CHALLENGES OF DEVELOPMENT IN BURUNDI: A CASE STUDY OF PROTECTION OF REFUGEES AND IDPS IN POST-CONFLICT RECONCILIATION AND TRANSITIONAL JUSTICE

LA Ndimurwimo* & MLM Mbao**

Violations of human rights and genocide in Burundi are among the most contentious issues which continue to attract the attention of academic discourse. This paper is concerned with the question of human rights violations in Burundi from a historical and comparative perspective. It seeks to trace the root causes of Burundi’s sullied human rights record over 52 years since independence from Belgium in 1962, the role of the military in human rights violations, including mass killings of civilians and extra-judicial executions of political opponents and the fact that the post-conflict constitutional architecture has not succeeded in establishing accountability and responsibility for these violations; in providing truth, justice and reparations to the victims and in putting an end to the culture of impunity which seems to be entrenched in Burundian society. Moreover, by analyzing critically the results from interviewing 113 Burundians and 16 non-Burundians, this paper argues that there will be no political stability enduring peace without addressing these issues in a comprehensive manner.

INTRODUCTION ................................................................................................................. 1096
I. SURVEY ............................................................................................................................... 1098
II. REFUGEE AND INTERNAL DISPLACEMENTS ............................................................... 1101
III. THE ROOTS OF THE CONFLICT ................................................................................. 1103
IV. TRANSITION TO INDEPENDENCE .............................................................................. 1105
V. FROM CONSTITUTIONAL MORNACH TO MILITARY REGIMES ....................... 1107
VI. THE MILITARY IN BURUNDI POLITICS AND HUMAN RIGHTS VIOLATIONS .................................................................................................................. 1110
CONCLUSION ....................................................................................................................... 1113

* LA Ndimurwimo, LLB, LLM, LLD Candidate, Lecturer in Law, Nelson Mandela Metropolitan University, RSA. Research fields: Labour Law and Public Law in general, with emphasis on Human Rights and Humanitarian Laws, Good Governance and Democracy in Africa.

** MLM Mbao, LLB, MPhil, PhD Professor of Public Law and Legal Philosophy, North West University, RSA. Research fields: Public Law in general, with emphasis on Human Rights Law, Good Governance and Democracy in Africa.
INTRODUCTION

Human rights issues in Africa, in general and in the Great Lakes Region in particular, have grown exponentially in the last two decades. It is a common cause that the genocide in the Great Lakes Region of Africa ranks alongside the extermination of the Jews in Nazi Germany as one of the worst human rights outrages of the last century. At the same time, it is quite remarkable that, while the international community, through the United Nations, responded with the necessary resolve to address gross human rights violations in Yugoslavia, Rwanda, Sierra Leone and Cambodia, the same has not been the case with Burundi.¹

What is particularly tragic about Burundi is that despite several peace agreements aimed at national reconciliation and democratic governance, grave human rights violations remain unaddressed and in some cases have taken a turn for the worse.² Included in this coinage of human misery are such crimes as extra-judicial executions, arbitrary detentions, torture, rape and other forms of sexual violence, the ill-treatment of minorities such as Burundians belonging to the Twa ethnic group and people with albinism and returnees from exile who are regarded as “foreigners” and discrimination on grounds of ethnicity,³ gender and sexual orientation.⁴


Other challenges facing post-conflict Burundi include the absence of institutions critical to transition to democracy such as an effective legislature, an independent judiciary, a free press, an ombudsperson to deal with cases of maladministration, an unresolved refugee question, land disputes, the use of children as combatants and impunity for gross violations of human rights. The problem of weak investigatory and prosecutorial agencies was underlined in the landmark case of Ngirincuti v Secretary of State for the Home Department.\(^5\) That case involved an asylum seeker in the United Kingdom who had been gang-raped in Burundi and infected with HIV. The court observed that despite the prevalence of cases of rape, sexual assaults and other serious crimes, they were rarely investigated and the perpetrators brought to justice.\(^6\)

In a paper of this nature and scope, it is neither feasible nor advisable to try and traverse all these challenges. Therefore, this paper is concerned with the question of human rights violations from a legal perspective and in the context of post-conflict reconciliation and transitional justice. The central thrust of the paper is that without the necessary resolve to put an end to the culture of impunity and to establish responsibility and accountability for past wrongs, there will be no lasting peace in Burundi.

As the distinguished Chilean writer, Ariel Dorfman, has succinctly observed:

> Enemies remember the past differently and until they agree in some way on the past, are able to forge a memory common to both sides, their rivalry will refuse to vanish. That is why Truth and Reconciliation Commissions, with all their flaws and concessions, all the pain they do not expose and all the crimes that may remain unpunished, are indispensable step in a transition to democracy after a period of systematic violence.\(^7\)

Dorfman’s observation calls for a process to reveal and preserve the truth about the past so that it may never happen again. This point was underscored by the most reverend Desmond M Tutu, writing in the Report of The Truth and Reconciliation Commission of South Africa, these remarkable words are:


However painful the experience the wounds of the past must not be allowed to fester. They must be opened. They must be cleansed. And balm must be poured on them so that they can heal. This is not to be obsessed with the past. It is to take care that the past is properly dealt with for the sake of the future.\(^8\)

As emphasized by Justice Albie Sachs,\(^9\) a new constitutional order that values participatory democracy, equality, truth-telling as means of dealing with crimes of the past so that they may not be repeated is required in Burundi. This paper interprets Dorfman’s observation in the light of Burundian survivors and non-Burundians’ views and assessment captured on the interviews conducted in 2010 and 2011.

I. SURVEY

Due to the problems stated above, a study was undertaken in 2010 and 2011. Interviews were conducted in the local languages of Kirundi and Kiswahili, with translation into English; other interviews were conducted in English as some Burundians are fluent in English. Additionally another survey was done with non-Burundians in the same context. The research findings were analyzed and interpreted in a qualitative approach.

Data analysis was carried out using the Statistical Package for the Social Sciences (SPSS). Initially, data was screened to identify errors which were corrected before detailed analysis was conducted. For the open-ended questions, content analysis was carried out and common answers were identified and coded to create categories of common responses to questions asked. Data analysis was carried out, initially by producing descriptive statistics for the categorical variables (proportions) or continuous variables (means, standard deviation and ranges). Advanced statistical analysis was carried out to compare existence of statistical differences between the proportions using Chi-squared tests or between means using either t-test or Analysis of Variance (ANOVA). A critical probability of \(p<0.05\) was used to decide on statistical significance between proportions and means.

Both interviews and literature survey results suggested that an


\(^9\) Sachs, op cit n. 7, at 70-71.
analysis behind the mass killing incidents in Burundi is well documented as to be a matter of common knowledge as well illustrated by the incidents of 1961-1965, 1968-1969, 1972, 1988, 1993 and the politically motivated killings before and during the post-peace and ceasefire agreements. For example, during interview places such as Rusizi River near Gatumba, Gitaza, and Mugara in Rumonge were visited. These are among places where most land disputes are still not resolved. According to the interviewees, rivers like Rusizi and Lake Tanganyika are viewed as mass graves for mass killings of the victims since 1960’s, 1972, 1993 to date or throwing corpses in the pits in order to conceal evidence.\(^\text{10}\)

A total number of 113 Barundi respondents participated in this study as summarized in Table 1 below.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Category</th>
<th>Number (n=113)</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mode of questionnaire administration</td>
<td>Face to face</td>
<td>72</td>
<td>63.7</td>
</tr>
<tr>
<td></td>
<td>Self-administered</td>
<td>41</td>
<td>36.3</td>
</tr>
<tr>
<td>Sex of respondent</td>
<td>Female</td>
<td>41</td>
<td>36.3</td>
</tr>
<tr>
<td></td>
<td>Male</td>
<td>72</td>
<td>63.7</td>
</tr>
<tr>
<td>Source of income</td>
<td>Business</td>
<td>7</td>
<td>6.2</td>
</tr>
<tr>
<td></td>
<td>Livestock keeping</td>
<td>2</td>
<td>1.8</td>
</tr>
<tr>
<td></td>
<td>Crop farming</td>
<td>40</td>
<td>35.4</td>
</tr>
<tr>
<td></td>
<td>Salaried employment</td>
<td>24</td>
<td>21.2</td>
</tr>
<tr>
<td></td>
<td>Self-employment</td>
<td>19</td>
<td>16.8</td>
</tr>
<tr>
<td></td>
<td>Student/pupil</td>
<td>21</td>
<td>18.6</td>
</tr>
<tr>
<td>Highest level of education</td>
<td>Primary school</td>
<td>36</td>
<td>31.9</td>
</tr>
<tr>
<td></td>
<td>Secondary school</td>
<td>24</td>
<td>21.2</td>
</tr>
<tr>
<td></td>
<td>College</td>
<td>19</td>
<td>16.8</td>
</tr>
<tr>
<td></td>
<td>University</td>
<td>21</td>
<td>18.6</td>
</tr>
<tr>
<td></td>
<td>No formal education</td>
<td>13</td>
<td>11.5</td>
</tr>
</tbody>
</table>

Out of 113 Burundians interviewed, 80 (70.8%) had fled their country and lived in exile as refugees. The remaining 33 respondents who participated in this study were refugees born in exile after their parents had fled Burundi or internally displaced persons during wars in Burundi. The majority of refugees who fled Burundi did so during 1970-1974 as well as 1990-1994 periods although few others also fled during other periods. For those who fled in 1970-1974 period, more than 95% fled in 1972 following killings of Hutus by mono-ethnic Tutsi army under the rule of Michel Micombero.

---

\(^{10}\) See Krueger, R., and Krueger, K., From Bloodshed to Hope in Burundi: Our Embassy Years During Genocide xiii (Austin, University of Texas Press 2007).
During 1990-1994 period, the majority (62.5%) fled in 1993 following killing of Hutu President, Melchior Ndadaye, by the same army. Refugees who fled Burundi destined to Democratic Republic of Congo, Rwanda, Tanzania and South Africa as summarized in Figure 1. The majority of these refugees fled to Tanzania (67.5%) and DRC (22.5%).

![Figure 1 Country of Destination for Burundian Refugees.](image)

It must be remembered that although most of refugees fled to the above mentioned countries, other refugees who fled Burundi destined to other African countries and the rest of the world. However, due to different reasons some Burundians opted for repatriation while others chose local integration in exile. Some reasons given by the respondents for formal or informal repatriation are summarized in Box 1 hereunder.

**Box 1 Refugees Reasons for Informal Repatriation**

“I was tired of refugee life in exile because most of the basic rights such as freedom of movement, education, work, and others were limited”

“I viewed being a refugee as a curse”

“I realised that my future was obscured”

“Frustration of working in foreign countries as refugee under hostile environment made me to decide to go back because I felt that it was better to go back to Burundi and be killed instead of remaining as a refugee”

“I wanted to go back to Burundi in order to improve the life style of my own people to the optimum level of other free persons also contributing to peace building process through my professional skills”

“I wanted to re-unite with my relatives and enjoy the fruits of democracy which other citizens in the world enjoy”

“The political atmosphere in the countries of exile (DRC and Rwanda) was not safe; hence I was forced to go back to Burundi”

“The more I studied the more I realized how refugees are being mistreated”

*Niliipenda nchi yangu* means—“I loved my country”
Refugee and internal displacements are major problems associated with armed conflicts and abovementioned mass killings in Burundi. According to the Internal Displacement Monitoring Centre (IDMC), the number of internally displaced persons (IDPs) resulting from armed conflicts reached approximately 27.1 million by the end of 2009. The United Nations High Commissioner on Refugees (UNHCR) has revealed that there is an on-going shift in global displacement trends while emphasizing on the rapid growth of IDPs. For example, in the light of the IDMC Report of 2008, some 100,000 IDPs in Burundi remain at the crossroads while integration of refugees from exile poses socio-economic hurdles.

Although Burundi is a State Party to the 1951 Refugee Convention, 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and has signed the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), protection of refugees and IDPs in Burundi may attract academic inquiry. The research findings from interviews conducted with IDPs and refugees revealed that although the basic human rights are enshrined in Burundi Constitution of 2005 and the international legal instruments such as the Universal Declaration of Human Rights (UDHR), the protection, promotion and realization of returnees and IDPs’ rights are still elusive.

This paper attempts to address human rights issues in Burundi with specific reference to IDPs and refugees and suggests that there is a need for interventions that could be employed to meet human rights and humanitarian standards. By referring to the findings, it is our argument that neither Burundians inside nor outside of Burundi seem to celebrate the consequences of mass killings. In this context, survivors are still remembering the atrocities in Burundi since 1960s and suggest the following in Box 2 in order to bring about human security and stability.

In comparison with 16 non-Burundians interviewed from different nationalities (see Table 2 below), it was revealed that contemporary Africans are longing for everlasting peace should Burundi and Africa in general cherish the rule of law, respect for democracy, accountability and national healing.
Box 2 Burundians’ Suggestions to Stop Gross Violation of Human Rights

“To arrest and prosecute those who committed genocide by the ICC”
“...Watu walohusika na mauaji ya kuangamiza wafikishwa mahakamani na kuadhibiwa means—people who are responsible for genocide must be taken to court and be punished”
“...Genocide cases should be dealt with thoroughly including those dating in 1960s and 1970s”
“Stricter laws should be enforced”
“To deal with impunity, perpetrators should be punished without discrimination based on ethnicity, political parties etc”
“Learn something principles used by other countries which experienced genocide”
“Strive for national unity and eliminate all forms of unfair discrimination”

<table>
<thead>
<tr>
<th>Table 2 Non-Burundian Respondents Interviewed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variable</td>
</tr>
<tr>
<td>----------</td>
</tr>
<tr>
<td>Mode of questionnaire administration</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Sex of respondent</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Nationality of respondent</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Highest level of education</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

As resonated in the following selected views, non-Burundians made suggestions on what should be done to stop mass killings, bring about, rule of law, national healing and good governance which may lead to social and economic development in Burundi, Africa and the world as summarised in Box 3 below:

Although the interviews dealt with various human rights issues, this paper focuses only on the respondents’ views on solution to stop violation of human rights, national healing and reconstruction. Mass killings in post-transition Burundi as demonstrated in Gatumba massacre have failed to
attract international community’s attention.\textsuperscript{11}

\textbf{Box 3 Non-Burundians’ Suggestions to Stop Mass Killings}

\begin{quote}
“To stop hate groups which are broadcasting, advocating and popularising propaganda in a society and to the people of Burundi. Perpetrators must suffer the consequences and be tried before the International Criminal Court or International Court of Justice”

“UN Security Council must play its role effectively by protecting population from genocide, war crimes and crimes against humanity. Justice must prevail i.e. punish offenders rather than protect them. There’s also need for reconciliation between the perpetrators and the victims so as to heal or close the gap of enmity between them. Without this, conflict can spark due to sentiments of revenge”

“There should be respect for human rights, rule of law and political stability throughout the country. There should be constant peace meetings and agreements with parties involved. There should be established a global mechanism investigating the crimes against humanity and those found guilty should be adequately punished to serve as deterrence. At the National level, there should be Peace and Reconciliation Commission as well as the National Human Rights Commission to address all the issues of human rights violations”

“Offer the relative leaders of the political factions incentives for coming together and ensuring peace and security”

“Leaders to have goodwill to reconcile the warring parties. Ensuring that government officers come from all the tribes equally or fairly”

“Zero tolerance of violations and immediate prosecution of those involved in genocide”
\end{quote}

It is clear that there was a general agreement between Burundian and non-Burundian respondents on the issues of national healing and ending impunity. The survey’s results prompted us to reflect on the brief history of Burundian conflicts.

\section*{III. The Roots of the Conflict}

In order to appreciate the current political and constitutional configuration in Burundi, we need to have a sense of historical perspective, in particular an understanding of the root causes of Hutu-Tutsi ethnic rivalry. In that context, this section now proceeds to sketch out that context, albeit briefly. Burundi is a relatively small country in the Great Lakes Region of Central Africa. Before the advent of European colonial rule in Eastern-Central Africa, Burundi used to be part of the Rwanda-Urundi Kingdom. However, following the scramble for Africa the Berlin Conference of 1885, the East African nations of Rwanda-Urundi and Tanganyika (now Tanzania) fell under the suzerainty of Germany, as Germany East Africa or \textit{Deutsche Ostafrika}.\textsuperscript{12}

\footnotesize

\textsuperscript{12} Ndarubagiye, \textit{op. cit.} n.3, at 22. \textit{See also GAHUTU, R., PERSECUTION OF THE HUTU OF BURUNDI, Dar-es-Salaam at 8} (Great Lakes Higher Education Coy. Ltd. 2000).
The German colonial authorities introduced a system of indirect rule through Tutsi Kings, chiefs and sub-chiefs. An agreement, known as the Kiganda Accord, was entered into between King Gisabo Mwezi IV and the Germany colonial authorities, on the advice of missionaries. Under that accord, Burundi was declared a German Protectorate. German colonial rule cemented the monarchical system under which Tutsi Kings and the Tutsi tribe in general dominated the other two ethnic groupings, namely the Hutus and the Twas.

For the sake of completeness, it is important to point out here that the Twas (or “pygmies”) are generally believed to be the original inhabitants of what is now Burundi and Rwanda; the Hutus were descendants of Bantu people who had lived in the area since immemorial time while the Tutsis were Nilotic people from East Africa who invaded and conquered the Twas and Hutus around the 14th century and established a feudal system of government. Under that system, while the Tutsi royalty was the political elites, landed-gentry and great cattle owners, the Hutus and Twas were reduced to feudal serfs and a source of cheap labour by doing manual work such as building roads, carrying luggage, collecting stones and timber for construction work, building public edifices and domestic work and manual labour on farms owned by German settlers. However, following the defeat of Germany in the First World War, Rwanda-Urundi was entrusted to Belgium under the mandates system of the League of Nations and later a trust territory under the Charter of the United Nations.

Under the trusteeship system, Belgium was supposed to prepare the people of the trust territory for self-rule and eventual independence but very little was done in that regard. Instead the pre-colonial system of kinship was ossified or reinforced into a neo-feudal order, founded on a rigid dichotomy between the Tutsi overlords and the Hutu serfs. That arrangement led in turn to stereo-typing behaviours and the legitimation of the imaginary divide between the so-called superior race of immigrant “Hamites” (The Tutsis) and the so-called “primitive indigenous negroes” (Hutus and Twas). For

---

16 Under Article 22 of the Covenant of the League of Nations, colonies and territories of the states that had lost the First World War and which were inhabited by peoples “not yet able to stand by themselves under the strenuous conditions of the modern world” were transferred into League Mandates to be administered as such by the victorious power. See further Chapter XIII of the UN Charter, 1945.
instance, from this system, a land or cow owner would be allowed to call his “subjects” by certain names such as “umuhutu wanje”, literally meaning, “my slave,” from the indigenous language of Kirundi where a Hutu simply means a slave.

A Hutu was seen as a subordinate or a follower of a more powerful person, a Tutsi. Consequently, in contemporary Burundi today, to call someone a Hutu may be inappropriate, if not offensive. In that milieu, the cattle-owning and landed-gentry Tutsi were perceived as Belgium’s “noble savages”, in sharp contrast with the Hutus who were frowned upon and despised as peasants, willing to toil for low-waged labour. Here lies the roots of today are the deep-seated ethnic hatred and rivalry which has scarred the country’s psyche.19 The killings of Hutu political leaders such as Presidents Melchior Ndadaye (1993) and Cyprien Ntaryamira (1994); Prime Ministers Joseph Cimpaye (1965); Pierre’ Ngendandumwe (1965), Joseph Bamina (1965) Speaker of Parliament Paul Mirerekano and many others are directly traceable to this institutionalized ethnic pathology.20

IV. TRANSITION TO INDEPENDENCE

As pointed out earlier, Belgium as the trustee power under the UN Charter was supposed to “prepare” the people of Rwanda-Urundi for eventual independence but did very little in that regard. Instead, it imposed a system of forced labour, taxation and pacification campaigns against peasant up-risings, mainly in the 1920s and 1930s.21 These uprisings were mostly directed at Tsutsis, especially the Batare clan who were perceived as collaborating with the Belgium colonial masters.22 The earliest steps towards political reform were taken in 1959, culminating in the gradual decentralization of legislative power to indirectly elected Councils with the Tutsi King, Mwambutsa IV, as a constitutional monarch.23 However, these minimalist changes failed because of the rising tide of nationalism and the “winds of change” sweeping across much of colonial Africa.

In the late 1950s, several political parties were already in existence with the ultimate goal of gaining independence under a constitutional

---

21 Lemarchand, op. cit. n. 19, at 34-41.
22 Lemarchand, op. cit. n. 19, at 34-41.
23 Krueger and Krueger, op. cit. n. 10, at 27.
monarchy.²⁴ Among the most popular of these political parties was the National Unity and Progress (UPRONA) which was launched in 1958 as a liberation movement by King Mwambutsa’s eldest son, Prince Louis Rwagasore, with the support of Hutu nationalists like Paul Mirerekano, Pierre’ Ngendandumwe and Joseph Bamina. On December 25, 1959, a law was passed to abolish chiefdoms and sub-chiefdoms.²⁵ This law also allowed the holding of elections on democratic lines. Another significant political party was the Christian Democratic Party (PDC) under Joseph Birori which was established by the Tutsi Batare Lineage, a loose alliance called the Common Front Group under the presidency of Jean-Baptiste Ntidendereza to counter UPRONA.²⁶

It should be noted here that Burundi split from Rwanda in 1959. In the several years leading to the attainment of independence in 1961, UPRONA received external support from other liberation movements on the continent, principally the Tanganyika African National Union (TANU) under Julius K Nyerere who went on to become the first President of Tanzania.²⁷ In 1960, general elections were held and won by UPRONA but the Belgium authorities did not publish the results because there were no international observers (including those from the UN and for the non-observance of democratic procedures).

On this point, Cornwell and de Beer have rightly pointed out that Belgium’s open hostility towards Prince Rwagasore had the unintended consequences of raising his nationalist credentials.²⁸

In January 1961, the UN pressurized Belgium to agree to dismiss an interim government it had installed and to hold fresh elections. In the elections held on September 18, 1961, UPRONA won with 58 seats out of 64.²⁹ The next day Prince Rwagasore was declared Prime Minister with a mandate to prepare the country for independence, however, Rwagosore’s victory was short-lived as he was assassinated a few weeks later on October 13, 1961, eight months before independence. In line with the Constitution, the Vice Premier, Pierre’ Ngendandumwe, a Hutu was supposed to take over or Paul Mirerekano, the Chairperson of UPRONA and Vice-Speaker of the National Assembly (another Hutu) but King

²⁴ Gahutu, op cit n. 12, at 17-24.
²⁵ Gahutu, op cit n. 12, at 25.
²⁶ Gahutu, op cit n. 12, at 25.
²⁷ Ndarubagyi, op cit n. 3, at 28.
Mwambutsa appointed André Muhirwa, a Tutsi as Prime Minister, with the government dominated by his fellow Tutsi clans-people. Among the Prime Minister’s appointees was Jean Ntiruhwama as Minister for the Interior. Muhirwa and Ntiruhwama formed the UPRONA Youth Wing, the *Jeunesse Révolutionnaires Rwagasore*—JRR (named after the assassinated Prime Minister). This Youth Wing, composed mostly of Tutsis was instrumental in massacring many Hutu political leaders, trade unionists and civilians in Kamenge in January 1962.30

The massacre of the Hutu leaders in 1962 continued in 1963 and sowed the seeds for more ethnic divisions in the country as will be shown hereunder. At the time of independence on July 1, 1962, the country was already in turmoil, accentuated by deep ethnic divisions in the main liberation movement, UPRONA. These divisions are highlighted in the next section of this paper.

V. FROM CONSTITUTIONAL MONARCH TO MILITARY REGIMES

Burundi gained independence on July 1, 1962, ostensibly as a constitutional monarchy with the Tutsi King, Mwambutsa IV as the Head of State. The Prime Minister was the Head of Government and was appointed by the King. He should have commanded the majority in the legislature. However, on numerous occasions the King refused to recognize Hutu Premier candidates, thus subverting the nascent democratic process. As pointed out earlier, following the assassination of Prime Minister Rwagasore in October 1961, the Hutu Vice-Premier, Pierre’ Ngendandumwe or Paul Mirerekano, another Hutu who was Parliamentary Speaker and Chairperson of UPRONA should have taken over as Prime Minister. Contrary to what the Constitution dictated, King Mwambutsa appointed his fellow Tutsi, André Muhirwa as Prime Minister in November 1961.

Due to constant disagreements among the political elites, two groups emerged in Parliament, the Casablanca Group made up of Tutsis, and the Monrovia Group (consisting of Hutus and moderate Tutsis).31 In 1963 there were elections within a divided UPRONA. These elections were won by the Monrovia Group. King Mwambutsa was forced to appoint the leader

30 For example the killings of politicians, trade unionists, religious leaders, business people and ordinary civilians between 1961 and 1969, in particular the murder of Jean Nduwabike with his three colleagues, Hutu trade unionist who were executed in Kamenge, Bujumbura on 1 January 1962 and the assassination of Gabriel Gahimbare, the first Roman Catholic Bishop who had been appointed to replace Archbishop Grauls, a Belgian Prelate based at Gitenga on 14 December 1964.
31 Gahutu, *op. cit.* n. 12, at 32.
of that group, Pierre’ Ngendandumwe, a Hutu, as Prime Minister. Rather predictably, Ngendandumwe’s tenure of office was cut short, unconstitutionally. In 1964, Rwandese Tutsi refugees who had fled to Burundi in 1959 following the civil war in their own country, wanted to attack Rwanda from Burundi. The government of Premier Ngendandumwe did not support that idea, leading to the dismissal of the Prime Minister by the King on March 31, 1964. Albin Nyamoya, a Tutsi from the Casablanca Group was appointed as Prime Minister but his government was dissolved on January 7, 1965. The following day, January 8, King Mwambutsa re-appointed Pierre’ Ngendandumwe as Prime Minister. Ngendandumwe’s main priority was restoration of peace but he never lived to realize his vision as he was assassinated on January 15, 1965 by Rwandese Tutsi refugees.

The assassination of Ngendandumwe plunged the country into further political instability. King Mwambutsa dissolved parliament and restored the absolute monarchy. In order to appease the Hutus, the King appointed the Hutu politician, Joseph Bamina as Prime Minister on January 16, 1965. Almost two months later, on March 31, 1965, the King called for parliamentary elections, with parliamentary seats reduced from 64 to 33. These elections took place on May 20, 1965 and were won by UPRONA with 21 seats; the Peoples Party won 10 with two seats going to independent candidates. In the continuing marginalization of Hutu politicians and in disregard of the Constitution, instead of appointing a Hutu candidate, Gervais Nyangoma from UPRONA, the King went for another Tutsi, Leopold Biha who did not belong to any of the political parties represented in parliament.

Under Biha’s government, all the key posts were held by Tutsis. This subversion of the electoral process awakened Hutu political leaders and intellectuals such as Gervais Nyangoma, Paul Mirerekano and Emile Bucumi from the Monrovia faction, to agitate for the overthrow of the monarch. King Mwanbutsa fled the country and sought refuge in the then Zaire (now the DRC) and later in Switzerland, leaving all power in the hands of a young army Commander, Michel Micombero, a Tutsi.

---

32 Gahutu, op. cit. n. 12, at 37.
34 Ndarubagiye, op. cit. n. 3, at 30.
Micombero’s ascendancy to power marks the entry of the military in Burundi’s tortured history. Micombero’s first act of infamy was to orchestrate the execution of Hutu leaders like Gervais Nyangoma, Speaker of Parliament; Joseph Bamina, Vice-Speaker of parliament and Paul Mirerekano together with several Hutu ministers and officials. In addition, innocent Hutu civilians were arrested and many of them died in prisons due to the harsh and appalling conditions therein and some tortured to death.

At the same time, the Supreme Court of Burundi, which was supposed to be the sentinel of individual liberties and freedoms, acquitted those Rwandese Tutsi refugees who assassinated Prime Minister Ngendandumwe, holding rather curiously that there were no grounds for their prosecution in the first place. That was on December 14, 1965. They were released from prison in March 1966, marking yet another milestone in the long history of impunity for politically motivated crimes. Following the departure of King Mwambutsa and the establishment of a de facto military regime by Micombero, King Mwambutsa’s other son, Prince Charles Ndizeye was enthroned under the dynastic name of Ntare V. Shortly thereafter on July 12, 1966, King Ntare declared an amnesty and released the Hutu survivors. Ntare went on to recognize and appoint Micombero as the Prime Minister. Micombero in turn prevailed on King Ntare to declare Burundi a one-party state with UPRONA as the only legitimate political party.

Although Micombero was a Tutsi, he was not in favour of the monarchy. As a Tutsi from the Hima clan in Bururi Province, his clan was greatly opposed to the “Royal” Batare clan who had dominated the country’s political, economic and military establishments. Predictably within a short time of his ascendancy to the throne, Ntare was over-thrown in a military coup while on an official visit to Zaire and Micombero abolished the monarchy on November 28, 1966. The one party system, dominated by the Tutsi-led military, continued until 1993 when the first democratically-elected Hutu President, Melchior Ndadaye came to power. He was assassinated in 1993 together with many Hutus in another military

35 Ndarubagiye, op. cit. n. 3, at45-46. Others assassinated in that year included Paul Nibirantiza, Pierre Burarame and Leonard Ncahororuri together with about 14,000 Hutu civilians.
36 Gahutu, op. cit. n. 12, at 47.
37 Ndarubagiye, op. cit. n. 3, at 34.
38 Gahutu, op. cit. n. 12, at 47.
coup led by another Tutsi army officer, Pierre’ Buyoya. In the next section, this paper proceeds with the role of the military in Burundi’s political landscape, with particular reference to human rights violations.

VI. THE MILITARY IN BURUNDI POLITICS AND HUMAN RIGHTS VIOLATIONS

It is common knowledge that the military has dominated Burundi’s political landscape since independence in 1962. Except for a short interlude between 1993 and 1996, successive military regimes have ruled Burundi under the barrel of the gun: Michel Micombero, 1966-1976; Jean Baptiste Bagaza, 1976-1987 and Pierre’ Buyoya, 1987-1993; 1996-2003. Following the departure of the military in 2003, Domitien Ndayizeye from the Front Pour le De’mocratie au Burundi or FRODEBU (Front for Democracy in Burundi) became the leader of an interim government. However, pursuant to the Pretoria Protocol of 2003 and subsequent elections in 2005, Pierre’ Nkurunziza, leader of the CNDD-FDD became President.

It must be pointed out here that the three military regimes from 1966 to 2003 were all led by Tutsi-army officers, all hailing from one Tutsi clan, the Hima and all from one province in Burundi, Bururi. Apart from this mono-ethnic domination of Burundian society by the military, it is axiomatic that the most egregious or odious human rights violations took place few years before and during these periods of military rule. The most shocking of these mass killings include:

The execution of Jean Nduwabike and three other trade union leaders in Kamenge, Bujumbura on January 19, 1967.

The assassination of Pierre’ Ngendandumwe, a Hutu Prime Minister elected in 1965 and assassinated on January 15, 1965.

The murders of Paul Mirerekano, President of UPRONA and Vice-Speaker of the Parliament with many other Hutu leaders like Gervais Nyangoma, Paul Nibirantiza, Pierre’ Burarame and Leonard Ncahoruri in 1965 with approximately 14, 000 Hutu civilians.

The 1972 massacre of 300,000 Hutu civilians.

The Ntenga and Marangara massacres where the army killed more

39 President Melchior Ndadaye was assassinated by the Burundian army in a coup on 21 October 1993. Ndadaye’s death fuelled more ethnic hatred between the Tutsis and Hutus which in turn ignited more mass killings of Hutu civilians at the hands of the Tutsi-dominated army.

40 After Ndadaye’s assassination in 1993, another Hutu President Cyprien Ntaryamira was killed in Rwanda when the plane carrying the Rwandan President, Habyarimana was shot down in 1994; Sylvester Nibantunganya was prevented by the army from taking over and was overthrown by the army in the Second Pierre Buyoya’s coup of 1996.

than 50,000 Hutu civilians.

The massacre of 20,000 Hutus in 1991 in Cibitoke.


These figures do not tell the whole story of the summary or extra-judicial executions and other monstrous human rights violations. What is remarkable is that writers on the human rights situation in Burundi are not \textit{id idem} as to whether in law these killings amount to genocide as conventionally defined.\footnote{See Article 11 of the Genocide Convention, 1948 which defines genocide to mean any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily harm or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.}


Another troubling aspect of the gross violations of human rights in Burundi, whether termed “particular or selective genocide” or “selective massacres” is that such characterizations generally refer to the mass killings of Hutus by Tutsis. This approach glosses over the Tutsi-dominated army’s insatiable appetite to cling on to power as a major cause of the mass killings. In that respect, it is incontrovertible that the mass killings of 1965, 1972, 1988 and 1993 were all associated with military coups.\footnote{Ndarubagiye, \textit{op. cit.} n. 3, at 27-38. Gahatu, \textit{op. cit.} n. 12, at 17-56 and Krueger and Krueger, \textit{op. cit.} n. 10, at 41.}

At the same time, it must be pointed out that Hutu rebels and insurgents have also committed human rights atrocities although these outrages have seldom or even been characterized as genocide.\footnote{Bentley and Southall, \textit{op. cit.} n. 42, at 31.}

In our considered opinion, the real question is not so much as whether these killings amount to genocide as classically defined as why the
perpetrators of these dastardly crimes have not been brought to book and in the process put an end to the culture of impunity. As Lemarchand has lamented: Nowhere in Africa have human rights been violated on a massive scale and with such brutal consistency than in Burundi…47 Today, almost nine years after the adoption of the Post-Transitional Constitution of 2005, arbitrary detentions, extra-judicial killings, torture and the ill-treatment of minorities continue unabated.48 Associated questions include: Why do these killings continue? Who is responsible? What happened to the institutions supporting democracy and the rule of Law in Burundi: the courts, the legislature, the Truth and Reconciliation Commission and the Ombudsperson? It is submitted that there are no easy answers to these questions.

It is common cause that the quest for national healing and reconciliation lay at the heart of the peace accords and ceasefire agreements leading to the adoption of the Constitution in 2005.49

However, the following buildings blocs are not yet in place:

The Truth and Reconciliation Commission and the Special Tribunal which should have been established pursuant to Security Council Resolution 1606 of 2005 have not been established, with the result that there has been no mechanism to secure truth and accountability and to ensure that those responsible for crimes committed during the country’s turbulent history are prosecuted. Although the Military Court of Burundi was established under the 1992 Constitution to deal with military officers involved in criminal activities, that Court failed to prosecute the officers accused of killing President Ndadaye and many civilians in 1993 in the process ossifying the culture of impunity.

The granting of “provisional immunity” or “temporary immunity” in respect of “politically motivated crimes” committed during the period of 1 July 1962-28 August 2000 and excluding the crimes of genocide, war crimes and crimes against humanity did not advance the cause of those calling for the investigation, prosecution and punishment of the perpetrators of gross human rights violations.50

47 Krueger and Krueger, op cit n. 10, at 27, quoting Lemarchand. See also Lemarchand, op cit n. 19.
50 In 2003 when CNDD-FDD was still a rebel movement, it entered into an agreement with the government providing that both CNDD-FDD combatants and members of the state security
The participation of suspected perpetrators of human rights violations in these agreements has had the unintended consequence of shielding them from prosecution, thereby perpetuating the culture of impunity.

Although the Pretoria Protocol of 2003 led to the holding of elections under the 2005 Post-Transitional Constitution and a civilian government under Pierre’ Nkurunziza, constitutional democracy and the rule of law remain fragile, accentuated by incessant struggles for political and economic power among Burundi’s fractious political elites and on-going conflicts among Burundi’s neighbours in Rwanda, Democratic Republic of Congo and Uganda.\textsuperscript{51}

In the premise the post-conflict constitutional architecture has failed, spectacularly to bring about comprehensive solution to refugee and IDPs’ problems, durable peace, stability and human security to Burundi.

CONCLUSION

This paper has been concerned with the broader question(s) of human rights violations in post-colonial Burundi and other associated questions, including the need to establish mechanism for accountability, reparations and justice for the victims of human rights violation and the need to put an end to the culture of impunity. By adopting an historical and comparative approach, the root causes of human rights violations have been traced to the colonial and post-colonial social order, based on institutionalized inequalities and discrimination, giving rise to pathological hatred and ethnic rivalries and the misuse of the military to purge ethnic rivals “once and for all”. This paper has underscored the roles of successive military regimes in gross violations of human rights, mostly of the Hutu majority and of the failure of post-conflict arrangements to cement national reconciliation and healing, establish political stability and constitutional democracy under the rule of law and to put an end to the culture of impunity. In the premise this paper has made a modesty contribution to the on-going search for nation-building, reconciliation, reparations to the victims of mass-killings and comprehensive transitional justice model in contemporary Burundi based on the rule of law and constitutionalism.