflecting on and effecting reconciliation. The process consists of visiting the past to condemn an oppressive and antidemocratic State system, often opposed by men and women fighting for change. Both parties have committed crimes, and their perpetrators should be punished. However, a distinction must be drawn between those who have committed crimes to perpetuate a bad political system and those who have

“The Truth and Reconciliation Commission was an exercise of profound spirituality: the belief that human beings are always capable of mending their ways and improving. An act may rightly be judged ‘monstrous’, but never its perpetrator.”

Mr. Jean-Marie Ngendahayo, MP, Burundi

struggled for liberation. Some wars may indeed be just, but as the Geneva Convention and the very principles of a “just war” remind us, the means employed in wars of liberation must also be just.

1. To learn the truth about misdeeds perpetrated in our history

- Is this the right time to embark on such an undertaking? Will it divide or unite us? Is it a question of a country’s culture, and if so, is a cultural value that discourages the search for truth (“Kuruza abkaboze”) worth defending?
- What are the risks to the country of creating such a commission? Are retrograde forces (beneficiaries of the prior repressive regime) still capable of causing harm? Are the new national institutions capable of managing such an exercise?
- What are the advantages and disadvantages of the exercise? Is it worth the risk to create such an institution, with a view to such profound transformations within the population?
- What truths are being sought? Is the search “restrictive” or “general and cathartic” - i.e. truth that sheds light on negative aspects of the past, freeing citizens to live their lives reconciled with and fully equal to one another?
- How far back in time should we go and why?

2. To seek reconciliation

- What parties are to be reconciled? Is the exercise a witch-hunt or an effort to achieve true reconciliation - punishing the guilty, yes, but also allowing others to live in harmony? Is the aim to replace former oppressors with new ones or to achieve a new, just and equitable society (Desmond Tutu’s “top dog vs underdog”)?
- How can true reconciliation be ensured? By healing wounds and rebuilding a just and equal society, with due regard for those who have lost more than others?

3. Building a new Burundi

- Going forward, a vision of national history shared by all.
- Responsibility for crimes has been clearly identified and settled. The Truth and Reconciliation Commission was an exercise of profound spirituality: the belief that human beings are always capable of mending their ways and improving. An act may rightly be judged “monstrous”, but never its perpetrator.
- Wounds have been dressed, and the fallen have been mourned. All victims must be accorded the same respect and compassion for their suffering.

- A national commitment to a just and democratic society is renewed. Clear recommendations must be issued and carried out to reform the judicial and prison systems and guarantee fundamental liberties.

4. How to conduct a truth and reconciliation commission

Conditions prior to establishment

- What philosophy must underlie the commission's work?
- Establishment of the commission's terms of reference.
- Establishment of its work programme and timetable.
- Determination of its legal status, in terms of independence and areas of authority.
- Identification of the resources available for the commission's programme.
- Determination of the institution to which the commission is accountable.

How will the commission be composed?

- Who fulfils the required conditions?
- What criteria apply?
- What are the conditions for membership?

Events leading to the creation of a Truth and Reconciliation Commission in Burundi

The report of the UN Secretary-General to the Security Council on 11 March 2005 declares that an investigative commission must "not necessarily take the form demanded by the Burundian government." This calls for two observations. First the Secretary-General is saying that the Commission can be for more than a simple investigative body. And that is what he calls for later - for the Commission to have two mechanisms: a non-judicial mechanism to establish the facts (a Truth Commission) and a judicial mechanism to assign responsibility (creation of a special chamber within the Burundian judicial branch).

The second observation is that now that we have power legitimized by elections and an elected Chief of State, this exercise should be removed from the realm of United Nations responsibility and placed back under the sovereign authority of the Burundian government now in office. It was in that spirit that yesterday, 7 November 2005, the Chief of State, Pierre Nkurunziza, inaugurated the newly created multi-sector committee for preparing and submitting to the President of the Republic the future Commission's terms of reference.

5. And if there were no Truth and Reconciliation Commission?

- What would be the short, medium, and long-term consequences?
- What substitutes might be possible?

6. Conclusion

We conclude with two quotations. The first is from Archbishop Desmond P. Tutu: "To forgive is not just to be altruistic. It is the best form of self-interest." The second is from the philosopher George Santayana: "Those who cannot remember the past are condemned to repeat it."

“If commissioners are seen as representing the interests of everyone, their conclusions will enjoy much more credibility and wider acceptance.”

Ms. Hlengiwe Mgabadeli, MP, South Africa

► THE IMPORTANCE OF AN INCLUSIVE AND CONSULTATIVE APPROACH TO COMMISSIONER SELECTION, AND OF ENSURING FOLLOW-UP TO COMMISSIONER RECOMMENDATIONS

Ms. Hlengiwe Mgabadeli, Member of the National Assembly, South Africa

1. Why do we need this inclusive approach?

To ensure that the injustices and human rights violations which were at the origin of the conflict never occur again. In the aftermath of conflict, human rights violators, their allies, bystanders and victims find themselves side by side. To achieve a successful reconciliation process, everyone needs to be included. This is not easy because conflict leaves serious physical, mental and spiritual wounds. However, if victims feel that the “commissioners” take due account of their suffering, they are more likely to come forward with their stories. Similarly, perpetrators will be more inclined to participate if they feel that the reconciliation process is a genuine attempt to come to terms with the past in order to create a better life for current and future generations. The importance of an inclusive process has to be communicated to and by all structures of society, in particular national and community leaders, schools and families. If commissioners are seen as representing the interests of everyone, their conclusions will enjoy much more credibility and wider acceptance.

2. Ensuring follow-up to the Truth and Reconciliation Commission recommendations

For such follow-up to take place, it is crucial that recommendations clearly spell out who does what, why, when and how. They should also establish a clear line of accountability including with respect for the structures that need to be consulted. Clear time frames should also be set. Specialized task forces or committees can be useful in ensuring follow-up in specific areas. Moreover, it is important for a structure to be in place which enjoys the full support of all those involved to monitor and evaluate the entire process. In this regard, all stakeholders should be asked to come together at regular intervals to discuss the state of implementation with a view to analysing which recommendations have been largely put into effect and why others have yet to be implemented.

SESSION V

Trials

▶ THE FUNCTIONING OF THE GACACA SYSTEM AND THE EXPERIENCES GAINED THUS FAR

Mr. Augustin Iyamuremye, Senator, Rwanda

Status report on the *gacaca* process

1. Introduction

1.1. Challenges for ordinary justice after the genocide

In the aftermath of the genocide, life was completely destroyed with over one million deaths, approximately three million refugees, a large number of orphans and widows and some 120,000 persons arrested for crimes of genocide. No law punishing genocide existed at that time in Rwandan legislation.

1.2. Solution-based approaches

Fundamental law no. 08/96 on the organization and prosecution of crimes of genocide and other crimes against humanity established specialized chambers within the civil and military tribunals, introduced the procedure of confession and guilty plea and the classification of perpetrators of crimes of genocide. Six thousand cases have thus been tried in five years and at this rate, the courts will need 100 years just to try the 120 000 detainees.

2. *Gacaca*

2.1. Mission of the *gacaca* process

The *gacaca* process was established to find out the truth about what happened during the genocide and accelerate the genocide trials. By eradicating the culture of impunity, the mission of the *gacaca* process is to strengthen unity and reconciliation for Rwandans and prove that they are capable of solving their own problems.

The *gacaca* jurisdictions deal with three categories of accused individuals:

- Category one: Perpetrators, co-perpetrators or accomplices of voluntary manslaughter or attacks on persons leading to death or individuals whose intention was to kill and who have inflicted wounds or committed other severe forms of violence that have not led to death.
- Category two: Individuals who have committed serious attacks without the intention of killing their victims.
- Category three: Individuals who have committed offences against property.

"By eradicating the culture of impunity, the mission of the *gacaca* process is to strengthen unity and reconciliation for Rwandans and prove that they are capable of solving their own problems."

Mr. Augustin Iyamuremye, Senator, Rwanda

2.2. Stages of the *gacaca* process

2.2.1. Investigation phase

Gathering of information on what happened during the genocide in Cellules (the smallest administrative unit in Rwanda) made it possible to build a case against the accused individuals and classify them accordingly.

2.2.2. Trial phase

Cases were heard by courts of first instance and appeal courts with the possibility of contesting, reviewing and validating the agreements of understanding on reparation for property damages.

2.3. Landmark dates in the *gacaca* process

- 26 January 2006: Organic law no. 40/2000 on the establishment of *gacaca* jurisdiction (GJ) and organization of prosecution of offences constituting crimes of genocide or crimes against humanity, committed between 1 October 1990 and 31 December 1994.
- 4 to 7 October 2001: election of judges.
- 18 June 2002: Official launching of the *gacaca* process in its pilot phase.
- 19 June 2002: Start of GJ activities in the first 12 pilot sectors, including 79 cellule-level GJ (1 sector/Province).
- 25 November 2002: start of GJ activities in 106 sectors including 672 cellule-level GJ (1 sector/District and Town).
- 19 June 2004: organic law no. 16/2004 amending the first.
- 20 June 2004: re-organization of GJ and its bodies.
- 24 June 2004: Official launching of GJ activities on a national scale.
- 8 December 2004: Training of judges in information gathering and trial.
- 15 January 2005: Start of information gathering activities on a national scale.
- 10 March 2005: First genocide trial before pilot sector GJ.

2.4. Pilot phase

A total of 751 cellule-level GJ in 118 sectors were involved in the observation phase to test the *gacaca* method. Activities included: i) Information gathering on crimes of genocide committed; ii) building of individual cases against the accused individuals; and iii) categorization of the accused individuals. The

lessons learned from the pilot phase facilitated enhanced functioning of the GJ through review of the organic law and other initiatives of a political nature.

2.4.1. Pilot phase achievements

Province/ town of Kigali	Confessions before GJ	Held for questioning	Persons acquitted by GJ	Persons placed on list drawn up by CJ
Butare	256	19	76	5,266
Byumba	75	6	6	2,813
Cyangugu	53	49	8	4,533
Gikongoro	37	19	28	3,615
Gisenyi	176	60	81	4,329
Gitarama	594	4	4	8,755
Kibuye	340	4	0	5,236
Kibungo	613	158	130	9,778
Kigali Ngali	321	44	98	8,912
Kigali town	107	153	84	5,551
Ruhengeri	103	34	21	2,273
Umutara	168	56	19	2,386
Total	2,883	606	555	63,447

- Number of persons prosecuted by the public prosecutor's office in pilot sectors: 56,763;
- Number of persons likely to be prosecuted for the crime of genocide throughout the country: $(63,447 \times 9,013)/751 = 761,446$.

2.4.2. Classification of cases in the observation phase

Province/ town of Kigali	Number of classified persons	Category 1	Category 2	Category 3
Butare	4,277	317	3,029	931
Byumba	2,595	104	1,394	1,097
Cyangugu	3,798	525	2,586	687
Gikongoro	4,494	459	2,245	1,790
Gisenyi	2,726	259	1,413	1,054
Gitarama	8,284	640	6,340	1,304
Kibuye	4,979	541	3,387	1,051
Kibungo	8,048	842	4,400	2,806
Kigali Ngali	9,812	742	6,394	2,676
Kigali town	5,808	1,812	2,966	1,030
Ruhengeri	2,077	171	748	613
Umutara	2,818	405	1,524	889
Total	59,171	6,817	36,426	15,928

Comparison in terms of percentage

- Category one: 1.5%;
- Category two: 61.6%;
- Category three: 26.9%.

2.5. The *gacaca* process at the national level

2.5.1. *Information gathering*

Information gathered on the preparation and execution of the genocide and its consequences in the cellule makes it easier to establish the individual responsibility of persons accused of genocide.

2.5.1.1. *Encouraging signs*

Gacaca is a political priority involving all public and private institutions, civil society, religious denominations and international organizations. In each district and town in the country a GJ activity day is scheduled in which over 85 per cent of the population participate. Everyone is aware of the information-gathering procedure and many follow it.

2.5.1.2. *Difficulties encountered in certain places*

The main difficulties observed are:

- Unwillingness to offer information (accessory through complacency);
- Formation of groups aimed at manipulating the truth;
- Intimidation and terrorizing of witnesses and genocide survivors;
- Persistent genocidal ideology;
- Acts and rumours aimed at derailing the *gacaca* process;
- Destruction of equipment used as information support (cupboards, notebooks, files, etc.).

2.5.2. *The trial*

The trials began on 10 March 2005 in the 118 GJ pilot sectors, in accordance with the law and following procedures. The population participates actively and on a voluntary basis.

2.5.2.1. *Status of 10 March 2005 trials*

Province/ town of Kigali	Trials scheduled	Same-day sentence	Pending sentence	Maximum sentence	Minimum sentence delivered
Butare	11	3	8	12 years	10 years
Byumba	8	1	7	7 years	
Cyangugu	9	3	5	8 years	7 years
Gikongoro	20	4	14	25 years	9 ½ years
Gisenyi	11	4	7	25 years	10 years
Gitarama	20	5	15	30 years	8 years
Kibuye	24	1	7	10 years	
Kibungo	11	2	9	7 years	
Kigali Ngali	55	4	32	12 years	12 years
Kigali town	8	2	6	30 years	7 years
Ruhengeri	10	2	3	9 years	8 years
Umutara	6	3	3	15 years	7 years
Total	192	34	116		

42 trials have not yet begun.

2.5.2.2. Status of 30 August 2005 trials

Province/ town of Kigali	No. of trials	Sentences delivered	Pending sentence	Appeals	Pending appeal sentence	Acquittals	Community service
Butare	236	226	10	44	10	1	76
Byumba	191	182	9	25	6	19	69
Cyangugu	144	134	10	26	10	16	65
Gikongoro	119	108	11	32	15	10	46
Gisenyi	404	395	9	71	35	75	145
Gitarama	384	379	5	91	74	30	133
Kibuye	66	56	10	20	10	1	19
Kibungo	293	254	39	50	33	41	97
Kigali Ngali	364	345	19	56	32	26	200
Kigali town	182	172	10	59	12	14	58
Ruhengeri	190	184	6	36	25	58	76
Umutara	129	127	2	39	24	19	35
Total	2,702	2,562	140	549	286	310	1,019

3. Conclusion

The *gacaca* process has developed at a promising pace in terms of its two main activities. The problems observed are inherent to the nature itself of the Rwandan genocide but results currently registered give reason to hope that the mission assigned to the GJ will be accomplished in all five of its areas. The contribution of each and every person remains indispensable, however, to enhance the process and implement it within a reasonable time frame.

► THE INTERNATIONAL CRIMINAL COURT OR THE CREATION OF HYBRID NATIONAL-INTERNATIONAL COURTS AS AN ALTERNATIVE

Judge Mandiaye Niang, Special Assistant to the Registrar at the International Criminal Tribunal for Rwanda

The International Criminal Court (ICC) or the creation of hybrid national-international courts as an alternative?

The prosecution and punishment of such crimes as genocide, crimes against humanity, or war crimes, often entail debate on the most appropriate choice of jurisdiction. Often at issue is the fact that national courts claiming jurisdiction by territoriality, may appear ill-equipped to judge crimes out of the ordinary, in respect of which very few national judges can claim relevant experience. In addition, such crimes, in violation of international law, are naturally and historically associated with international jurisdictions. As early as 1948, the Convention on Genocide announced the creation of an international court. In the following sections we shall consider how hybrid jurisdictions may provide the best solution.

1. The ICC is not an option for countries like Burundi

Unlike the international courts set up to judge crimes against international law in the former Yugoslavia, Rwanda, and Sierra Leone, the ICC is a permanent court. Statutory provisions, however, confine its role quite narrowly. Burundi signed the Treaty of Rome creating the ICC in 1999, but deposited its instruments of ratification much later, in 2004. In terms of the statutory limitations, the ICC's jurisdiction in Burundi extends only to crimes against international law purportedly committed in the country after September 2004, when Burundi deposited its instruments of ratification. Even if, for some extraordinary circumstance, the Security Council were to seize the ICC in respect of events prior to Burundi's formal accession to the Treaty of Rome, the Court's jurisdiction could only apply to events after 1 July 2002, when the ICC entered into force. Indeed, the ICC is not authorized to judge any crime committed prior to its entry into force.

For matters of international justice that arose during Burundi's past, which include acts committed in 1993, 1972, and even earlier, no recourse can be had through the ICC. And yet the various ad hoc international jurisdictions created to date have had no difficulties connected with non-retroactivity of their founding instruments.

2. Advantages and disadvantages to be considered in selecting the national or international system

The advantages and disadvantages of these two justice systems can be seen in the light of certain parameters, intended to ensure that justice truly performs its function of regulating societal disturbances. Two things must be provided: A) justice of high quality; and B) justice that is responsive to the parties concerned.

A. Justice of high quality

The first criterion for justice of high quality is the technical competence and moral integrity of judges, particularly in terms of impartiality. A judge's impartiality, however, is not only a function of probity. It is also a matter of the parties' perceptions, as in the old saying "*justice must not only be done but it must also be seen to be done*". In terms of technical competence and perceptions of impartiality, an international court would certainly be preferable to local justice in Burundi, a country just emerging from conflict. Genocide and crimes against humanity are complex offences, often unfamiliar to local judges. International criminal law is in itself a new subject area, something of a cross between international public law and criminal law. There are not many specialists in the field, and Burundi is no better off in this respect than most poor countries. Moreover, in view of the society's ethnic divisions, recourse to outside expertise may be vital to dispel any perception of partiality.

It must also be noted that justice of high quality carries a significant cost in terms of infrastructure, logistics, and cooperation with other States. Poor countries like Burundi do not have such resources. Experience has shown that the international community's willingness to make sufficient resources available to an international court is not equalled when it comes to justice at national level.

None of this, however, means that the choice of an international court is always advantageous, even when it comes to the quality of the justice handed down. We know now that international justice is very costly. And even if the international community is prepared to pay the price, there can still be questions

“Hybrid tribunals can be considered good alternatives only if they combine the advantages, without the disadvantages, of national or international systems.”



Judge Mandiaye Niang, Special Assistant to the Registrar, ICTR

about perspective when the justice to be rendered applies to persons deprived of even the vital minimum for survival. Such justice may lead more to frustration than satisfaction.

This same risk also exists with respect to the standards of justice applied by international courts. These jurisdictions, by virtue of their substantive and procedural provisions, are slow and not in a position to judge large numbers of cases. They generally concentrate on certain symbolic cases, such as the accused ringleaders of crimes against international law. The great majority of defendants are therefore left to the care and judgment of domestic judicial systems, whatever their imperfections might be. The paradoxical result is favourable treatment for those potentially most responsible, relative to those who may simply have been following orders. This latter group may not receive a proper defence, and may be at risk of the death sentence - a risk that in principle is absent in the international tribunals where higher-ranking defendants are prosecuted.

Another potential difficulty is the physical distance between an international tribunal's venue and the site of the crimes at issue. This brings us to the issue of proximity, another criterion for effective justice.

B. Justice in close proximity with affected parties

A reproach sometimes directed at international justice is its distance from those it is essentially designed to serve: victims. The two ad hoc international tribunals are located in The Hague and Arusha, far from the countries where the crimes they judge have been committed. This is also true of the new ICC: it is headquartered and conducts most of its hearings in Europe, but the crimes to be brought before it have all been committed in Africa. An important issue here is that of justice by example, which entails some degree of deterrence. Clearly, however, what happens in Arusha is not always understood in Kigali, and far less so in the deep interior of Rwanda. So this is one of the essential functions that may be lost.

Proximity is not only an issue in terms of geography. Cultural proximity is also required for insight into the parties' psyches, and thus for better judicial rulings. This dimension may also be absent from an international system, where judges who may be legal experts are not necessarily equipped to penetrate the culture and psychological environment, as sometimes necessary to interpret local statements and behaviour correctly. Cultural differences can result in misunderstandings, and in turn, denials of justice.

So in terms of proximity between judge and parties, national systems certainly appear to be the better choice - but a choice not without risks. As more or less direct witnesses, if not interested parties, national judges lack the perspective needed - and which distance can provide - to judge within the strict confines of legality. Judges cannot be certain of their ability to set aside personal knowledge of a dispute, as the law requires. And it goes without saying that judges active in the causes at issue cannot be good judges.

In short, the choice of either venue, national or international, carries certain disadvantages. This may explain the increasing trend toward hybrid jurisdictions.

3. Hybrid jurisdictions: an alternative without the disadvantages of exclusively national or international systems?

Hybrid tribunals can be considered good alternatives only if they combine the advantages, without the disadvantages, of national or international systems.

Mixed composition can provide tribunals with both the expertise of foreign judges and the first-hand knowledge of local judges. Physical proximity, moreover, can be assured by setting up courts in the countries where human rights have been violated - also advantageous in terms of having evidence and witnesses close at hand. The deterrent effect, part of the “justice by example” function, is also assured - by showing once important and untouchable political figures brought before justice and, as the case may be, sentenced to prison in the country. Another advantage is that the expertise of foreign judges and personnel is directly shared with their local counterparts, helping to strengthen national judicial capacity. The national system will inherit and directly benefit from the infrastructure put in place as a result of international involvement.

So, in several ways the mixed format offers a felicitous blend of the advantages associated with both systems. But it is not necessarily a panacea. It can even accentuate some of the disadvantages of one system or the other. That is certainly the case of what is often denounced as “two-speed justice”. Like international tribunals, hybrid courts, applying international standards of justice, can only judge a limited number of cases. When seen next to these international standards, local standards of justice may become all the more unacceptable.

The choice of local judges to sit on hybrid courts inevitably leads to resentments. If their status and income stand to be enhanced, local judges could apply in larger numbers, complicating the choice in divided countries. If on the other hand they retain their local status upon appointment, local judges may become frustrated by less than equal treatment relative to their international colleagues, even though their work is the same. And frustrated judges may not be good judges.

It must also not be imagined that international judges are necessarily exempt from pressures exerted in a divided country, which are usually best avoided by maintaining some geographic distance. Once an international judge has been stationed in a particular country, his associations or friendship with one group or another will be scrutinized closely, commented upon, and interpreted according to which group benefits from his decisions or positions.

Even so, the hybrid format offers enough clear advantages to make it the best way forward in countries like Burundi, where reconstruction is still fragile but security and stability are sufficient for the deployment of international judges and personnel.

The disadvantages mentioned above can be mitigated by a defining a charter applicable to such international judges, setting strict rules for observance at all times with respect to actions or associations that might raise suspicions of partiality toward one camp or another.

SESSION VI

Justice versus amnesty

► THE ISSUE OF AMNESTIES REVISITED: WHAT HAS BEEN THEIR LONG TERM EFFECT?

Ms. Hope Kivengere, Member of the Great Lakes Institute for Strategic Studies

The socio-political landscape of amnesties

An examination of the amnesties granted in various countries around the world clearly shows that amnesties have in most cases, if not all, been granted against a background of horrendous human right violations. In many cases, societies have undergone years of trauma as a result of which the social fabric has been torn or seriously damaged.

The question that usually leads countries to consider an amnesty is the dilemma of how to respond to the magnitude of violations that have been committed. The question is usually raised amidst a set of issues that need to be harmonized into social action:

- How can justice be served to both perpetrators and victims?
- How can justice be served so that it promotes social cohesion?
- Can justice and reconciliation work hand-in-hand, or must they be sought separately?
- What will best enable victims and perpetrators to live in the same society?
- How to handle issues of memory: should it be erased from the entire society, the perpetrators only or should it be preserved as a lesson for posterity?

Countries coming out of conflict usually end up with debilitated if not virtually non-existent judicial systems. In addition, they often lack the resources to investigate, apprehend and prosecute human rights violators. Consequently, the prospect of handling thousands of violations through conventional judicial systems seems a mammoth task.

In most cases, amnesties have been applied in post-conflict situations when armed confrontation and other types of violent conflict have been halted or have ended through negotiations. Cases of amnesties while armed conflict is ongoing, such as in Uganda and Indonesia, are few and far between. In such cases, amnesty is used to encourage non-State combatants to take advantage of the amnesty and abandon violence.

Current views about amnesties

The experience with amnesties in various countries has elicited opposing reactions and opinions. Proponents of an amnesty continue to argue that it benefits society in the following important ways:

- It promotes reconciliation;
- It encourages truth-telling;
- It can save the victims from the trauma of trials;

- Most societies cannot afford to go through the formal justice system, therefore people would have to spend years in prison waiting for justice;
- Many cultures encourage amnesty, especially in Africa;
- The promise of amnesty can encourage dictators to abandon power and insurgents to come out of hiding (using amnesty as an incentive); and
- It is a way of bringing people back into the social community.

Those who do not favour amnesty, on the other hand, base their argument on what they consider to be the negative impact of amnesty:

- It encourages a culture of impunity;
- It undermines the rule of law;
- It runs counter to international conventions.
- It encourages revenge;
- It serves tyrants who have violated human rights;
- It deprives victims of the opportunity to know what could have happened to their loved ones; and
- It reduces the chances of reparation for victims.

One of most serious issues still being grappled with even by those in favour of an amnesty is the question of impunity: does amnesty encourage impunity? Can societies and the international community in general live comfortably with the idea that crimes against humanity have been committed and are left unpunished? The second issue that continues to haunt countries is the issue of the victims' right to truth and justice. These issues have led to the general feeling that justice and amnesty cannot exist in harmony.

The checkered effect of amnesties

There are cases where amnesties have met with relative success and have paved the way for societal healing and reconciliation, allowing countries to focus on reconstruction and development. Mozambique is a case in point. In Algeria, more than 90 per cent of voters recently voted for the adoption of the Charter for Peace and National Reconciliation which includes a provision for amnesty for those responsible for the deaths and disappearance of more than 200,000 Algerians since 1991.

Elsewhere, amnesties have had to struggle against a feeling that justice is yet to be done, a feeling shared by the victims of the violations. Chile is a good example.

Countries that have instituted amnesties

- Sierra Leone: Following the 1999 Lomé Peace Agreement - It provided amnesty for violations committed during the armed conflict but excluded genocide, war crimes, crimes against humanity and other serious violations of international law. In 2000, the United Nations adopted a resolution to establish a Special Court to try human rights abuses.
- South Africa: The Truth and Reconciliation Commission was empowered to grant amnesty for political crimes to those who fully disclosed what they had done.

“How to balance the need for amnesty and the need for justice for all, as well as the need for reconciliation and harmonious existence.”

Ms. Hope Kivengere, Great Lake Institute for Strategic Studies

- Chile: The Chilean military regime granted itself amnesty to cover the period from when it took power. Later, prosecutions took place for atrocities committed during that period mainly to establish criminal responsibility since the amnesty had ruled out punishment.
- Mozambique: A general amnesty for crimes against the State was proclaimed, following the signing of the Peace Agreement after 16 years of war. Amnesty was seen as a tool for reconciliation to pave the way forward. The idea of accountability for crimes committed seems not to have been pursued.
- El Salvador: A Truth and Reconciliation Commission in 1987 named senior officials involved in serious human rights abuses. Five days after the publication of the Commission’s Report, parliament issued a general amnesty for all those who had been involved in what it called “political crimes”.

A summary of the current issues of contention

In general, the experience with amnesties has left the world asking important questions that are yet to be resolved, the most crucial of which are:

- Is amnesty is being used by the political class to cover up violations?
- The issue of accountability: should those who committed the crimes, even if forgiven, be known?
- Should the amnesty involve an element of truth-telling and, possibly, personal appeals for forgiveness?
- Does amnesty encourage impunity and, therefore, should there always be some punishment, however mild?
- Amnesty may undermine law and order and, therefore, lead to acts of personal revenge.
- How to balance the need for amnesty and the need for justice for all, as well as the need for reconciliation and harmonious existence.
- The victims’ rights to truth and justice.
- Countries that are signatories to international human rights conventions are granting amnesties to criminals whom the conventions bind them to prosecute. How to harmonize international and national human rights standards vis-à-vis perpetrators?

Can anything be done?

Amnesties’ checkered experience points to the need for a close look at the issue of amnesty centring on the following questions:

- Should amnesty always involve an element of truth-telling?
- Should amnesty always involve a certain amount of punishment, even if only symbolic, of the perpetrator?

- Should amnesty exclude the most heinous crimes?
- Should amnesty be tied to perpetrators compensating victims so that justice is seen to be done?

Answers to these questions would help to bridge the gap between justice and amnesty so that the two can work towards the same cause: enhancing the condition of society.

► AMNESTIES AS A LAST RESORT?

Judge Mandiaye Niang, Special Assistant to the Registrar at the International Criminal Tribunal for Rwanda (ICTR)

Justice or amnesty: amnesty as a last resort?

Transitional post-conflict situations are often a time for settling old scores. When different conflicting factions come together, it is often the result of negotiations involving mutual concessions. How far should these concessions go? This is an inescapable question when grievances run deep and parties are unwilling to forget them in the name of national reconciliation. The question has taken on greater urgency with the international community's resolve to punish vigorously such horrible crimes as genocide, crimes against humanity, and crimes of war. Is amnesty for such crimes acceptable under any circumstances? A categorical "no" may be tempting - revolting as the prospect of legally sanctioned impunity for such crimes may be. But given the vital issues at stake, the question is still worth debating. From a legal standpoint, this road is still bumpy and nothing is yet definitive. Some clarifications may therefore be useful before analyzing the ethical as well as political dimensions of amnesty for crimes against international law.

1. Evolving positions in law on the issue of amnesty

As a parliamentary measure to erase judicial convictions or absolve criminal acts prior to adjudication - waiving any subsequent prosecution - amnesty, like a presidential pardon, is generally a political act taken to regulate society on the basis of factors not necessarily relevant for a judge. In the darker days of Latin America's history, when military regimes systematically violated human rights - and in certain parts of Africa following the first national conferences - opposition parties, supported by human rights activists, sometimes championed amnesty legislation. Their aim was to rehabilitate political opponents who had been victims of State repression and often been stripped of their civil and political rights by unfair laws or judicial proceedings. In such cases amnesty was often hailed as a means to consolidate progress toward the rule of law.

The latest generation of amnesty - legislation conferring absolute immunity from prosecution - is more problematic. It is often the result of demands made by former dictators or supporters of political regimes built on terror, discrimination, forced disappearances, and lies - or by rebel movements using questionable methods of combat. Amnesty or immunity has often been proposed, or imposed, as a condition for abdication, democratic transition, or armistice for the sake of peace and future stability in the country.

“There has been a rising chorus in support of banning impunity for the crimes of genocide and other grave violations of international humanitarian law. But it would be premature to conclude that the page on impunity has at last been turned.”

Judge Mandiaye Niang, Special Assistant to the Registrar, ICTR

Such amnesty is often legitimate, the result of constitutional legislation consistent and therefore binding on the judiciary - at least until repealed under the new order.

Over this past decade the rules of the game have changed. Prosecution has been “delocalized” in the name of universal or supranational jurisdiction. The question of the validity or applicability of amnesty laws, vis-à-vis foreign or international courts, has come back to the forefront. In some cases, the response has been to deny the validity of amnesty or immunity, based on the international obligation of States to punish crimes against international law or extradite their perpetrators to countries where they will be prosecuted. In other words, the punishment of crimes against international law is considered to form part of a State’s *erga omnes* obligations, i.e. obligations that can be invoked in respect of all and cannot be waived at the behest of only one party to the international legal system.

This new approach of denying the validity of amnesty for the probable perpetrators of crimes against international law has been regaining momentum. In France, a Mauritian officer was prosecuted for violating provisions of the 1984 Convention against torture, even though an amnesty law in Mauritius covered the acts he was accused of committing. The Special Court of Sierra Leone denies the validity of amnesty granted to insurgents under the Lomé accords. During negotiation of the Arusha Accords, the position taken by Burundi with respect to amnesty for crimes against international law was very similar. Indeed, even when it was decided to grant what was called “provisional amnesty” to insurgents joining the peace process, as well as for crimes of the State during the period of conflict, it was clearly indicated that genocide, crimes against humanity, and crimes of war would not be covered.

There has been a rising chorus in support of banning impunity for the crimes of genocide and other grave violations of international humanitarian law. But it would be premature to conclude that the page on impunity has at last been turned. Many, virtually unassailable bastions of impunity remain. Significantly in this connection, some national reconciliation processes have taken place strictly at national level, where the international community has no real say. Immunities and amnesty granted in such a context are therefore not subject to international cautionary advice, and such advice is not generally invited. An example is the recent referendum proposed as part of a “civil concord” process in Algeria by President Bouteflika, on the issue of amnesty for Islamic groups suspected in some cases of committing massacres while engaged in terrorist activities classifiable as crimes of war. The interesting experience underway in Morocco, with the establishment of an Equity and Reconciliation Authority (IER), has also shown limitations in the prosecution of torture and other crimes during the reign of King Hassan II. Indeed, in testifying before this authority, former victims were not permitted to name their torturers, some of whom remain in service. One can legitimately question whether torturers can be viably prosecuted at all in the current context, even though they enjoy no formal protection against prosecution. The experience of the Truth and Reconciliation Commission in South Africa is even more illustrative of the difficulties of preventing impunity in societies in transition. The Commission members were accorded wide prerogatives

to grant amnesty to individuals appearing before them in exchange for full confession of earlier crimes. Whether this approach represents a satisfactory solution, however, remains an open question. Among other consequences, it resulted in complete absolution for crimes committed under a regime of apartheid, and thus classifiable as crimes against humanity. And yet, the international community apparently had no difficulty validating, or at the very least supporting, this process, which largely boils down to a form of bartering: the right to justice in exchange for the right to truth.

In addition, as history accelerates, we must not forget that France - which categorically denies the legitimacy of amnesty granted by Mauritania to one of its officers suspected of torture - has not fully put its own house in order. Following the Algerian war of independence, the French parliament passed legislation granting amnesty for all related crimes. This may explain France's refusal to sign a convention prohibiting any statute of limitations for war crimes and crimes against humanity.

There is another very good example of the diversity of approaches taken to the question of amnesty, and impunity in general. The United States, which is not a member of the International Criminal Court (ICC), refuses to recognize that Court's jurisdiction over its national citizens by virtue of territoriality. The country has demanded and obtained a new vote every six months on a resolution protecting its soldiers stationed in the Balkans, as part of the peacekeeping mission, against any ICC prosecution of war crimes they may commit. The United States demanded such a vote as a condition for maintaining its troops in the Balkans, thus leaving the international community little choice. It took the revelation of acts of torture in Iraq, most notably in the famous prison camp at Abu Ghraib, for the UN Secretary-General to convince the Council that granting blind immunity to soldiers having just demonstrated their capacity for such heinous war crimes and torture, was not morally tenable.

It is also important to note that amnesty is not the only means to impunity. Even in the absence of any government efforts to encourage impunity, specific circumstances in the field can sometimes produce that result. Rwanda, for example, has had to massively expand its detention facilities after authorities realized that they would never, or at least in the immediate future, have the means to try the vast numbers of defendants awaiting trial for genocide - more than 150,000.

This rapid overview suggests that there is no single response to the issues of amnesty or impunity in general. There has admittedly been movement toward prohibiting amnesty, but not in many of the jurisdictions where massive violations of human rights or international humanitarian law could be at issue. The next section will assess the political and ethical responses to the challenge of amnesty.

2. Amnesty: the ethical and political issues at stake

When the issue of amnesty is placed on the table it is always as a sort of price to be paid for a more stable future. If it is posed as a real choice between the alternatives of settling old accounts (while compromising the future), or forgetting the past (in order to ensure a more stable future), it warrants our careful consideration. But it is often posed as a false choice: if the presumed criminals are in a position to disrupt the future out of fear of possible prosecution, there is little actual risk of prosecution in the absence of reconciliation, because the country will then have to direct its attention to managing crises. In a context like that, sacrificing the past, at least provisionally during reconstruction, appears the more realistic option. That is certainly what the provisional amnesty concept, invented by the Burundians within the framework of the Arusha Accords, is all about. The choice between justice or amnesty often depends on the relative strength of the opposing parties, as illustrated in the following table:

Amnesty	Justice
Internal reconciliation process without international involvement.	The perpetrators of the crimes have lost the war or lost power.
The perpetrators of the crimes still hold power and continue to exercise it, or alternatively, agree to concede some of that power in exchange for impunity.	The perpetrators of the crimes still hold power but are vulnerable to certain forms of international pressure.
The perpetrators of the crimes do not hold power but have the capacity to inflict harm sufficient to disrupt national stability.	Non-systematic prosecution of those in power conducted from abroad in the name of some form of universal jurisdiction.

This matrix, reflecting the duality between justice and amnesty as encountered by States in practice, shows that amnesty for crimes against international law, however undesirable from a moral perspective, still constitutes an option, provisional though it might be. In the final analysis, what matters is understanding the country’s particular environment. That is what will ultimately determine whether or not amnesty is acceptable and applicable vis-à-vis the international community.

SESSION VII

Reparations

► **PROVIDING REPARATION: THE MOROCCAN EXPERIENCE**

Mr. Belhaj Dermoumi, Member of the House of councillors, Morocco

Speaking to the Parliament and nation in 1990, King Hassan II stated: “The nation, forgiving and merciful to all its subjects, grants amnesty to and pardons them for their political crimes, and asks them to return to their country...”. Amnesties were then granted and many members of the opposition returned to Morocco, including Saharan citizens. The recently created Ministry of Human Rights and the Consultative Chamber on Human Rights, presided over by the President of the Supreme Court, deliberated with representatives from all of the parties, unions, “majority and opposition, bar associations and civil society, and women’s associations concerned with the defence of human rights...”

When he took the throne, pledging allegiance to the traditional Moroccan system, King Mohammed VI undertook courageous, modernizing reforms at all levels. Among these was establishment of the Equity and Reconciliation Commission (IER), as announced in his address of 7 July 2004, at Agadir, following agreement among the Parliament, the government, the Oulema, the parties and unions.

“When he took the throne.... King Mohammed VI undertook courageous, modernizing reforms at all levels. Among these was establishment of the Equity and Reconciliation Commission (IER)...”

Mr. Belhaj Dermoumi, Member of the House of councillors, Morocco

Composed of former victims and assisted by some of the kingdom’s most distinguished judges and attorneys, the IER was given a budget and set up three working groups (investigations, reparation, and studies and research). It then proceeded to formulate a programme to address issues raised by plaintiffs, lawyers, various associations, and information provided by the public prosecutor.

Operating free of undue restrictions, the IER visited all regions of the kingdom, following advance notification as to the dates and purpose of the visits. Sessions were held with the plaintiffs and representatives (hearings, interviews, and interrogation). These long sessions were televised and discussed freely, on the radio and in the press, among all concerned, and even in the presence of foreign representatives.

The beneficiaries of reparation include victims of irregular imprisonment or acts of brutality committed by executive and judicial branch officials, as well as former military officers involved in the two coups d’Etat, whose cases were improperly adjudicated or whose punishment exceeded the sentences issued.

Material reparation in the case of civil servants and private employees did not prove a problem: they were reinstated in their former positions with back pay and promotions. Other victims were compensated fairly quickly on the basis of a matrix established by the IER in agreement with the associations and financial specialists.

As Moroccan citizens from the Sahara returned to the country they were officially promised pardons and reintegrated into society by the government. A number were reinstated as community government employees, or assisted in starting businesses in Layaun, Boujedor, Dakhla, Smara, or other regions.

Over time the situation normalized; communal, regional, and national democracy took root; and freedom of expression was reaffirmed - in short, the country was fully liberalized. The rule of law is now being consolidated further in the interests of our citizens and the balanced development of our country.

► THE CHALLENGE OF DETERMINING APPROPRIATE COMPENSATION

Ms. Hope Kivengere, Member of the Great Lakes Institute for Strategic Studies

Compensation

Compensation can never undo the crime or offence committed. Instead, it aims to alleviate the suffering of victims and restore their dignity.

The United Nations has laid down basic principles regarding reparation for victims of gross human rights violations, which may take the form of restitution, compensation and rehabilitation of the victims and, in the case of compensation, should correspond to the gravity of the violation and resultant damage to the victim.

It is clear that “victims of violations” refer to the victims themselves if they are still alive, but in cases where they have been killed or have disappeared through violations, their immediate families and/or dependants who have been traumatized as a result.

In the wake of horrendous human rights violations, the State is faced with two main challenges:

- The magnitude of the crimes in terms of numbers of victims: How does it compensate the victims? Where does the State get the resources?
- The magnitude of the crimes in terms of their inhumanity and the trauma caused to the victims. How does one compensate a family, for instance, for loss of loved ones?

States and/or societies must come to terms with these challenges and find ways of dealing with the issue of putting right what went wrong.

What kind of compensation?


As a first step, the State has to work out the type of compensation (financial assistance, medical care or counselling, education and resettlement) and identify the beneficiaries (groups or individuals).

The example of Uganda

Against a backdrop of gross human rights violations, 800,000 people were killed extra-judicially between 1971 and 1985. Horrendous atrocities have been committed by Joseph Kony’s Lord’s Resistance Army for the past 19 years.

Compensation has been multifaceted given the magnitude of the problems inter alia through the Human Rights Commission, the Commission of Inquiry into Violations of Human Rights and the resettlement of peasants who had been chased from their land during the early 1980s. In addition, the following conclusions were reached:

- Compensation of the Luwero people who helped the National Resistance Movement during the war, especially with cattle and food.
- Special education programmes for orphans of Luwero heros.

 “The task of determining who is eligible for compensation is time-consuming and has to be done carefully.”

Ms. Hope Kivengere, Great Lakes Institute for Strategic Studies

- Erection of memorials for victims of massacres.
- Presidential donations and scholarships for families of victims of massacres in Luwero.
- Special programmes for communities:
 - Luwero: government programmes, non-governmental organizations, EDF, etc;
 - Northern Uganda Reconstruction Programme (NURP);
 - Northern Uganda Social Action Fund (NUSAF);
 - Education facilities, health facilities, feeder roads, micro-credit schemes/projects.

Lessons learned

The lessons learned from the Ugandan case are that the issue of compensation has to be a process, and a long one at that, if the State is to manage it. This is due to the scarcity of resources compounded by the fact that, following periods of violent conflict, the State also faces formidable challenges to reconstruct and rebuild the country and set it back on the path of development. Additionally, the task of determining who is eligible for compensation is time-consuming and has to be done carefully.

It is also important to pay special attention to the psychological effects of violations since they are not always obvious to the naked eye, unlike destroyed physical structures or recorded deaths. The psychological effects of violations are often hidden and cause long-term damage if not attended to. The State has to set up special programmes to actually ferret out these damages, and the programmes must have a long life span to be useful.

Therefore, in the long run, in addition to interventions directly aimed at individuals of specific families or groups, special programmes to provide education and health facilities must be intensified so that the entire population can be assisted as soon as possible.

SESSION VIII

Institutional reforms

► ENSURING AN EFFECTIVE JUSTICE SYSTEM

Mr. Didage Kiganahe, Second Vice-President of the National Assembly, former Minister of Justice of Burundi

1. Toward what judicial system should the country move?

What is the most effective judicial system for ensuring both truth and reconciliation?

In terms of the problems encountered by African societies emerging from conflict, the effectiveness of a judicial system should in our opinion be judged according to its capacity for effectively combating impunity, while at the same time respecting the rights of the accused, learning the truth about facts often manipulated, and effecting the reconciliation required to prepare society for the other challenges of reconstruction and development.

A judiciary built exclusively on traditional judicial techniques, however useful they might be, may not meet popular expectations, which are frequently focused less on punishment than on learning the truth, healing old wounds, and turning attention to the problems of life in general, paying due respect to the suffering endured by victims.

When violence reaches a certain level (as in the case of genocide or massive and systematic violence) the domestic judicial system may not have the capacity to bring perpetrators to justice, or do so while observing due process in accordance with international standards. Ad hoc international tribunals, the International Criminal Court, or a hybrid system combining domestic and international features, can be used in such cases.

From a strictly technical perspective, any judicial system requires independent courts, rules precisely defining their jurisdiction, a corps of independent and impartial judges, clear rules of procedure, and a range of appropriate criminal sanctions.

A. An independent and impartial tribunal

The question here is whether the traditional courts in a country emerging from violent war or rebellion can properly judge all of the parties involved in multiple crimes during the period of conflict.

In Rwanda, faced with the immense number of cases requiring adjudication in the aftermath of genocide - relative to existing judicial capacity - national courts were overwhelmed in their efforts to settle post-genocide disputes on a reasonably timely basis, justifying the creation of the *gacaca* tribunals.

In Burundi, the wholesale massacre following the death of President Ndadaye led to such numerous arrests and such congestion in the courts that to this day, after more than 10 years and despite the establishment of special criminal court chambers, the fate of hundreds of persons remains uncertain.

Given the impasse resulting from the endless procedures required in traditional courts, it may sometimes be necessary to establish specialized courts for cases categorized as conflict-related, operating on the basis of specifically designed procedures.

A.1. *An independent tribunal*

A tribunal's independence should be assessed in terms of its relations with the executive branch as well as the parties concerned. In Africa the independence of judges has been a fundamental union issue. The tradition cultivated by single-party governments in the past was to make the judicial system a rampart of the power they gained by force -a means to repress subversive elements contesting the legitimacy of their regimes.

Under most African constitutions, judges are named by the executive branch. In periods of conflict, there is the risk that judges politically allied with the government in power will receive preference. A court composed of judges appointed in this manner may not offer the appearance of independence often necessary to ensure a fair trial. As the English say, "justice must not only be done: it must also be seen to be done".

What mechanism for appointing judges, then, can provide assurances as to their independence? Several such mechanisms have been devised. Judges can be appointed for life (Supreme Court of the United States). Or they can be appointed for a period extending beyond the appointing authority's term in office (i.e. that of the parliament having put the current executive branch in office). Or again, they can be protected by the rule of irremovability, which prohibits the executive branch from removing a judge during his term without his agreement. An internal regime of rules and organs enabling judges to discipline each other is another way to ensure their independence.

Situations may arise, however, where the context in which crimes have been committed and a country's political culture may make it difficult in practice, to guarantee an independent magistracy, even after writing these rules for judicial organization into law. Indeed, regimes may develop the practice of compensating the more zealous magistrates.

The difficulty of establishing a mechanism to make courts truly independent has in some cases made international tribunals, or hybrid national-foreign tribunals, a preferable option. In the final analysis, the most effective mechanism for ensuring an independent tribunal will depend on the particular circumstances in each country.

A.2. *An impartial tribunal*

A judge's independence must also be assessed vis-à-vis the parties in litigation. Thus, the concept of *impartiality* represents another criterion for evaluating the effectiveness of a judicial system. As a matter of jurisprudence, this concept refers to how a judge may have felt personally in a given circumstance, or whether he would tend to give preference to one party or another. Appearances play an important role in this regard. Accordingly, as a matter of inspiring public confidence in the court system, it has generally been taught that any judge who can be legitimately suspected to lack impartiality should recuse himself.

In the context of African societies, where conflicts have often carried ethnic connotations, the ethnic origins of a court's judges - for instance, in a case involving conflict between ethnic groups, when all the

"In the context of African societies, where conflicts have often carried ethnic connotations, the ethnic origins of a court's judges - for instance, in a case involving conflict between ethnic groups, when all the judges are of one ethnic origin and a party in the case is of another - may cast doubt on the court's impartiality."

Mr. Didage Kiganahe, Second Vice-President of the National Assembly, Former Minister of Justice, Burundi

judges are of one ethnic origin and a party in the case is of another - may cast doubt on the court's impartiality.

The Burundian law of 22 September 2003, on the competence of tribunals of major jurisdiction in criminal matters (enacted essentially for the purpose of adjudicating crimes committed during the ethnic cleansing of 1993, after the death of President Ndadaye), requires that in order for their rulings to be valid, courts must be composed with due regard for ethnic balance. A ruling by a court composed exclusively of Hutus or Tutsis, even if correct on the substance, would thus lack legitimacy. Again, "justice must not only be done: it must be seen to be done".

In a context like that of Burundi, where violence has always had an ethnic dimension, impartiality requires that both of the two main ethnic groups Hutus and Tutsis, and be represented in every court. Otherwise, parties are more likely to suspect bias from courts whose members are of different ethnic origin from their own.

B. A judicial system based on adequate rules of procedure

B.1 *Rules of procedure respectful of human rights*

A judicial system called upon to settle disputes over acts committed during periods of instability must follow rules of procedure that assure parties of respect for the fundamental rights of any citizen involved in criminal proceedings. This point is all the more important because some regimes will be tempted by summary justice as a way to eliminate their former military or political adversaries.

In Burundi, the number of persons accused and deprived of liberty for more than 10 years after the events of 1993 was estimated at more than 1500. That being the case, and given the courts' inability to settle the dispute promptly, alternative measures were considered. The ministerial order of 24 March 2004, for instance, required prosecutors to provisionally release accused individuals whose cases had languished in the prejudicial stage for more than six years. This is another way of saying that the proceedings must be conducted without unreasonable delay, failing which the rights of the accused will be in jeopardy.

B.2 *Plea bargaining as a means to expose the truth while serving the interests of reconciliation between victims and perpetrators*

Plea-bargaining is a procedure used in international criminal tribunals and could be usefully incorporated into the legal systems of countries emerging from conflict involving numerous crimes.

The procedure permits more cases to be adjudicated in less time, accelerating procedures and reducing the prolonged anguish victims must sometimes endure for years awaiting judgments that are slow to arrive. Rwanda's Law of 1996, for instance, introduced the procedure of plea-bargaining to punish perpetrators of genocide.

C. A judicial system based on rigorous but humane criminal sanctions

Among the rules applicable in a judicial system, particular attention should be given to those concerning criminal sanctions. Their effectiveness will reflect on the validity and legitimacy of the entire proceedings. Notwithstanding the desire for reconciliation that may characterize the criminal process, punishment, after all, is the primary essence of criminal proceedings.

The death penalty is today an issue in some circles, although quite a few countries have already removed this sanction from their penal codes. Elsewhere, though still in place, application of the death penalty remains problematic. In Burundi, this supreme sanction hangs over hundreds of individuals convicted for their participation in the events of 1993.

This situation places the government before a dilemma. The Truth and Reconciliation Commission Act of December 2004 - though soon to be rendered obsolete by the Security Council resolution of 20 June, calling for establishment of a truth commission and special judicial chambers - hinted at a possible solution, whereby the Commission would be authorized to reinterpret judicial rulings issued after proceedings regarded as parodies of justice.

It would be desirable for the future law that will eventually govern this institution to follow that lead, permitting the re-examination of cases resulting in hasty death sentences. There are several possible substitutes for the death sentence, such as life imprisonment without parole. In considering appropriate criminal sanctions for judicial systems in post-conflict countries, preference should be given to *mediation* and *alternative* punishments, other than prison sentences.

In countries where resources are still limited, the option of confining and feeding thousands of prisoners at public expense, with no contribution on their part to national production, requires rethinking. From that perspective, prisons could become rehabilitation centres in a truer sense.

Conclusion

In the interests of coherence, any judicial system should rest on three pillars:

- First, independence and impartiality, and a clear delineation of jurisdiction among the various courts and tribunals.
- Second, proper rules of procedure. Rules of procedure provide a roadmap for seeking the truth in criminal matters. In devising such rules for judicial systems in post-conflict societies, the temptation to expedite proceedings should be carefully avoided.
- And third, rules on criminal sentencing. In this connection, most African countries still need to venture off the beaten path in search of new sentencing provisions, more responsive to the needs of African society. Substitutes for traditional prison sentences must be promoted so that convicted parties, even if imprisoned, can still contribute to national development.

► SECURITY SECTOR REFORM AND PARLIAMENTARY OVERSIGHT

Mr. Anders B. Johnsson, Secretary General, Inter-Parliamentary Union

Myriad scenarios are possible regarding the initiation, handling and response to intra-State violent conflict. At best, civilian authorities effectively oversee and entrust the security sector with a well-defined mandate and strategy to protect citizens and bring the violence to an end. At worst, an effective institutional framework is not in place or has broken down and the security sector is left with little or no democratic control. In that case, it may become a source of widespread insecurity in itself and a tool in the hands of the powers that be or a “state within a state”.

The reality of conflicts often lies somewhere between these two extremes. Once the dust has settled, in particular in the case of the worst case scenario, security sector reform should be an important priority. Such a reform requires both a critical look at the past and at the future. It raises questions of accountability when members of the security sector have committed human rights violations or have pursued their own interests rather than protecting the people they are meant to serve. It also reflects a need to promote human rights values and a professional ethos within the security sector. It is about credibility as citizens need to be able to trust those who protect them. This often requires efforts to make the security sector representative of all segments of society. Moreover, in the aftermath of conflict, there may be a need to redefine threats and the mission and tools of the security sector. Of particular importance in this respect is the “human security concept” that has gained significant ground in the security debate as it puts the individual and the population at large on the centre stage.

The overarching principle underlying all of these steps, and often a formidable challenge in post-conflict societies, is the firm embedment of the security sector in a democratic structure in which it is subjected to civilian oversight. This requires first of all security services to recognize such civilian supremacy and swear their allegiance to the constitution and to the State institutions. It also requires them to be politically neutral. Civilian oversight means that the top positions of the security services, such as the commander-in-chief of the armed forces or the director of the intelligence services, should be appointed by the cabinet or the minister of defence, or, as in some States, be subject to debate or approval by parliament. From a good governance point of view, the security services, such as the armed forces, should have civilians in top management.

Civilian oversight of the security sector requires a strong and effective parliament. As the security services use a substantial share of the State’s budget, it is essential that parliament monitor the use of the State’s scarce resources both effectively and efficiently. It is also important for parliament to have the capacity and ability to properly scrutinize security-related legislation brought before it by the government. Parliament should be able to table amendments to ensure that the proposed legal provisions adequately reflect the new thinking about security and to promote its effective implementation.

Having said that, the reality of post-conflict situations shows, however, that parliaments are often weak or non-existent. Capacity-building to help parliaments to fulfil their oversight role is therefore crucial. This is all the more relevant when it comes to the security sector. Increasingly, parliaments are having to oversee complex and technical security-related issues such as weapons procurement, arms control and the preparedness of military units. Not all parliamentarians have sufficient knowledge and expertise to deal with these issues in an effective manner. Nor might they have the time and opportunity to develop them, since their terms as parliamentarians are time-bound and access to expert resources within the

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country and abroad may be lacking. Secrecy laws may pose formidable hurdles to parliamentary oversight of the security sector. Moreover, the strong focus on “human security” requires parliamentarians to have a much more comprehensive view of security challenges and responses than previously.

The Inter-Parliamentary Union and the Geneva Centre for the Democratic Control of Armed Forces have jointly developed a handbook for parliamentarians on parliamentary oversight of the security sector which addresses many of these challenges and provides them with a framework, in particular examples of good practices, for effective oversight of this particularly sensitive sector. I am hopeful that you will find it a useful complement to the knowledge that you will gather during this seminar.

SESSION IX

International initiatives in support of reconciliation

► WHAT ROLE FOR THE INTERNATIONAL COMMUNITY

Mr. Goran Fejic, Head of Programme, Democracy Building and Conflict Management, International IDEA

When we consider what role the international community may play in the national reconciliation processes, we should first ask ourselves three questions:

- Is there a need for international engagement?
- What are the benefits and potential dangers thereof?
- Are there any rules of engagement for the international community?

Most societies emerging from violent conflict are totally impoverished. They lack the material and technical resources to set up healing projects, truth and reconciliation commissions and reparation programmes. They are often societies in a state of shock. They have suffered terrible blows and have not had the opportunity to look at how other societies emerging from similar experiences have coped with the heavy burden of the past.

Therefore, external support is needed and may be extremely useful. It can take many forms, some of them more general, others very specific:

- First of all, the international community is often engaged in the process that leads to the end of a civil war and the consolidation of peace in the immediate aftermath of conflict. Through the

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United Nations, regional organizations or international non-governmental organizations, it can exercise its influence in support of the inclusion of appropriate reconciliation programmes in the peace process. It can put pressure on those groups in a post-conflict society that are ready to renew the conflict or disrupt the still fragile peace process – those we usually call the “spoilers”.

- Second, many conflicts today have a regional dimension so that regional actors may have to be a part of the reconciliation process. The international community can help to bring together legislators and policy practitioners from the broader region to jointly exchange experiences and discuss reconciliation issues that have a wider regional significance. Likewise, the African Union is engaged in supporting some peace processes in Africa, the European Union is active in supporting the peace process in the area we now call the Western Balkans or the former Yugoslavia, and the Organization of American States is supporting some peace processes in the Western Hemisphere.
- Third, the international community is also a potential source of finance and expertise. Increasingly, bilateral and multilateral donors as well as regional actors are beginning to realize the importance of reconciliation as an ingredient of conflict prevention, human development, human security, poverty elimination and peace-building.
- Fourth, justice is a specific area where the international community has been involved in processes that have a reconciliation potential. It has set up international tribunals such as the International Criminal Tribunal for the former Yugoslavia in The Hague and the International Criminal Tribunal for Rwanda in Arusha. It has sponsored the setting up of truth and reconciliation commissions such as those in El Salvador, Guatemala, Timor-Leste and many others.
- Fifth, international NGOs such as the International Centre for Transitional Justice in New York, the Institute for Justice and Reconciliation in Cape Town, or intergovernmental organizations such as International IDEA in Stockholm have gathered documentation and comparative knowledge and have developed professional expertise on reconciliation and transitional justice issues. They can organize workshops for national and regional stakeholders and decision-makers to exchange information and advice.
- Finally, there are very specific initiatives through which the international community can support various instruments of reconciliation and transitional justice. For example, it can assist truth commissions with forensic experts to identify victims in mass graves or support the publication of the Truth and Reconciliation commission’s report; it can finance reparation funds or help in the organization of witness-protection schemes; it can support the inclusion of reconciliation programmes in school curricula, and it can help in the design of reconciliation training programmes etc.

However, while the benefits of international support of a national reconciliation process can be very substantive it is important to be aware that engaging foreign actors is not entirely without its failing and that it might be useful to consider some rules and principles for their intervention.

Furthermore, it is important for national decision-makers to be aware that the international community (very much like civil society) is not a monolithic bloc, a single entity that comes forth with ideas and proposals that are always coherent and compatible with each other.

In proposing certain reconciliation tools instead of others, in proposing to accelerate or to delay the process, different segments of the international community may have different opinions – not necessarily because they have hidden agendas, but simply because they may have different perceptions of the country's priorities.

For example, certain transitional justice and reconciliation tools, such as truth commissions, have become increasingly popular with international donors and NGOs. International initiatives to set up such bodies may be well-intentioned, but they should always be discussed and assessed by the people directly affected by the conflict and the representatives of the people affected, such as parliamentarians.

The international community may even give contradictory advice. For example, the views of a United Nations peace-building mission are not necessarily the same of those of international NGOs.

I know from personal experience of a country in which certain international NGOs were pressing for the immediate establishment of a transitional justice mechanism, while the United Nations mission was much more cautious, considering that peace was still extremely fragile and that pointing fingers at some still powerful perpetrators of abuses could incite them to opt out of the peace process and renew the conflict. I don't wish to say who was right and who was wrong. What was most important in my view was that the issue generated a serious debate within the country, between the government and civil society.

When is the proper time in the peace process to set up a transitional justice mechanism? If it comes too soon it may endanger peace, if too late it may sanction impunity and compromise the quality of the new democracy being built. The international community can help by making available experiences from other countries, offering comparative knowledge, but it cannot decide on behalf of those directly involved. It cannot say when is the right moment and which will be the most appropriate mechanisms.

There is a popular slogan today which goes "No Peace without Justice". It is a nice slogan. I can subscribe to it. Almost. But, what do we do when peace and justice are not on the same side? Sometimes one is faced with a dilemma: it may be possible to have better peace and a better society if it is free from warlords and perpetrators of human rights violations. It may also end up delaying peace indefinitely, which will involve many more killings and abuses.

There have always been and there will always be courageous people ready to take big risks in order to advance the cause of truth and justice. But only those who have suffered injustice and oppression can decide whether they want to assume such a risk. My point is that no international actor has the right to persuade them to do something that endangers their security and delays the achievement of peace.

A durable reconciliation process needs to be home-grown; in all of its stages the will of those who are directly concerned is absolutely essential. This is so not only because it is the only way to avoid serious and dangerous mistakes that could subsequently undermine both the peace reconciliation processes.

The reason is also political and moral. Pain, misery, oppression, discrimination, humiliation can only be told and acknowledged by those who have suffered it and those who caused it. Only the victims and perpetrators can reconcile themselves with one another. The international community can help them but it cannot do it for them.

► **THE EXAMPLE OF THE AMANI FORUM - THE GREAT LAKES PARLIAMENTARY FORUM ON PEACE**

Mrs. Victoire Ndikumana, Member of the National Assembly, Burundi, Treasurer of the AMANI Forum

1. What is the AMANI FORUM?

Amani means “peace” in Swahili. Amani is a forum of parliamentarians from the Great Lakes region committed to preventing and resolving conflicts in their countries and region. The AMANI Forum has branches in Uganda, Rwanda, Burundi, Zambia, the United Republic of Tanzania, Kenya, and the Democratic Republic of the Congo, with a regional Secretariat based in Nairobi, Kenya.

The AMANI Forum endeavours to enhance the status and role of parliamentarians in the quest for peace at regional level, and to act as a regional parliamentary group for the prevention and resolution of conflicts. Parliamentarians are important factors in their societies and have a role to play in preventing and helping to resolve violent conflict.

As a pressure group, the AMANI Forum promotes peace and reconciliation in conflict zones and proposes preventive measures. It also promotes justice and respect for human rights.

2. The vision of the AMANI Forum

The vision of the AMANI Forum is a Great Lakes region successfully rid of conflict.

3. Objectives of the AMANI Forum

- Promoting peace and heightening awareness about peaceful conflict resolution

The AMANI Forum encourages and supports the creation of active parliamentary forums within the region's national parliaments. The organization endeavours to sensitize parliamentarians and the general public to issues surrounding the quest for peace and to encourage their involvement. They seek to strengthen the status and role of parliamentarians in their efforts to bring peace to the region and to strengthen their knowledge about conflict resolution. The AMANI Forum promotes the rule of law; strict respect for constitutional governance, justice, and equity; and the development of a democratic culture in our societies. The organization also contributes to the construction of democratic political institutions, and in particular, a democratic legislative branch, responsible executive branch agencies, independent legislative and judicial branches, and respect for human rights.

- Monitoring conflict situations and encouraging political institutions to act

The AMANI Forum acts as a regional parliamentary group working to prevent and resolve conflicts in the region. It closely follows the situation in potential conflict zones in order to inform and alert governments and other institutions concerned to the need for preventive measures.

4. Activities of the AMANI Forum

- At national level

The Amani Forum's national branches include the parliaments of Uganda, Rwanda, Burundi, Zambia, the United Republic of Tanzania, and Kenya. The Democratic Republic of the Congo has recently been accepted as a new branch and a full-fledged member of the family. The national branches conduct activities to prevent and resolve conflicts affecting their countries.

- At regional level

- *Information missions*

The Amani Forum organizes specific missions in conflict-affected countries of the subregion. The aim is to understand the nature of the conflict and the parties to the dispute, in order first to play the role of intermediary between parties, and second to issue recommendations. The Amani Forum uses its influence to recommend political solutions to explosive situations. Two missions are exemplary in this regard: one in northern Uganda (Gulu) and another to Shimoni in Kenya and Zanzibar. With respect to the first, the conflict in northern Uganda has long been an internal matter only, of little real concern to the international community - despite the deprivations and horrors suffered by the Ugandan people. The AMANI mission and its subsequent report to President Museveni, served to enhance the lobbying and awareness-heightening efforts led by northern parliamentarians with respect to the cruelty of this conflict, with a view to finding peaceful solutions. The mission to Shimoni, in Kenya and Zanzibar, was conducted to investigate the situation of Tanzanian political refugees from the CUF political party after the contested elections at Pemba in 2002. Presentation of the mission report to President Mkapa was followed by the opening of negotiations between the CCM and CUF, and the organization of new elections at Pemba in May 2003.

- *Exchange visits*

The Amani Forum organizes interparliamentary visits between its national branches to help strengthen the capacity of its members for dialogue with other countries and encourage parliamentary diplomacy in the interests of their peoples. During the course of 2002, visits to Kigali by delegations from AMANI Uganda, and to Uganda by AMANI Rwanda delegations lead to a lessening of tensions between Rwanda and Uganda, whose relations had deteriorated after the Kisangani incidents between their respective armies. Another success was marked by visits between the parliamentary delegations of Rwanda and Zambia, which led to a project to repatriate refugees from Rwanda who had settled in Zambia. Finally, visits to the Democratic Republic of Congo (DRC) since 2003 have resulted in that country's incorporation as a full member of the AMANI family and the organization of an interparliamentary dialogue, in September 2005, at Kigali, between the DRC, Rwanda and Uganda.

“The experience of the Amani Forum is a case study in preventing and peacefully resolving conflicts, to provide the basic conditions for true reconciliation between national factions and between countries.”



Mrs. Victoire Ndikumana, The AMANI Forum

- *Electoral observations*

Since some conflicts grow out of contested election results, or even the electoral processes themselves, another of the Amani Forum activities has been to participate in electoral observations. This was the case at Pemba, Zanzibar, in 2003, and Rwanda during the general elections of 2004.

- *Strengthening the capacity of parliamentarians*

The Amani Forum organizes training sessions for its members on subjects related to the prevention and peaceful resolution of conflicts and reconciliation, to give them the knowledge and tools they need to act as proponents and crafters of peace.

Conclusion

The experience of the Amani Forum is a case study in preventing and peacefully resolving conflicts, to provide the basic conditions for true reconciliation between national factions and between countries.

The examples provided - improved relations between Uganda and Rwanda, inter-parliamentary dialogue among Rwanda, the Congo, and Uganda - show how parliamentarians, through a total commitment to peace, can fulfil their role of representing peoples who long for little else.

Concluding session

Mr. GORAN FEJIC, Head of Programme, Democracy Building and Conflict Management, International IDEA

For the past three days, we have been addressing questions that are highly significant for any country aspiring to revitalize and strengthen its democracy, and in particular societies emerging from violent and devastating conflicts.

We have tackled some complex subjects, subjects that pose true dilemmas for parliamentarians and, more generally, for citizens mindful of their rights and duties.

How to find the right balance between the need to heal old wounds and the desire of any society in reconstruction to look towards, and devoted its energy to, the future? What role can parliamentarians play in the processes of reconciliation? What instruments will be most effective in advancing reconciliation in Africa? How to make difficult choices in the absence of any ideal solution? How to choose between two such fundamental objectives as peace and justice? Obviously we would prefer not to have to choose at all. But this is a luxury countries emerging from violent conflict cannot afford.

How to determine the modalities and extent of reparation? This is a particularly difficult question for countries impoverished by war. What role should the international community play?

We have not sought unanimity. Unanimity on such a complex issue, from such a free and open gathering of parliamentarians as this one, could only be artificial. But the debate, in my view, has been rich and mature. And while views have differed, just as the historical situations of countries in this vast continent of Africa have differed, the principal messages that came through during these discussions appear to converge.

One of the most important messages, in my view, is the commitment among African parliamentarians to build lasting democracies on solid foundations. This does not mean forgetting the painful past but rather coming to grips with it, to draw lessons for the future, heal wounds, and give new life to new institutions. The true meaning of life, and of human reconciliation in particular, lies in trust, mutual respect, and solidarity.



“One of the most important messages, in my view, is the commitment among African parliamentarians to build lasting democracies on solid foundations.”

Mr. Goran Fejic, Head of Programme, International IDEA

"Today, the world in general, and Africa in particular, can be proud of Burundi's progress in building peace, democracy, and reconciliation, the conditions *sine qua non* for any development process."

Mr. Gervais Rufyikiri, President of the Senate, Burundi

Mr. GERVAIS RUFYIKIRI, President of the Senate, Burundi

It goes without saying that as responsible Africans committed to building a better, more worthy, more prosperous Africa, we must join efforts in the quest for true reconciliation, a prerequisite for any sustainable development.

Reconciliation is a process shared throughout the world. It includes the search for truth, justice, forgiveness, and healing. In other words, reconciliation means finding ways to live alongside our former enemies - not necessarily to like them, or to forget the past, but to coexist and cooperate, as the inhabitants of any country must do.

Reconciliation is a noble endeavour and an objective requiring perseverance, hard work and constant effort. It is therefore our duty as parliamentarians to reflect on these issues together, contribute to a crucial national and international conversation about them, and enlighten the choices they will require of us. The stakes involved in each of these issues, though not always apparent, could not be more vital.

Each of our parliamentary institutions has the noble duty to participate fully in the stabilization and construction of a just and prosperous society. It is one way among many others to prevent conflicts and support the processes of reconciliation. As you have no doubt realized during these sessions, reconciliation represents a profound, long-term societal process requiring us to recognize, remember, and draw lessons from the past.

This mission can only be achieved if we allow truth to take its rightful place in the processes of reconciliation and rapprochement among individuals and peoples. Indeed, the truth brings us closer together. It shows what already unites opposing parties and what can dispel resentments from the past, preparing the terrain for new progress towards justice, brotherhood, and peaceful coexistence among peoples. In other words, truth is the first step on the path to reconciliation, forgiveness, and peace.

Burundi did not decide to host this seminar by accident. It marks an important milestone in our history and in the progress of our subregion - a sign of growing political maturity and source of the first glimmers of optimism about the future.

Today, the world in general, and Africa in particular, can be proud of Burundi's progress in building peace, democracy, and reconciliation, the conditions *sine qua non* for any development process.

We are just as proud to see Burundi distinguish itself in fields other than violence, and which reflect honourably on Africa as a whole.

Thus, to achieve true peace, we call on all men and women, young and old alike, to start by embracing the truth. It is a noble cause for each of us as individuals, but also for the social groups and nations to which we belong.



THE ROLE OF PARLIAMENTS IN THE NATIONAL RECONCILIATION PROCESS IN AFRICA

REGIONAL SEMINAR ORGANIZED JOINTLY BY THE PARLIAMENT OF BURUNDI, THE INTER-PARLIAMENTARY UNION AND THE
INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE **BUJUMBURA, 7-9 NOVEMBER 2005**

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NDIKURIYO, Faustin (Mr.)	Member of the Senate
NTWARI, Antoine (Mr.)	Member of the Senate
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NZOYISABA, Cathérine (Ms)	Member of the Senate
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BUSUGURU, Déo (Mr.)	Member of the Senate
HABANABASHAKA, Pétronie (Ms)	Member of the Senate
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Member of the National Assembly

IMUANGOMBI, Mbega (Mr.)

Member of the National Assembly

NTAUTU, Mey (Mr.)

Member of the National Assembly

NTAMBU-NDAMBI, Tony (Mr.)

Legal attaché in the office of the third Vice-President of the National Assembly

MOROCCO

DERMOUMI, Belhaj (Mr.)

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NIGER

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NIGERIA

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ANISULOWO, Iyabo (Ms)

Senator

JIMOH, Fatai (Mr.)

Secretary

RWANDA

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Member of the National Assembly (DA)

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VAN DER MERWE, Koos (Mr.)

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SUDAN

MARGRET, Samwil Arob (Ms)

Member of the National Assembly

TOGO

KANSONGUE, Yambandjoi (Mr.)

First Vice-President of the National Assembly

ATCHOLI, Essossolame (Ms)

Finance Director

*
* *

¹ ANC: African National Congress
DA: Democratic Alliance
IFP: Inkhata Freedom Party

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KATE KAMBA, Sylvia (Ms)	Member of the Regional Affairs Committee
BUNDI, Justin (Mr.)	Clerk of the Legislative Assembly
MASAMI, Paul (Mr.)	Clerk Assistant of the Legislative Assembly

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PANELLISTS

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DERMOUMI, Belhaj (Mr.)	Member of the House of Councillors, Chairman of the Parliamentary Group of the Democratic Union, Morocco
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NTIBANTUNGANYA, Sylvestre (Mr.)	Member of the Senate and former President of Burundi

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INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (INTERNATIONAL IDEA)

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INTER-PARLIAMENTARY UNION

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HUIZENGA, Rogier (Mr.)	Assistant Human Rights Programme Officer

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