

Policy Brief

Burundi's TRC officially launched: but will victims participate?

Impunity Watch is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts research into the root causes of impunity and obstacles to its reduction, promoting the voices of affected communities to produce research-based policy advice on processes intended to encourage truth, justice, reparations and the non-recurrence of violence.

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Summary

On 4 March 2016, in Kayanza in the country's north, Burundi's President officially launched the operational phase of the Truth and Reconciliation Commission (TRC) and its popular awareness-raising campaign. Before a packed conference hall composed of the highest levels of government, senior party officials, ambassadors, and other invitees, the President – addressing his compatriots predominantly in his native Kirundi – invited all Burundians to participate in the process, orating the adage, *there is no future without forgiveness*. Reactions to the launch however demonstrate that a large-scale truth-seeking project is fraught with problems in the midst of an ongoing crisis. A climate of fear, intimidation, lack of genuine free speech and a ruling party that maintains a tight grip on power provide the conditions that are anything but conducive to the work of a TRC. Should Burundi's Commission nonetheless forge ahead, the ability of victims to influence the process will provide a measure of the government's sincerity for having an independent and impartial process for dealing with the past. In this Policy Brief we thus examine awareness-raising as a prelude to and form of victim participation at truth commissions, drawing upon preliminary findings from comparative research conducted in the communities of Bugendana, Itaba, Ruhororo, Kivyuka and Cibitoke. The findings offer timely insight into the importance of information as a basis for meaningful participation at Burundi's TRC, with recommendations for the Commission, government and international community.

Burundi's TRC launched one year into its mandate

With over a year of its four year mandate having already passed,¹ Burundi's TRC was officially launched on 4 March 2016 amid much pomp and ceremony. Although punctuated by the country's worst crisis in more than a decade, the TRC's work has been in any case slow to take off in the public arena.² Surprise at the official launch taking place in Kayanza (northern Burundi) was thus only eclipsed by the suddenness of the announcement of the ceremonies. Nonetheless, the importance attached to the event may be measured by its official protocol, the presence of the President of the Republic, Pierre Nkurunziza, along with the upper strata of his government, as well as the presence of all of the principal ambassadors from among the international community.

Without doubt, the President is correct in his assessment that the event is an historic day in Burundi's short history.

More than fifteen years have passed since the signature of the Arusha Peace and Reconciliation Agreement (2000) in which provisions for the establishment of today's Commission are laid out. Those fifteen years have seen the end of the civil war, the disarmament of a host of rebel movements, the implementation of an elaborate and unparalleled consociational power-sharing model, the election of President Nkurunziza to three consecutive terms in office, and, in 2015, the appalling relapse towards violence and repression. During the corresponding period there had been little appetite for questions of transitional justice and measures to deal with the past, both on the part of successive governments and on the part of Burundi's vast donor community.³ Nevertheless in 2014 the ruling party's appetite began to change; first with the signing into force of the law for the creation, operation and mandate of the TRC on 15 May 2014 (hereafter, "the law"), and then with the swearing in of the eleven TRC commissioners on 10 December 2014.⁴

Since that date, measured progress has taken place at the TRC mostly out of the public view. The eleven commissioners, few among whom have prior experience with transitional justice, have participated in numerous workshops, including study visits to South Africa and Togo.⁵ The commissioners have taken time to define the internal rules and regulations governing the Commission's organisation and operation, developing their strategic work-plan with the assistance of national and international consultants,⁶ seemingly in accordance with the various duties stipulated under Article 51 of the law.⁷ To that end, the TRC's President, Monsignor Jean-Louis Nahimana, has confirmed that 150 investigators (*enquêteurs*) will be recruited before the end of March 2016 with a view to collecting between 25,000-30,000 testimonies by the end of the year ready for public hearings to commence in 2017.⁸ Monsignor Nahimana has assured that internal measures in conformity with Articles 48 and 51(e) covering the protection of victims and witnesses have also already been outlined, which include a specialised, multidisciplinary unit of experts.⁹

But a number of vital steps have yet to be taken. Notable among them are several responsibilities that fall partially to the government or the National Assembly. Articles 24-28, for example, cover the establishment of an International Advisory Board of five dignitaries who will assist the Commission, whose rules of implementation shall be agreed between the government and 'international partners'. Article 48 of the law contains a provision stipulating that field investigations will only commence after the promulgation of a law for the protection of victims and witnesses. The law, written and tabled at the National Assembly by the Council of Ministers, has yet to be adopted, though there are indications that the law will be passed during the current parliamentary session before the end of March 2016.¹⁰ A highly sensitive issue that will need careful attention will be the procedures for the identification and protection of mass grave sites under Article 6 (d), for which clear statutory protocols will be required. Finally, the 2016 budget allocation of approximately \$940,000 USD (1,462,420,356 Fbu) to the Commission is insufficient for the government to ensure that the TRC has the financial and material resources necessary for its proper operation (Article 42).¹¹

Without doubt the crisis that began in April 2015 has had a dramatic impact on the speed of the TRC's progress. The crisis created an environment that was hostile to a very public approach by the Commission and its President, which perhaps explains the slow pace of advancement. Yet the Commission has so far missed an opportunity to ensure that the public is regularly informed of its progress even in spite of the challenging context. Keeping the population up to speed with developments by privileging the transparency of information would make a significant contribution to the real and perceived independence of the TRC.

Arusha Peace and Reconciliation Agreement 2000, Protocol II (Democracy and Good Governance), Chapter I (Constitutional Principles of the Post-Transitional Constitution), Article 18 (Combating impunity during the transition)

Article 18(2)

In accordance with Protocol I to the Agreement, a National Truth and Reconciliation Commission shall be established to investigate human rights abuses, promote reconciliation and deal with claims arising out of past practices relating to the conflict in Burundi.

Act No. 1/18 of 15 May 2014 Establishing the creation, mandate, composition, organisation and functions of the Truth and Reconciliation Commission

Article 24

The Commission is assisted by an International Advisory Board consisting of five dignitaries who are recognised for their strong sense of probity.

Article 48

The Commission shall establish and implement a programme to protect victims and witnesses as well as their family members whose safety may be jeopardized due to their participation in this process. In the case of field investigations, the testimonies of victims commence following the promulgation of a law regarding the protection of victims and witnesses.

**Act No. 1/18 of 15 May 2014
Establishing the creation,
mandate, composition,
organisation and functions
of the Truth and
Reconciliation Commission**

Article 6(3)(c)

Once established, the Commission has the following duties:

- a) Adoption of an organisational chart;
- b) Organise trainings for Commissioners, appropriate the governing law, and adopt internal rules, implement financial regulations, designate an operating budget and a schedule of activities for the duration of its mandate;
- c) Recruit experts and necessary personnel;
- d) Design software databases and develop a communications strategy;
- e) Take measures to protect and support victims and witnesses;
- f) Develop guides to facilitate the collection of depositions, inquiries and investigations and to govern the training of investigators;
- g) Take measures for the collection, protection and management of archives, as well as for the identification and protection of mass graves.

Still, as far back as December 2014 upon the election of the commissioners, IW warned that,

[...] in the current socio-political context – where the CNDD-FDD of incumbent President Pierre Nkurunziza maintains a tight grip of power, where opposition political parties are weak and divided, and where civil society organisations working on TJ have been largely ineffective in holding the government to account – there is a very real that TJ will be instrumentalised for the good of a few, rather than for the benefit of the masses.

More than a year since this warning was raised, the same concerns remain valid.

National transitional justice processes require the engagement and oversight of a country’s civil society and independent media to have a realistic chance of reaching their objectives, but as is now well-cited, Burundi’s once vibrant civil society and media landscape has been stripped bare since the failed *coup d’état* in May 2015.¹² The CNDD-FDD has simultaneously tightened its grip on executive and legislative power, as well as its stranglehold on the population, including through the enhanced presence of security forces throughout the territory and the less overt (but no less important) appearance of members of its *Imbonerakure* youth wing at the collinal and communal levels.¹³ Crucially for today’s Burundi, any doubts about the independence and impartiality of TJ processes – each inalienable prerequisites – will have a highly negative impact on their social and political legitimacy and eventual outcomes, regardless of how earnestly the process *in fact* functions.

Members of Burundi’s civil society in exile reacted to the recent ceremonies in Kayanza by denouncing the Commission as a “diversion” organised by the government to take attention away from the ongoing crisis.¹⁴ In spite of Monsignor Nahimana’s retort that we must wait for the Commission to begin its work before passing judgement, the reaction demonstrates that the ‘sincerity of Burundi’s commitment to TJ is *still* under scrutiny’¹⁵ in a context where there are now even fewer opposing voices to the CNDD-FDD of the President and yet fewer counter-narratives within the country to the official discourse.¹⁶

For these reasons, it is clear that the prevailing context is not conducive to the work of a truth commission. A solution to the ongoing political crisis would ideally be needed before the TRC begins its difficult task of uncovering painful – and highly politicised – memories of the past, indicating that a proposed temporary suspension of the TRC’s mandate would perhaps be a prudent course of action. Since this seems unlikely however, all actors with a vested interest in the process must make difficult decisions on how they will engage with the Commission. For no other group will these decisions be more difficult than for victims.

In this Policy Brief, we thus explore victim participation in Burundi’s TRC. Neither the analysis nor the findings constitute official endorsement of the TRC, nor advocacy for victims to participate in the process. Instead, we seek to present key findings from our research that shed light on the dynamics surrounding participation, showing why information is fundamental for victims to make informed choices about their participation and for them to positively influence the process.

The engagement of victims, affected communities and ordinary citizens may ultimately be the factor that defines the TRC process. In the current climate of increased fears and insecurities that has seen recourse to ethnic-based manipulation, the TRC’s work to convince the population to engage will not be sufficient if minimum guarantees of security cannot be provided. Creating the conditions for Burundians to participate without fear of reprisals is thus *sine qua non* for the process. However, as we will explore in more detail here, participation in Burundi will also rely heavily on the level of information that is ultimately disseminated about the TRC and the extent to which that information is translated into a genuine, informed understanding of the TRC among the population.

Victim participation in transitional justice mechanisms

Transitional justice processes are typically established in the name of victims. Nonetheless, evidence from past practice demonstrates that victims themselves often feel disconnected from these processes and disappointed with the outcomes. Novel approaches to ensuring public engagement and in particular ‘victim participation’ have thus gradually emerged in the theory and practice of TJ.¹⁷ According to the UN Special Rapporteur on TJ, ‘none of the proclaimed goals [of TJ] can happen effectively with victims as the key without their meaningful participation.’¹⁸

Advocating in favour of specific forms of victim participation for different processes, the Special Rapporteur suggests in this regard that truth-seeking,

[...] requires the active participation of individuals who wish to express their grievances and report on the facts and underlying causes of the violations and abuses which occurred. Truth-seeking will only be regarded a justice measure if civil society, in particular victims organizations, is adequately represented in the composition of a truth commission.

Justice mechanisms or reparations schemes, as well as measures for the non-recurrence of violence, consequently require different forms of participation.

As part of a comparative research project, Impunity Watch defined six types of direct and indirect participation, ranging from ‘full empowerment’ as decision-makers at each stage of a TJ process, to the ‘direct participation’ that stems from testifying before a truth commission, to the indirect participation associated with ‘collaboration’ by way of vicarious representation.¹⁹ From the perspective of victims, the most important feature of victim participation is not necessarily how ‘direct’ or ‘active’ it is (as the dominant theory suggests),²⁰ but rather the extent to which participation is experienced as empowering or disempowering for the victims themselves. This means that ‘indirect’ and ‘passive’ participation are important ways for victims to meaningfully participate in a TJ process, especially when it corresponds with the type of participation sought by victims,²¹ or in those situations where public participation may have adverse consequences for their safety and security.

In 2015-2016, Impunity Watch researchers conducted interviews and a series of focus group discussions on victim participation in Burundi to understand the types of participation victims were seeking in Burundi. Conducted in the communes of Bugendana and Itaba (Gitega Province), the commune of Ruhororo (Ngozi Province), Kivyuka (Bubanza Province) and Cibitoke (Cibitoke Province), the views of more than sixty individuals were documented.²² Whereas a full research report containing the detailed findings will be published in April 2016, the analysis here focuses on the preliminary findings that specifically concern the awareness-raising phase recently launched by the President of the Republic and the President of the TRC.

Victim participation in and around Burundi’s TRC

The TRC law of May 2014

Before examining some of the research findings it is important to briefly look at how victim participation is conceived according to the law establishing Burundi’s TRC.

According to Article 1 of the law, ‘victims’ are those persons ‘who have suffered direct violence and/or their dependants’. Although Article 5 (‘Principles’) refers to the ‘restoration of the dignity of victims’ as a key principle alongside ‘the desire to establish the truth’ and ‘national reconciliation’, no explicit link between the truth-seeking function and the participation of victims is made in the law. The latter can be inferred from the law and from the practice of past truth commissions, but the wording of the duties of the Commission outlined in Article 6 suggest that the drafters of the law were inspired by commission of inquiry models of investigative practice, rather than those of truth commissions.

In fact, only two explicit references to *participation* are made in the law. These references emerge in the Articles that outline the necessary measures for the protection of victims and witnesses.

Article 48 covers the obligation of the Commission to establish a protection programme for victims, witnesses and their families who participate in the process and whose safety may be jeopardized. The law does not specify whether this participation – and thus the breadth of the protection afforded – refers to the preparatory phase, the deposition phase, the investigations phase, the hearings phase or the reparations and reconciliation phase, or indeed all of these phases. Similarly, Article 49 compels the Commission to take special measures to assist traumatised persons, children, the elderly and victims of sexual violence ‘to participate in this process, to register their case, present their testimony and to express their views and concerns’. The precise scope of what these protection measures will entail is left to the Commission to define.

Finally, fleeting reference is made in the 2014 law’s preamble to the 2009 National Consultations on TJ conducted among the population and the Diaspora. Although the outcomes of the consultations have been largely ignored in the operationalisation of the TRC to date,²³ consultations of this nature provide the Commission with valuable information that, according to the OHCHR, should be used to shape or enhance the design of transitional justice programmes.²⁴ Burundi’s TRC Commissioners

Act No. 1/18 of 15 May 2014 Establishing the creation, mandate, composition, organisation and functions of the Truth and Reconciliation Commission

Article 48

The Commission shall establish and implement a program to protect victims and witnesses as well as their family members whose safety may be jeopardized due to their *participation* in this process.

(Emphasis added)

Article 49

The Commission takes special measures to assist victims and witnesses including those who have been traumatised, children, the elderly and victims of sexual violence, to *participate* in this process, to register their case, present their testimony and to express their views and concerns.

(Emphasis added)

‘Notification’ as a form of participation in transitional justice processes

The most indirect, passive form of participation is notification. Here we refer to the process of keeping victims informed of a TJ process or their particular case [...] Though excluded by Edwards (2004) as non-participation and ‘lacking the essential characteristic of a participatory act’, we should not underestimate the value of participation in this form. Notification can send a message, however symbolic, that victims are involved and that ‘they are not forgotten and that their interest in the case is recognized by [the] authorities’ (Wemmers, 2010: 635). Being informed of one’s rights and developments in the TJ process may be the most that some victims seek. This form of participation can also protect the safety and interests of vulnerable groups. (Taylor, 2014)

have been afforded sufficient liberty by the 2014 law to shape the design of the TRC, which presents them with the opportunity for dexterity in operationalising information from the National Consultations. By doing so they could ensure that victims and the wider population recognise a TRC that responds to their expectations, which would have a positive impact on the legitimacy and credibility of the institution, and thus the willingness of victims to participate.

The existing foundations for victim participation in the TRC process are thus limited, weak, and somewhat confusing. It will be up to the Commissioners to use the interpretative scope that the law unintentionally provides to craft a process that accommodates the meaningful participation of victims.

Lack of information and understanding about the TRC

Moving to the findings from the research, a dominant conclusion from across the five communities is that there is a lack of information about the TRC and consequently little understanding about its mandate and purpose. With few exceptions, questions posed concerning victims’ views of the TRC were met with almost identical responses: too little information. This lack of information is not limited to the nuances of the mandate and purpose of the TRC, but extends to a wider information deficit and understanding about TJ more generally.

The interviewed victims specifically highlighted the impact that the ongoing crisis has had on the amount of available information. Complaining of the closure of the independent media after the failed *coup d’état* in May 2015, they suggest that what little information had been previously available about TJ has now disappeared altogether.

Foremost among the consequences of this situation is confusion. Without fail, in each community our researchers had to correct people’s misunderstanding that they were representatives of the TRC having come to collect testimonies. But confusion primarily exists around what can be expected of the TRC. Perhaps in part revealing their personal needs, a number of interviewees misunderstood the mandate of the Commission, believing that it would lead to criminal prosecutions and to the eventual payment of compensation. Consider the following almost identical opinions of two women from different communities:

“I had heard that this commission will be set up I didn’t know it was already established. I hope that once this TRC comes to us we will seize the opportunity so that it will deliver justice to us.”

(Female, 30, Hutu, Cibitoke)

“I learned that this commission exists, but I don’t know much about its mandate [...] I had heard that this TRC will establish the suspected perpetrators of different human rights violations to bring them to justice.”

(Female, 27, Tutsi, Bugendana)

From the side of those who committed acts of violence, the confusion is similar. Among the persons interviewed in Itaba a number of perpetrators were of the belief that once the TRC begins hearing testimonies arrests will be promptly made of those named in the violence. One man, a self-confessed perpetrator during the massacres in 1993, pronounced:

“I have no confidence in the international community who wants to interfere in our affairs; affairs that I have already settled with my neighbour. These people prioritise sanctions. This is to say that I risk prison once my reconciliation with the victim is questioned.”

(Male, 55, Hutu, Itaba)

The case of this man and the events that followed his participation in the research are particularly illuminating: Having participated in reconciliation processes organised by a local CSO, the man arrived by bicycle with the wife and mother of the people he had killed perched on the back. After his fears about the TRC were raised, our researchers informed the man after the interview that the TRC is not a judicial institution mandated to arrest or prosecute individuals. Arriving several months later for the focus group organised in his community, the man’s fears had been lifted, seen from the change in his discourse:

“[...] I tell you, if we do not prepare people [to participate in the TRC], I’m sure that as soon as the radio announces the arrival of the aircraft of these foreign judges, everyone will flee for fear of being arrested by the court.”

(Male, 55, Hutu, Itaba)

As well as offering insight into the importance of accurate information, this anecdote also reveals concerns about the potential for the TRC’s work to unsettle local processes for dealing with the past that have already been instituted and taken root locally. We will elaborate upon this dynamic in the full report of the research, but here it is important to note that it sheds light on the tensions between national TJ mechanisms and local processes of which the TRC must be mindful.

A further dimension revealed from these opinions related to the lack of information is the tendency to confuse the TRC with other institutions.

The citations show the tendency to mistake the TRC for a criminal tribunal. Considering the different nuances between (and even among) TJ mechanisms, this mistake is rather understandable. Yet at the same time a large number of interviewees confused the TRC with the National Independent Electoral Commission (CENI) whose mandate was to organise the 2015 elections. Whereas this is in part a reflection of the political climate at the time of the research (the ongoing electoral and political crisis), it highlights a lack of basic understanding of the functioning of diverse state institutions.

Expectations of participation

After the passage of more than a decade since the Arusha Agreement in 2000, the information gap can be easily understood. Endless discussions and stop-start negotiations on TJ have likely desensitised the population either to the likelihood of measures for dealing with the past seeing the light of day, or perhaps even to their importance. Expectations become easily lowered and priorities are laid elsewhere in a country where the majority of the population lives in deep poverty. The ongoing political crisis at the time that the fieldwork was conducted also undoubtedly influenced people’s perceptions of the TRC.

Specific consequences of the lack of information were found when discussing the reasons that victims may have when deciding to participate (or not) at the TRC. Lacking any point of reference for such an institution, many victims clearly found it difficult to provide more than a general principled perspective on the importance of participation. This may be seen in the following citation:

“Victim? I consider myself as a witness to the truth at that time. That’s to say that when the authors refuse to recognize their crimes, I will speak to accuse them because I was there and I saw everything.”

(Male, 33, Hutu, Kivyuka)

This view that the participation of victims must be facilitated because they can speak the truth about violence that took place was shared by the majority of interviewees. Interestingly, the view emerged from the research that Burundian women above all ‘hold the truth’, since they were most often the witnesses to violence. However, because of their lack of knowledge on the process, interviewees struggled to articulate what this would concretely entail for the operation of the TRC.

Responding to the same question, other interviewees explicitly warned that their lack of understanding would therefore affect their ability to participate. To this end, a 53 year-old Hutu woman from Kivyuka suggested that, “for the moment we don’t see how we can determine our participation until one explains to us how the TRC will function.” In the same sense, a 45 year-old Tutsi man from Bugendana decried:

“We are not informed about our role in the work of the TRC [...] If they could explain how transitional justice mechanisms work, we would understand our responsibility.”

These views once more demonstrate that the population lacks sufficient understanding of what participation in the TRC would entail and, importantly, how they can shape the process.

What’s more, the latter two opinions reveal some of the subtle socio-cultural dynamics that will certainly influence participation, especially for women (even in spite of their status as the ‘holders of

“I look forward to the TRC coming. I wish it establish the truth about what happened in our country, the causes and those responsible for these abuses. My family and friends share these expectations too. In 2009, I have not participated in the National Consultations on transitional justice mechanisms in Burundi.”

(Male, 30, Hutu, Ruhororo)

Burundian proverbs

“The hen may not sing in the presence of the cock”

(Nta nkokokazi ibika isake iriho)

“He who alienates the votes of the wise cannot reign”

(Kananira abagabo ntiyimye)

“Only talk to people whose wealth is equivalent”

(Hayaga abangana)

the truth’). The anticipation that a nameless ‘other’ will arrive and explain to victims how they should participate and to instruct them on their responsibilities is a reflection of the passivity that is a product of Burundian political culture. Hierarchical, centralised, highly religious and patriarchal, the culture bestows huge importance upon an exaggerated respect for authority. The right to openly express oneself is not valorised, especially for women and younger generations in the presence of men and elders, which is tied to inflated moral qualities of discretion and courteousness that demand a certain type of expected behaviour. A legacy of the monarchy, colonialism, missionary zeal, and hegemonic one-party rule goes a long way to explaining these cultural norms. In Kirundi, for example, the president is referred to as the “Sebarundi”, meaning “father of the nation”. What’s more, past experience demonstrates that a pro-active stance leaves people vulnerable to persecution, meaning that passivity becomes a self-reinforcing survival strategy.

In this sense, expectations of participation are also inherently tied to an essentially self-imposed subservience to authority and the traditional exclusion of the majority of the population from political decision-making. As suggested, this is particularly grave for women and youth, each constituting a group that is customarily disenfranchised as a result of their exclusion from decision-making processes – whether at the social, economic, or political levels. The paradox of the exaggerated respect for authority is that authorities are most often driven by their own self-interest, excluding the very people who accord them such reverence. As a consequence, politics is highly centralised in Bujumbura and driven by egocentricity, which is neither conducive to the public sharing (and accessing) of information, nor the participation of the populace in decision-making. In such an environment of exclusion, the absence of a reasonable expectation of the opportunity to participate in a state-level institution, as well as a lack of real insight into what that participation could entail, were a constant feature in the research.

And yet, expectations of participation also revealed a deep undercurrent of discontent with the authorities that exists in stark contrast to the daily expression of Burundi’s norms of respect, discretion, and so forth. Consider the following statements:

“If possible, it would be better that victims are in the hall at the moment of the public hearings before the TRC. This would prevent representatives from modifying the content of our testimonies. Ideally, victims would be able to express themselves individually and directly.”

(Male, 66, Tutsi, Ruhororo)

“Burundi’s history is already known and the political authorities know what awaits them once the truth is established by the participants. They will do all that they can to influence the work of this body so that it is carved for their interests.”

(Male, 51, Hutu, Bugendana)

More troublingly for the TRC, years of impunity have created a situation defined by many victims as one of a lack of hope. This sentiment is palpable in the following testimony:

“We never meet with other victims. We are aware of the steps taken by transitional justice in Burundi. But that [TJ] may be done at a time when those who are accused of crimes of the past are the leaders of the country today. Who else would initiate these meetings to keep us informed? No one. He who would attempt a debate on the crimes of the past, faces prison if he is not killed. He would be considered as an enemy of the nation. We are like sacrificial lambs. We will see decisions fall on us without knowing they were taken.”

(Female, 30, Tutsi, Ruhororo)

A final point reflected in the above statements is deserved of brief mention. The men, women and youth interviewed exhibit an apparent ambivalence towards TJ. Whereas on the one hand victims have a desire to tell the truth, they are uncertain about how to go about doing so, simultaneously fearing the consequences of that truth. The TRC must address this ambivalence if it is to ensure that victims are willing to engage in the truth-telling process.

Consequences for victim participation at the TRC

The research in Burundi confirms the importance of information and awareness-raising for meaningful victim participation. Whereas this form of participation may lack the conventional characteristics of a participatory act, the systematic provision of targeted and up-to-date information empowers victims to be involved in the TJ process on their own terms.

By contrast, the different dynamics surrounding the lack of information and understanding revealed by the interviews will influence victims' expectations of participation and will ultimately influence the way in which victims engage with the TRC. In turn, these developments are very likely to have a negative bearing on the legitimacy and wider societal impact of the TRC.

Information & understanding as fundamental prerequisites to participation

The findings from Bugendana, Itaba, Ruhororo, Kivyuka and Cibitoke support the conclusion that information and understanding are fundamental prerequisites for meaningful participation in Burundi's TRC. Among the majority of victims, information about the very existence of the TRC was lacking; among others who had at least heard about its existence, the Commission was easily confused with other institutions. Similarly, few interviewees demonstrated real understanding of TJ in a broader sense to be able to pass an informed judgement on what could be expected from the TRC and from their own participation.

A sense that victims are still trying to understand exactly what the mandate and mission of the TRC is in their country was pervasive. If information is not disseminated in a timely and consistent manner, then victims' participation in the TRC will remain highly precarious. A risk exists that confusing the TRC with a criminal justice institution could lead to empty communities when investigators arrive to gather testimonies and empty halls during the public hearings. Then again, unrealistic expectations of the Commission may otherwise lead to packed-out public hearings as people arrive in anticipation of receiving compensation. With little knowledge of the process, the ability of Burundians to actively and directly participate in the TRC, as well as their ability to participate in more indirect, passive forms, will be effectively blocked.

All of this suggests that the awareness-raising phase recently launched by the President is of fundamental importance for *whether* and *how* victims will eventually choose to participate in the TRC process. Not forgetting that one of the three guiding principles for the work of the Commission is the 'restoration of the dignity of victims' (Article 5), this importance cannot be overstated.

The situation is nevertheless somewhat startling given the number of awareness-raising campaigns and projects that have been implemented on TJ in Burundi. This is all the more surprising when we consider that, in the localities where the research was conducted, at least two (Itaba and Ruhororo) have longstanding projects on TJ, one has an active victims' association (Bugendana) and another (Kivyuka) has been recently the subject of much media attention. What this reveals, however, is the importance of ensuring that programmes and activities are designed to ensure that the provision of information leads to genuine understanding and thereafter to empowerment of the persons targeted using a pedagogical approach. In this sense, the findings also raise questions about the continued effectiveness of the media when disseminating information on TJ. Without a pedagogical function and greater engagement with the people, the research shows that dissemination alone is insufficient for meaningful participation.

The findings thus support the conclusion that there is an acute need for a *pre-participation* phase in Burundi's TRC. This phase would facilitate victims and the population at large to participate in a process that empowers them with the information and understanding that they need to make informed choices with respect to participation and for influencing the TRC.

Finally, it must be repeated that the ongoing political crisis create conditions that are extremely adverse to a vast, highly sensitive truth-seeking process that has among its objectives to re-write the country's history and determine responsibilities for past violence. Leaving aside the 250,000 Burundians who have fled the country who may not have the opportunity to directly participate in the process, the threat of political instrumentalisation of the TRC is very real, especially in the current climate of fear and repression. A truth commission in this context is thus fraught with problems; the conditions being anything but favourable to its work.

"I cannot say that we have regular outreach meetings on the implementation of TJ mechanisms in Burundi. Rather, since your organisation has already started this initiative, I ask you to continue and to come back again to inform us. We will always be grateful. We would like to enlighten the TRC because without our role there will only be a part of history, half, even less, of the whole truth."

(Female, 49, Hutu, Cibitoke)

Since it would appear that the Commission aims to forge ahead, in the information that it shares and in the actions it undertakes the TRC must go out of its way to demonstrate its neutrality and independence if victims are to have any trust in their participation in the process. The measures installed for the protection of victims, witnesses and their families, especially vulnerable groups, will be absolutely crucial to the participation of victims. And in the current political climate, ‘vulnerable groups’ must be extended to include those persons who wish to speak about the actions of former rebel movements whose members now form part of the current political elite, such as the CNDD-FDD and FNL, as well as members of the former one-party rule.

In order to promote the basic information and understanding that must be prerequisites for victim participation in and around Burundi’s TRC, we recommend the following:

To the Truth and Reconciliation Commission

- Immediately design, establish and publish a countrywide awareness-raising campaign on the TRC, based on expert advice from media and transitional justice professionals, Burundian civil society organisations working with victims, and international organisations, establishing innovative strategies for information-sharing and empowerment beyond customary approaches.
- For the implementation of the awareness-raising campaign, establish partnerships with pre-existing structures at the collinal and communal levels that have legitimacy among the local population, such as peace clubs and reconciliation groups created by NGOs and CSOs, local church structures, and youth groups.
- Ensure that the awareness-raising campaign includes actions that target refugee populations and the Diaspora.
- Publish without delay all rules, procedures and measures designed in accordance with Article 51 of the 2014 law, in particular procedures for the protection of victims and witnesses (Articles 48, 49, 51(e)) in order to subject them to public scrutiny.
- Create a highly visible media profile for the President of the Commission within the national and international media, which favours two-way interaction with the population, as a way to safeguard against political interference with the TRC.
- Use every available resource and opportunity to demonstrate the independence and impartiality of the Commission, including through robust victim and witness protection measures.

To the national authorities

- Ensure that the TRC is allowed to fulfil its mandate without any political interference and in accordance with the fundamental principles of independence and impartiality.
- Establish a robust law for the protection of victims and witnesses.
- Provide all necessary resources for the full implementation of provisions for the protection of victims and witnesses, including special protection measures for women and vulnerable groups.

To the international community

- Provide conditional funding directly to the TRC initially for the awareness-raising campaign, using clearly defined benchmarks and pre-established indicators for monitoring political interference in decision-making, releasing funds in instalments only if those benchmarks and indicators are met.
- Before the commencement of the investigations stage slated for June, finance a pilot project to monitor progress and developments at the TRC that will provide feedback to donors and the Commission, including proposed advice on improvements to its operation.
- Finance projects that increase the capacities of national CSOs to accompany victims and witnesses to make informed choices about how to participate at the TRC, ensuring that they have sufficient resources to provide long-term accompaniment.

“I’ve already conquered my fear. The only fear inside me is the fact that today, telling the truth exposes a huge risk. But as a Christian, I cannot keep quiet. If it is to save the Nation, it’s worth paying the price for revealing this truth.”

(Male, 51, Hutu, Bugendana)

- Urgently redouble efforts for the training of trauma counsellors who will assist victims and communities of victims in recounting painful memories of the past.
- Before the commencement of the public hearings phase slated for 2017, finance the establishment of a dedicated, long-term monitoring mechanism by national and international organisations in Burundi that will provide periodic reports on the TRC's work and recommendations for its improvement.
- Publicly denounce all political interference with the work of the Commission in whatever form it occurs and from whomever it originates.

Notes

¹ According to Article 4 of Act No. 1/18 of 15 May 2014 governing the creation, mandate, composition, organisation and function of the Truth and Reconciliation Commission, the term of office of the Commission is four years after the swearing in of the Commissioners, which may be extended once, for a period of one year. Eleven Commissioners were sworn in on 10 December 2014. See Impunity Watch, *Sincerity of Burundi's Commitment to TJ under Scrutiny as TRC Commissioners Sworn In; Four-Year TRC Mandate Officially Begins*, Policy Brief, December 2014. Available at: [http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_\(Dec_2014\).pdf](http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_(Dec_2014).pdf).

² The President of the TRC, Monsignor Jean-Louis Nahimana, read a list of achievements during the preparatory phase of the TRC's work which consists mainly of the participation of the Commissioners in several workshops and capacity-building events, rather than concrete steps forwards.

³ As recently as 2015/2016, major donors such as the EU, Belgium, the Netherlands and the United States had prioritised stability through measures for the reform of the security sector at the expense of applying pressure for the government of Burundi to take measures to fulfil its obligations under the Arusha Agreement. These obligations stipulate *inter alia* that a truth commission and a mechanism for criminal prosecutions will be established to address a legacy of violence and impunity since independence.

⁴ For an overview of the timeline of transitional justice from 2000 to 2015, see Impunity Watch, *Sincerity of Burundi's Commitment to TJ under Scrutiny as TRC Commissioners Sworn In; Four-Year TRC Mandate Officially Begins*, Policy Brief, December 2014. Available at: [http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_\(Dec_2014\).pdf](http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_(Dec_2014).pdf).

⁵ AFSC, *Study Tour Report of Burundi TRC to South Africa, Cape Town*, April 2015, October 2015.

⁶ GIZ (German Agency for International Cooperation), for example sponsored a consultant to work with the TRC to develop its internal work.

⁷ Article 51 covers the duties of the Commission during its preparatory phase. It appears reasonable to assume that the following have been completed: (a) adoption of an organisational chart; (b) organisation of trainings for the Commissioners, and the adoption of internal rules, the governing law, financial regulations, and operational budget. Little information has been forthcoming on the following duties under the same article however: (c) recruitment of experts and necessary personnel; (d) design of software databases and a communications strategy; (e) measures to protect and support victims and witnesses; (f) development of guides to facilitate the collection of depositions and to govern the training of investigators; and (g) measures for the collection, protection and management of archives, as well as the identification and protection of mass graves.

⁸ RFI, *Burundi: les défis de la Commission vérité et réconciliation*, 6 March 2016.

⁹ Public statement by the TRC President on 8 March 2016 during a conference in Bujumbura.

¹⁰ *Ibid.* During the same conference, the President stated his hope that the National Assembly would indeed adopt the law before the end of March 2016.

¹¹ By way of example, a donor roundtable will be co-organised by the TRC and the Office of the High Commissioner for Human Rights in Burundi in March 2016 seeking pledges of support for the TRC. In her comparative research examining truth commissions, Hayner (2011) has described the ideal features of a TRC, one of which is a budget of between \$5-25 million USD. Hayner, P.B. (2011) *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Oxford: Routledge.

¹² See Amnesty International, *Report 2015/2016: The State of the World's Human Rights*, 2016.

¹³ Participants to interviews conducted by Impunity Watch in December 2015 revealed that the presence of *Imbonerakure* had increased in their communities, including some members having replaced local administrators and other local officials.

¹⁴ RFI, *Burundi: à peine lancée, la CVR au centre de controverses*, 8 March 2016.

¹⁵ To paraphrase IW's December 2014 Policy Brief.

¹⁶ For example, a communiqué by the CNDD-FDD on 10 March 2016 laying out its version of the past confirms that these fears are well-founded and demonstrates the pressures that the TRC is subjected to in the current socio-political climate. To defy these politicised narratives and establish its own version of the past will demand an incredible demonstration of independence and impartiality by the Commissioners, and perhaps above-all, tremendous courage. See Communiqué No. 005/2016 du Parti CNDD-FDD du 10 mars 2016. Available at: <http://cndd-fdd.org/2016/03/10/communiqué-n-0052016-du-parti-cndd-fdd-du-10-mars-2016/>.

¹⁷ For an overview of current thinking and practice around victim participation, see Taylor (2014), *Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?*, Impunity Watch Discussion Paper. Available at: http://www.impunitywatch.org/docs/IW_Discussion_Paper_Victim_Participation1.pdf.

¹⁸ UN Doc. A/HRC/21/46

¹⁹ Taylor (2014), *Victim Participation in Transitional Justice Mechanisms: Real Power or Empty Ritual?*, Impunity Watch Discussion Paper. Available at: http://www.impunitywatch.org/docs/IW_Discussion_Paper_Victim_Participation1.pdf.

²⁰ For example, Edwards (2004) argues that participation 'involves an interaction between victim and decision-maker that is not passive' and must necessarily involve action by the victim her/himself. Edwards, I. (2004) *An Ambiguous Participant: The Crime Victim and Criminal Decision-Making*, British Journal of Criminology, 44: 967-982

²¹ Wemmers, J. (2010) *Victims' Rights and the International Criminal Court: Perceptions within the Court Regarding the Victims' Right to Participate*, Leiden Journal of International Law, 23(3): 629-643.

²² The research used a comparative research framework also being employed in Cambodia, Guatemala, Honduras, Kenya, and Tunisia.

²³ Impunity Watch, *Sincerity of Burundi's Commitment to TJ under Scrutiny as TRC Commissioners Sworn In; Four-Year TRC Mandate Officially Begins*, Policy Brief, December 2014. Available at: [http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_\(Dec_2014\).pdf](http://www.impunitywatch.org/docs/IW_Policy_Brief_Election_of_TRC_Commissioners_(Dec_2014).pdf).

²⁴ OHCHR (2009) *Rule-of-Law Tools for Post-Conflict States: National consultations on Transitional Justice*.

²⁵ Since the interviews took place, the TRC has been officially launched. One can hypothesise that if the same research were repeated, victims would identify an upsurge in information on TJ, but that such information would follow the particular discourse of the ruling party.

²⁶ See Impunity Watch, *Exhumation of Mass Graves in Kivuyuka, Bubanza Province, Burundi: State of Affairs and Recommendations*, 8 July 2013. Available at: http://www.impunitywatch.org/docs/Rapport_Kivuyuka_9_juillet_2013_EN.pdf.

Impunity Watch is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts research into the root causes of impunity that includes the voices of affected communities to produce research-based policy advice on processes intended to enforce their rights to truth, justice, reparations and non-recurrence. IW works closely with civil society organisations to increase their influence on the creation and implementation of related policies. The present Policy Brief is published as part of our comparative research project into victim participation in transitional justice mechanisms. As well as in Burundi, the project is being conducted in Cambodia, Kenya, Guatemala, Honduras and Tunisia.

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