

# REGIONAL SEMINAR ON THE ROLE OF PARLIAMENTS IN THE NATIONAL RECONCILIATION PROCESS IN AFRICA

Organized jointly by the Parliament of Burundi, the Inter-Parliamentary Union and the International Institute for Democracy and Electoral Assistance (International IDEA)

**Burundi, 7-9 November 2005**

Bujumbura, Kigobe Centre National Assembly Building



## 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 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 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.

Thank you.