

# Land Restitution in Postconflict Burundi

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## ABSTRACT<sup>∞</sup>

With the end of the civil war in Burundi, the government began a transitional justice process to consolidate peace and deal with the legacies of past violations. Part of the transitional justice work in the country has been restitution of land and other property – a process that has provoked further violence and, to some extent, threatened national unity. Political elites have hijacked the land restitution process in a way that has shaped land conflicts on the ground and affected national politics. Based on action research carried out in Nyanza-lac Commune, Makamba Province, between May and December 2017, this article discusses return-related land conflicts and dialogue as a means of settling such conflicts. The research findings indicate that dialogue can help affected communities resolve and transform complex conflicts in a context where the law has failed to address them.

**KEYWORDS:** Burundi, community, dialogue, land, peace, restitution

## INTRODUCTION

Burundi is one of the poorest countries in the world. It is landlocked between Rwanda in the north, Tanzania in the east and south and the Democratic Republic of Congo in the west. With the highest population density on the continent, Burundi is inhabited by around 12 million people, most of them young people and children, with 90 percent of the population living in rural areas.

For most of its post-independence history, Burundi has been dominated by a struggle for political power between the Hutu majority (about 85% of the population) and the Tutsi minority (about 14%), while the Twa (1%) have played a less important role. The Tutsi, preferred for public service by the Belgian colonial administration, dominated most of the pre- and post-independence economic and political management of the country, while the Hutu struggled to access opportunities. Most attempts by the Hutu to come to power were violently crushed by the exclusively Tutsi army.

Lemarchand argues that it is the 1972 selective genocide against the Hutu that should be a major reference point in efforts to understand subsequent conflicts in

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Burundi.<sup>1</sup> The 1972 crisis produced hundreds of thousands of refugees, whose subsequent return brought up challenges regarding property restitution and ushered the country into a renewed conflict.

The Hutu came to power in 1993, when the first democratically elected Hutu president, Ndadaye Melchior, overwhelmingly won the general election. When Melchior was killed by elements in the Tutsi-dominated army after only three months in office, however, a civil war erupted that saw hundreds of thousands of civilians killed and hundreds of thousands of refugees crossing into neighbouring countries, adding to the population that fled the crisis in the 1970s. Burundian refugees thereafter numbered around 777,000.<sup>2</sup>

Property restitution in Burundi can be understood through the prism of this long power struggle between Hutu and Tutsi. The majority of those who fled in the 1970s and 1990s were Hutu. They lost their land and other property to secondary occupants<sup>3</sup> or to private and public institutions close to the Tutsi-dominated government. They also lost their property to family members and neighbours who stayed behind.

The 2000 Arusha Peace and Reconciliation Agreement and subsequent protocols brought the civil war to an end, implemented a power-sharing deal between the Hutu, Tutsi and, to some extent, Twa,<sup>4</sup> and provided for the establishment of the Truth and Reconciliation Commission (TRC). The TRC was meant to be established by the Transitional Government and the Transitional Assembly no later than six months after they took office, but the process was delayed. In the meantime, refugees began to return to the country, seeking to recover their land and other property. The government instituted first the National Commission for the Rehabilitation of *Sinistrés* (CNRS) and then a sub-commission, the Land and Other Property Commission (CNTB), which had a mandate to assist returnees with recovering their land, in keeping with the spirit of reconciliation among the original property owners (returnees) and secondary occupants.

Many postconflict countries have adopted transitional justice as an important phase in peacebuilding. Research on the effectiveness of transitional justice in consolidating peace in African countries suggests, however, that these processes fail to deliver what they promise, especially with regard to reparations and restitution.<sup>5</sup> Specifically, land issues have been identified as a weak point in transitional justice mechanisms.<sup>6</sup>

- 1 R. Lemarchand, 'In the Shadow of Genocides Past: Can Burundi Be Pulled Back from the Brink?,' *African Arguments*, 22 January 2016, <http://africanarguments.org> (accessed 25 January 2016).
- 2 'Return and Reintegration of Burundian Refugees, Supplementary Appeal, July 2004–December 2005,' UNHCR, <https://www.unhcr.org/partners/donors/40ee8e274/return-reintegration-burundian-refugees-supplementary-appeal-july-2004.html> (Accessed 8 April 2021)
- 3 In this article, the second occupants are those that inherited land formerly belonging to refugees (the original owners).
- 4 P. Nantulya, 'Burundi: Why the Arusha Accords Are Central,' *Africa Center*, 5 August 2015, <http://africa.center.org/2015/08/burundi-why-the-arusha-accords-are-central/> (accessed 26 January 2016).
- 5 H. Ware, 'Not the Universal Remedy: The Diversity and Impact of Truth and Reconciliation Commissions in Africa' (proceedings of the *African Studies Association of Australasia and the Pacific – AFSAAP 37th Annual Conference*, Dunedin, New Zealand, 25–26 November 2014), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.687.9094&rep=rep1&type=pdf> (accessed 17 February 2016).
- 6 D. Todorovski and J. Potel, 'Exploring the Nexus Between Displacement and Land Administration: The Case of Rwanda,' *Land* 8(4) (2019): 1–15.

Burundi is dealing with a number of ‘classic’ causes of land conflict, including competition over land as a scarce commodity in a highly populated country.<sup>7</sup> From a legal perspective, security of land tenure has been weakened by the inability of the Burundian government to ensure land governance to the satisfaction of different groups in society.<sup>8</sup> Both the scarcity of land and loose land governance are due, by and large, to politically unjust decisions made in the past,<sup>9</sup> which led to illegal dispossession of private land, especially that belonging to refugees.

Van Leeuwen and Van Der Haar’s innovative research suggests that alliances and framing provide an additional and important understanding of land conflicts in Burundi.<sup>10</sup> Their analysis builds on Kalyvas’ theory of how alliances during civil war are often formed between local/private and supralocal (often political and national) actors. According to Van Leeuwen and Van Der Haar, although these actors may not have the same goals, each actor in the alliance benefits from it: the supralocal actors provide the local actors with the force they need to win a local advantage, while the supralocal actors gain local control of resources, support and information, as well as the capacity to recruit and motivate supporters. Violence is used to coerce and mobilize support.<sup>11</sup>

This article is based on action research<sup>12</sup> carried out in Nyanza-lac Commune, Makamba Province, in southern Burundi, between May and December 2017, as well as my subsequent reflections as a practitioner working on land conflicts in that region. In addition to exploring local stakeholder perspectives on the land claims process, I aim to show the positive role that dialogue can play in helping ordinary people affected by land conflicts resolve and transform these complex conflicts where the law has failed to address them. The article explains the complexities behind land restitution in Burundi and the methodology used in the research, before concluding with a presentation and analysis of the collected data.

### LAND RECLAMATION: A HARD BATTLE TO WIN

Although some occurred in the late 1970s and in 1993, most refugee returns – about 570,000 – followed the peace agreement and democratic elections that brought President Pierre Nkurunziza and the National Council for the Defense of Democracy–Forces for the Defense of Democracy (CNDD–FDD) to power.<sup>13</sup> For refugees, access to land was the major point under consideration. Refugees who

7 N.E. Jengo, ‘Resource Scarcity and Social Identity in the Political Conflicts in Burundi’ (Masters diss., Stellenbosch University, 2013).

8 B.J. Falisse and C.R. Niyonkuru, ‘Social Engineering for Reintegration: Peace Villages for the “Uprooted” Returnees in Burundi’ (paper presented at the 2014 World Bank conference on land and poverty, Washington DC, USA, 24–27 March 2014).

9 M. Van Leeuwen and G. Van Der Haar, ‘Theorizing the Land–Violent Conflict Nexus,’ *World Development* 78 (2016): 94–104.

10 Ibid., 98.

11 N.S. Kalyvas, ‘The Ontology of “Political Violence”: Action and Identity in Civil Wars,’ *Perspectives on Politics* 1(3) (2003): 475–494.

12 T. Mbazumutima, ‘Building Viable Community Peace Alliances for Land Restitution in Burundi’ (PhD diss., Durban University of Technology, 2018).

13 S. Franssen and K. Kuschminder, ‘Back to the Land: The Long-term Challenges of Refugee Return and Reintegration in Burundi,’ *new issues in Refugee Research* (2012).

decided to return to Burundi did so because they believed they would get their land back. Many refugees in exile in Tanzania, meanwhile, decided to take up the Tanzanian government's offer of naturalization because of the possibility of accessing land and other means of livelihood in that country.<sup>14</sup>

The Burundian government's first significant action to assist returnees with recovering their assets was the establishment of the CNTB in 2006, under the office of the first vice president. The CNTB team was initially composed of 23 members with a mandate to deal with all the land-related conflicts resulting from past civil conflicts.<sup>15</sup> The needs were many, and as 23 CNTB commissioners were based in the capital Bujumbura, the commission became inefficient and led many returnees to ignore its work. This was the genesis of an administrative principle to give 50 m<sup>2</sup> of their former land to returnees while they waited for the CNTB's decision, which took up to six years in some cases.<sup>16</sup>

With time, the CNTB, which was clearly not independent from the influence of the office of the first vice president,<sup>17</sup> opted unilaterally to apply the principle of dividing land into two equal pieces between the returnee and the secondary occupant – a practice that legally validated the ownership by the secondary occupants. Even in such cases, many secondary occupants decided to fight the CNTB's decision in court and, in most cases, returnees lost because they did not have the language skills, capacity and means to battle their cases through the court system. Those few returnees who went to court almost always lost their cases to secondary occupants because the court evoked the 30-year prescription of the 1986 land code.<sup>18</sup> This prescription confers the right of ownership on the person who has acquired and exploited a property for 30 years.<sup>19</sup>

The 2006 CNTB law was revised in order to address some of the challenges identified above. The new 2009 law instituted a number of changes, such as increasing the number of commissioners to 50 and creating 17 provincial delegations, which became the first instances where CNTB decisions were taken. This meant that it was possible for those who were not satisfied by a provincial decision to appeal against it at the national level.<sup>20</sup> The decisions of the CNTB at the national level could still be appealed in the Court of Justice, but they remained applicable until all the possible

14 P.J. Maniraguha, 'Challenges of Reintegrating Returning Refugees: A Case Study of Returnee Access to Land and to Basic Services in Burundi' (Master of Philosophy in Peace and Conflict Transformation, University of Tromsø, 2011), 52.

15 République du Burundi, *Commission Nationale des Terres et autres Biens: Billan d'activités (période: 2006–2011)* (2011).

16 Ibid.

17 In Burundi, this was the 1st Vice President from the opposition Union for National Progress (UPRONA) party, a party which was leading the country when the refugees' land was grabbed by the government and individuals close to the government. In such a situation it makes sense that this office was not going to facilitate the restitution principle.

18 International Refugee Rights Initiative, Rema Ministries and Social Science Research Council, *supra* n 45 at 13.

19 République du Burundi, *Rapport de l'atelier sur le thème « la CNTB et la Justice: Ensemble pour la réhabilitation des sinistrés dans leur droit de propriété et pour la réconciliation nationale* (2013).

20 B. Ntamazeze, 'Réhabilitation des sinistrés et la sécurisation foncière: Contexte général de la problématique des terres et des autres biens (Document interne)' (CNTB, 2017).

court appeals had been exhausted.<sup>21</sup> Even with the revised CNBT law, the court system continued to make judgments based on the 30-year prescription. As a result, many CNTB decisions that had restituted land to returnees and been appealed against were annulled by the court.<sup>22</sup>

On 4 January 2011, the CNTB law was revised again. This time it was removed from the opposition vice president's office and placed under the office of the president, which was intended to give the commission the political muscle needed to finally guarantee returnees' property rights. The CNTB worked hard, and many returnees were able to retrieve the totality of their land and some houses. Still, secondary occupants appealed against the CNTB's decisions and the 30-year prescription continued to be used.

In circular number 550/66/CAB/2012, addressed to senior staff in his ministry and copied to different relevant ministries, the Minister of Justice called on all staff to respect the principle of property restitution. He specifically encouraged them not to quote the 30-year prescription in judgments against refugees who could not act and protect their property against those who grabbed it during their absence.

On 31 December 2013, the CNTB law was revised once more, resulting in the establishment of the Special Court on Land and Other Property (CSTB) on 15 September 2014. The new CNTB law included significant changes. One major change was that normal jurisdictions were no longer allowed to deal with appeals against CNTB decisions, as these appeals could only be directed to the CSTB (although such an appeal would not suspend the application of the CNTB decision until the CSTB had changed it).<sup>23</sup> Another major change was that the CNTB was enabled to review cases that had been dealt with by previous commissions, as there was a general feeling that the previous commissioners had not acted in the interests of returnees.

The CSTB was created with two chambers to allow for appeals against the first chamber's decisions. The court's judgment is final and cannot be appealed, except in cases of a third-party person. The major change with the court was that it had to take decisions quickly, efficiently and based on national and international principles in order to allow returnees and other *sinistrés* (those affected by the conflict) to retrieve their property.<sup>24</sup>

The political opposition was not happy with these changes. Former Vice President and UPRONA<sup>25</sup> Member of Parliament Yves Sahinguvu, as well as Front for Democracy in Burundi–Nyakuri (FRODEBU–Nyakuri) Member of Parliament Jean Minani, proclaimed that both the CNTB and the CSTB laws were unconstitutional. UPRONA went on to attack the constitutionality of the CNTB law before the

21 Ibid.

22 S. Fransen and K. Kuschminder, *supra* n 15 at 3.

23 République du Burundi, *Loi n° 1/31 du 31 décembre 2013 portant révision de la loi n° 1/01 du 04 janvier 2011 portant missions, composition, organisation et fonctionnement de la Commission Nationale des Terres et autres Biens*.

24 République du Burundi, *Loi no 01/26 du 15 septembre 2014 portant création, organisation, composition, fonctionnement et compétence de la Cour Spéciale des Terres et autres Biens ainsi que la procédure suivie devant elle*.

25 UPRONA, now one of the opposition parties, was the party in power when the current returnees left the country in the 1970s. The then UPRONA administration was the one that redistributed most land belonging to refugees to the second occupants.

Constitutional Court. The opposition argued that the changes were not in agreement with the Arusha Accords and could increase ethnic tensions in the country. It further argued that the changes served the government's electoral repositioning ahead of the 2015 general elections.<sup>26</sup> In the end, UPRONA lost its case.

The opposition's actions soon influenced secondary occupants, especially in Buheka Nyanza-Lac, who refused to respect the CNTB's decisions and violently blocked the road against CNTB vehicles and commissioners who came to execute the decisions.<sup>27</sup> This resistance coincided with the beginning of the 2015 political crisis. Tensions were so high that the government decided to suspend the execution of around 200 decisions in the area.

In 2019, the new CNTB law allowed the CNTB to execute its decisions fully by cancelling, whenever necessary, the title deeds judged to have been 'fraudulently' given. Consequently, on 13 February 2019, the National Assembly of Burundi passed two bills relating to the functioning of the CNTB and its special court. Prior to this new legislation, the decisions of the CNTB did not imply the possibility of cancellation of property titles registered in the name of an occupant who had acquired the transfer of property rights – a decision which secondary occupants see as a legal framework for carrying out abusive property expropriation.<sup>28</sup>

Although the CNTB had the opportunity to explore alternative ways of resolving land conflicts in line with its reconciliation mandate, its approach was influenced by the win–lose court system. Furthermore, its top-down method, with politicians shaping the direction of CNTB interventions, failed to include communities as primary players in land dispute resolution and consequently ended up with less appropriation of the CNTB's conclusions by beneficiaries. It is against this background that I was motivated to work with those victimized by this system to try out dialogue as a means to address land conflicts.

## RESEARCH METHODOLOGY

Prior to setting up the action research team, I conducted a preliminary study through in-depth interviews with focus groups and individuals, exploring local stakeholder perspectives on the land claims process. The focus group discussions collected data from purposely selected respondents directly involved in land conflicts. The first focus group discussion was with eight secondary occupants who inherited refugees' land and had been asked to give the land back to returnees. The second focus group discussion was with eight returnees who had claimed the whole or a part of their land from secondary occupants. The third focus group discussion was with eight members of grassroots associations involved in community conflict resolution. These were returnees' as well as non-returnees' associations. The fourth focus group

26 P. Ngendakumana, 'Cour spéciale des Terres et autres Biens: Députés, hâtez-vous lentement!', *Iwacu* (2014), <http://www.iwacu-burundi.org/la-cour-speciale-des-terres-et-autres-biens-deputes-hatez-vous-lentement/> (accessed 4 March 2017).

27 C. Bigirimana and D. Hakizimana, 'Makamba: La Cntb, source d'insécurité?', *Iwacu* (2015), <http://www.iwacu-burundi.org/makamba-la-cntb-source-dinsecurite/> (accessed 5 March 2017).

28 DDH-Burundais, 'La Commission Nationale des Terres et autres Biens (CNTB): Un nouveau Cadre légal pour couvrir des expropriations abusives' (November 2019), Bulletin de Justice numéro 16 du 20 Novembre 2019 - SOS, <http://sostortureburundi.over-blog.com> (accessed 8 April 2021).

discussion was with eight councillors selected from all the political parties represented in the communal council of Nyanza-Lac. They were selected for being elected by the people to manage all community-related problems.

The in-depth interviews were conducted with four purposely selected authorities in order to access detailed analyses of the land problem from a policy and intervention point of view:

1. One member of parliament was selected for representing the population of Makamba and voting on laws affecting the land restitution process, and for following the actions of the government;
2. One provincial authority from the ruling CNDD–FDD party was chosen for their role in executing the government’s policies in the province of Makamba and for looking after the interests of the ruling party;
3. One member of the opposition UPRONA party working in provincial institutions was selected for their role in executing government policies and for looking after the interests of the opposition; and
4. One member of the provincial CNTB delegation was selected for being a member of the independent public body in charge of settling land conflicts.

A preliminary data analysis confirmed that, on the one hand, there is an alliance between the government, the CNTB and the returnees, which uses direct and/or indirect violence against secondary occupants, and on the other hand, there is an alliance between secondary occupants and the opposition, which uses direct and indirect violence against returnees. There was a need to reverse the trend by starting an action research team that would start a community alliance for peaceful land restitution.

The members of the action research team were identified either through my interactions with the focus groups or through recommendations from Rema Burundi, an organization I work for that has been working with these communities on land-related issues for years. All the members of the team were volunteers affected by the CNTB land restitution process. The work of the research team was also facilitated by the local administration, as we held most of our meetings in a hall owned by Nyanza-lac Commune. This was possible because I had written permission from the minister of home affairs authorizing me to carry out the research.

Action research – or participatory action research – is based on a democratic principle that brings together action and reflection, theory and practice, in a participatory and involving way. The researcher works together with those affected by a problem in order to understand it and find solutions.<sup>29</sup> The democratic nature of action research dictates that the researcher accepts the members of the action research team as co-researchers and co-implementers. They therefore participate in the decision-making process, from developing an understanding of the problem to the evaluation of the intervention.

29 E.P.M. Morales, ‘Participatory Action Research (PAR) cum Action Research (AR) in Teacher Professional Development: A Literature Review,’ *International Journal of Research in Education and Science* 2(1) (2016): 156–165.

I purposely selected 10 members for the action research team. Of the 10 members, five were returnees who had gone or were going through the process of recovering their land, while five were secondary occupants who had gone or were going through the process of giving land back to the original owners. In both cases, this research started when the land restitution process was carried out to the dissatisfaction of the members on the team.

The five secondary occupants did not have to be in direct conflict with the five returnees in the same team. Both men and women were represented, as issues of land and property reclamation affect men and women differently. Because I believed that the land conflict is highly politicized and ethicized, I took care to include members of different political and ethnic backgrounds. After the selection process, I worked with the team to understand the complexity of land-related conflicts, plan for an intervention based on dialogue, implement it and evaluate it.

A guide for dialogue sessions agreed on by the action research team helped us to collect the team's stories as told by them,<sup>30</sup> and collect the data needed to establish community peace alliances capable of addressing land conflicts as they set and implemented a community-owned peace agenda. In the process of preparing 20 dialogue sessions,<sup>31</sup> we adopted the dialogue guide as well as evaluation guides. What was interesting for this research was the contribution that informal dialogue and meetings made to the overall outcome of the intervention. Most of the time, I was only visiting the field when I had a planned activity with the action research team. They, however, continued to do things together in my absence. The evaluation demonstrated that these informal and unplanned dialogue events reinforced the planned dialogue sessions.

A review of capacity-building needs showed that the action research team needed a tool to help them carry out the necessary assessment, plan for an intervention, implement it and evaluate it. After introducing a number of planning tools to the team, we decided to use results-based management (RBM)<sup>32</sup> – *gestion axée sur les résultats* in French – because the tool combined the skills needed to go through the planning cycle and critically reflect on what we were doing.

Finally, we had the support of an advisory group made up of people with different professional backgrounds who helped us, and me individually, deal with our own biases as we undertook the research.

30 K. Etherington, 'Narrative Approaches to Case Studies' (presentation, 2013), 30, <https://www.keele.ac.uk/media/keeleuniversity/facnatsci/schpsych/documents/counselling/conference/5thannual/NarrativeApproachestoCaseStudies.pdf> (accessed 23 February 2016).

31 Sessions did not take the same amount of time – some were short and lasted for only two hours, while others lasted for up to two days.

32 The United Nations Development Group, *Result-based Management handbook* (2010: 7) defines results-based management as a management strategy by which all actors on the ground, contributing directly or indirectly to achieving a set of development results, ensure that their processes, products and services contribute to the achievement of desired results (outputs, outcomes and goals).

## RESEARCH OUTCOMES

### Preliminary Data

The focus group discussions as well as individual interviews indicated a slow and frustrating land restitution process, although different groups seemed to have different explanations as to the reason.

For returnees, the process is slow because the CNTB does not have enough power to implement the decisions they have taken. One returnee noted:

The other day the CNTB came to restore to my neighbour his land. Imagine he had all the papers that he won the case and he was hoping that he was going to get some food for his children. But the Government decided to stop the process because of security reasons.<sup>33</sup>

Secondary occupants, meanwhile, said that the process is slow because there is no fairness in the way cases are investigated. 'It is unbelievable that the CNTB has been taking for the second time cases that have been previously concluded by the same institution,'<sup>34</sup> said one interviewee. An authority from the opposition further explained:

We had discussed everything at Arusha and it was clear that the mandate of the CNTB was going to be reconciliation, not frustrating the second occupants and making happy the returnees as if they are not all Burundians. In front of such a divisive practice by the government, one would only expect resistance.<sup>35</sup>

The framing from the ruling party authorities is very different from that of the opposition. They believe that the Arusha Accords, as far as land restitution is concerned, are about supporting the *sinistrés*. One interviewee said, 'What else could a responsible government do but to stand in solidarity with these affected by the war?'<sup>36</sup> The CNTB member quotes the Dar-es-Salaam declaration on the Pact on Security, Stability and Development for the Great Lakes Region, especially the Protocol on Property Rights of Returning Persons, as well as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

Different groups mentioned how the land restitution has been politicized and marked with violence. From the very start of our interactions, returnees could not hold themselves back from speaking of the political process that led to their exile and loss of their land: 'I actually believe that the Micombero regime killed us and chased us away so that they may take our land and houses. It is unbelievable that we crossed the border and within a short time, they had divided our property.'<sup>37</sup>

33 Personal interview, returnee woman, Nyanza-Lac, Burundi, May 2017.

34 Personal interview, second occupant man, Nyanza-Lac, Burundi, May 2017.

35 Personal interview, authority from the opposition party, Makamba, Burundi, May 2017.

36 Personal interview, authority from the ruling party, Makamba, Burundi, May 2017.

37 Personal interview, returnee woman, Nyanza-Lac, Burundi, May 2017.

Councillors from the ruling party spoke of a resistance rooted in the historical injustices perpetrated by some of the current opposition leaders, who were leading the country when the land changed hands. According to one such interviewee:

It is not a secret but the opposition's manoeuvre is simple: they want to gain political mileage by making sure that we cannot find a solution to the land problem. If they support the secondary occupants, these ones will vote for them. It is also an issue of protecting themselves. These opposition politicians abused their power and distributed land which was not theirs; they actually sold it to other people and they sold houses which belonged to refugees. Now they fear that they will have to pay back all that money.<sup>38</sup>

The secondary occupants, meanwhile, indicated that the whole land restitution process was political and that the major problem was that the government was behaving as if it wanted to enact revenge for what happened in the past. 'The government should take responsibility for what the previous governments did under the principle of state continuity,' said an interviewee, adding, 'Can we now say that, in the future, another government could undo what this government is doing?'<sup>39</sup>

The same argument was given by those who received their lands from the administration in the 1970s. They noted that when you impose on people something that is oppressive, the only thing they can do is to resist:

We are not against our brothers [returnees]; they are just struggling like us. But the government is not fair on us maybe because they want the returnees to vote for them. Why should they [the government] treat us like thieves?<sup>40</sup>

Likewise, the grassroots associations, the opposition communal councillors and the opposition provincial authority went further and recalled the Arusha Accords' reference to a compensation fund. They noted that in situations where two people are fighting for ownership of same piece of land, the best way is to compensate one of them. According to an interviewee, 'We do not understand why the government does not start the compensation fund, which could actually help to solve so many problems.'<sup>41</sup>

The CNTB member and the member of parliament said that they do not think the compensation route is safe at all. Their argument rests on the fact that when the Arusha Accords mention compensation, it is with reference to refugees who would not be able to recover their land because of various circumstances, including their land being used for public benefit. They also said that 'blind compensation' would lead to impunity.

As to the question of what the community should do in order to have a property restitution process that is peaceful and fair, suggestions were fairly varied. The

38 Personal interview, ruling party Councillor, Nyanza-Lac, Burundi, May 2017.

39 Personal interview, second occupant woman, Nyanza-Lac, Burundi, May 2017.

40 Personal interview, second occupant widow, Nyanza-Lac, Burundi, May 2017.

41 Personal interview, Opposition provincial authority, Makamba, Burundi, May 2017.

grassroots associations and most of the secondary occupants took a long time to answer this question. They specifically called for a new model that is practical, fair, community-based and community-run, just as it was in the past:

The community has not been involved sufficiently. They should have prepared the minds and hearts of both the returnees and those who did not flee about the property restitution. The community and especially the *abashingantahe*<sup>42</sup> [elders] can help to settle the land conflicts as much as possible.<sup>43</sup>

However, both returnee and secondary occupant women had mixed feelings about the efficacy of community-mediated land conflict resolution. While they said they did not think that the CNTB was the best channel, they hoped that a number of issues would be sorted out before the community could take over or even help the CNTB:

I think there will be an added value in involving the community in the land restitution process. Trying it would be better as the CNTB is not helpful to us. However, I think the elders decide cases based on cultural beliefs which underestimate women. I would like special measures to be taken about this problem. Also, their [community elders'] services must be free of charge as many women have no money to buy beer to pay them.<sup>44</sup>

Some of the returnees seemed desperate. They argued that there is nothing that can be done for peaceful land restitution:

*Akari mu kanwa k'imbwa gakurwayo n'ubuhiri* [what is in the mouth of the dog is removed by the rod]. You cannot expect these people to give us back our land easily. The government must use force; otherwise nothing will happen.<sup>45</sup>

### Preliminary Data Analysis

Although many cases have been successfully settled by the CNTB, it is clear that the commission has been unable to deal with land disputes effectively. Perhaps the biggest obstacle has been the politicization of the land problem, which has pushed the commission to deal with political issues more than be a humanitarian body at the service of returnees. It appears that politicians built up expectations that ended up being difficult to meet. Both returnees and secondary occupants said they had the right of ownership of the same piece of land. In such a situation, violence becomes almost inevitable. What politicians have managed to do is dig deep into the conflict

42 In the Traditional Burundi community and even in neighbouring countries like Rwanda, there were community men and women who were above reproach (*abashingantahe* in Burundi), who were the primary human resource for community-run justice.

43 Personal interview, male member of grassroots association, Nyanza-lac, Burundi, May 2017.

44 Personal interview, second occupant widow, Nyanza-lac, Burundi, May 2017.

45 Personal interview, young returnee man, Nyanza-lac, Burundi, May 2017.

as they continue to encourage their followers to harden their positions. This has led to frustration and finally to violence of all kinds.

Furthermore, the connections between identity, citizenship and land surfaced in the research data, confirming the findings of previous studies:

The realization of citizenship for returnees is centrally contingent upon fair and effective repossession of land – and specifically family land – signifying an end to the causes of flight that broke their citizenship bond in the first place.<sup>46</sup>

Returnees often linked land and citizenship by noting that they will still be refugees as long as they do not have their land.

The research also indicates that the place of the traditional institution of *abashingantahe* remains important for the different actors, although the possibility of women's interests being sidelined by this institution, whose decisions rely heavily on tradition, was clearly highlighted.

Finally, it is clear that none of the focus group members or individual interviewees thought that an ordinary person, who is not part of the community leadership, could meaningfully contribute to the resolution of the land problem. They all saw leaders as the most important people to address the land conflict. However, in the absence of political consensus on how to do this, the question of what ordinary citizens can contribute to the peaceful resolution of land conflicts become central to the dialogue with the action research team.

### Action Research Data from Formal and Informal Dialogues

The aim of the action research team was to settle land conflicts affecting individuals in and outside the team and, based on the prospective positive outcome, to progressively build a community alliance for peaceful land restitution. The team held 20 formal dialogue sessions in a period of eight months and an unknown number of informal dialogue sessions. It also organized dialogues with the community in Nyanza-lac and information visits to stakeholders in order to explain its work.

The dialogues were built around four questions that set the baseline for the understanding of the real situation that members of the research team were going through. The first question asked how the land restitution process affected the action research team and their community. Secondary occupants said they felt insecure and that they were not listened to by the government and were accused of being criminals who grabbed land. 'I feel I am accused of having illegally acquired land, yet it is the government that gave us this land,'<sup>47</sup> said one. The returnees were overwhelmed by fear and frustrated by the whole land reclamation process. 'I have

46 International Refugee Rights Initiative, Rema Ministries and Social Science Research Council, *"Deux Personnes ne peuvent pas partager la même paire de chaussures": La citoyenneté, les terres et le retour des réfugiés au Burundi* (Kampala: IIRRI, 2009).

47 Personal interview, second occupant male, Nyanza-lac, Burundi, June 2017.

not been able to get back my land and consequently my family is living in pathetic conditions not able to know what to do,' said an interviewee. 'And my neighbours who stayed in the country hate me. They see me as an invader and I wonder why I should be seen like that!'<sup>48</sup>

When asked about who was responsible for the situation, both groups accused at least the government and the politicians, noting:

We all know that the government and the politicians of the opposition are not able to agree on the way forward so that this problem may be resolved once and for all.<sup>49</sup>

One of the secondary occupants also said:

I think we have problems with our laws and I also know that politicians do not want to revise the laws in a way that will answer the questions we have.<sup>50</sup>

The groups had different views on how to deal with the problem. Seven of the 10 members of the action research team did not see any way out of their difficult situation. One thought of going into business as accessing land was so difficult; another called for the start of the compensation fund, and still another hoped for a way back to Tanzania, saying, 'I was born in Tanzania. Why can't the government give us papers and allow us to go back to Tanzania?'<sup>51</sup> The worrying situation, however, was a tendency to form resistance movements: 'We have come together, as secondary occupants, in order to protect one another from this government, which is against our interests.'<sup>52</sup>

After some discussion, the action research team was optimistic that dialogues would create a learning environment where team members would be empowered themselves and thereafter empower the community to settle land cases peacefully. After a planning phase, which took a number of sessions, the team members started to share their stories and actively listen to one another. Active listening is when individuals use their own words to clarify what another has said in a way that shows concern for understanding both the person and their situation.<sup>53</sup> Listening is important because it:

brings about changes in peoples' attitudes toward themselves and others; it also brings about changes in their basic values and personal philosophy. People who have been listened to in this new and special way become more emotionally mature, more open to their experiences, less defensive, more democratic, and less authoritarian.<sup>54</sup>

48 Personal interview, returnee man, Nyanza-lac, Burundi, June 2017.

49 Personal interview, returnee man, Nyanza-lac, Burundi, June 2017.

50 Personal interview, second occupant man, Nyanza-lac, Burundi, June 2017.

51 Personal interview, returnee man, Nyanza-lac, Burundi, June 2017.

52 Personal interview, second occupant man, Nyanza-lac, Burundi, June 2017.

53 T. Gordon, *Teacher Effectiveness Training*, 1st revised ed. (New York: Three Rivers Press, 2003).

54 C. Rogers and E.R. Farson, 'Active Listening,' Excerpt from 1957 article, Chicago (University of Chicago Industrial Relations Center) (25 PP.) [http://files.teachingjedi.webnode.com/200000004-6f61f705bf/ActiveListening\\_RogersFarson.pdf](http://files.teachingjedi.webnode.com/200000004-6f61f705bf/ActiveListening_RogersFarson.pdf) (accessed 3 May 2021).

Story sharing and listening are not new to the African context, nor to the Burundian one for that matter. Burundians educate one another and create new understanding through stories. Parents and grandparents educate their children and grandchildren through stories shared as they sit around the fire waiting for dinner. In fact, ‘story sharing can enable someone to speak their truth for the first time and to recognize the pain with which they have been living.’<sup>55</sup>

The returnees noted that they feel dehumanized for not being able to access their land. They blamed themselves and the government for bringing them to Burundi. Some felt traumatized by the process, while one hoped and prayed for a miracle:

It will take God’s miracle for me to get back my land. I have tried everything possible for the CNTB to decide on my case and it has taken 10 years without any decision being taken.<sup>56</sup>

Things were not that different for the secondary occupants. They feared a future without land and the investments made on the land. They identified themselves with the land so much that it felt impossible for them to give it away. As one noted:

My father died, leaving me that land which was given to him by the government and I got married on that same land. This is the only home I know. How do I give it to this other family who is claiming it is theirs? After 42 years on this land, how else can you tell me it is not mine?<sup>57</sup>

After the returnees and the secondary occupants told their personal stories, there was a discussion, and it was clear that the team had started to have a shared story of suffering and started seeing the urgency of looking for durable and practical solutions. A common understanding started to come out. First, the team realized that the conflict is not just between the original landowner and the secondary owner: ‘Of course we have those who grabbed land, but it is important to realize that many current landowners are innocent – not land grabbers. They are victims too, like us.’<sup>58</sup> Second, the team acknowledged that every conflict is unique and must be treated in a unique way:

I think there are many more options than just sharing land or taking the whole of it! Compensation has not been explored enough and it is possible for people to agree on what to give out and what to stay with.<sup>59</sup>

Third, the team started to understand that the degree of vulnerability for each group is not the same, as returnees struggle more than secondary occupants: ‘Surely these people [returnees] have suffered most. Theirs is a daily struggle to put food on the

55 K. Newell-Jones and R. Crowther, *Storytelling: A Tool for Promoting Peace and Literacy* (London: Feed the Minds, 2010).

56 Personal interview, returnee man, Nyanza-lac, Burundi, July 2017.

57 Personal interview, second occupant man, Nyanza-lac, Burundi, July 2017.

58 Personal interview, returnee man, Nyanza-lac, Burundi, July 2017.

59 Personal interview, second occupant man, Nyanza-lac, Burundi, July 2017.

table.<sup>60</sup> Fourth, they recognized that fear, if not dealt with, leads to frustration and frustration leads to violence. As one team member said, 'It is when somebody fears that their neighbour might attack them that they start preparing to counterattack them or to attack ahead.'<sup>61</sup> Fifth, the team members noted that politicians are making the issues worse by supporting groups against one another: 'I am blaming them both, the opposition and the government, for continuously dividing us just for their own interests. They cannot sustain what they claim to offer us.'<sup>62</sup>

Finally, the team argued that the consequences of land conflicts are affecting the members far beyond what they would have hoped to get from the land they were fighting for:

Surely, I now cannot sleep and I have been forced to leave my house and come to rent a small house simply because of land! What value does land have so that I may even put my life at risk?<sup>63</sup>

Consequently, they noted, everybody lived in fear and trauma:

We all must find a way out of this mess. We leave in constant fear. The fear of being attacked, the fear of losing our property, and so on, as well as the traumatic situation which goes with the property restitution.<sup>64</sup>

During the subsequent dialogue sessions, the action research team reviewed the informal dialogue, which happened at two levels. The first level was between the team members themselves, while the second level was between the team members and the other parties in the land conflicts. Within the team, as members got to know one another, they met in smaller groups in their homes, at church, in the pub, at the marketplace, and continued to discuss. The beauty of informal sharing is that these discussions did not need to be just on the land conflicts, but could be on other issues as well.

First, the team members were able to bond and begin to trust one another:

I was really struggling to trust my brother and sister secondary occupants. But after realizing that we go to the same church, I made sure I talked to them after church. A few weeks later one of them invited me and we went for lunch in their house. Now we visit freely each other and I feel I have a real friend.<sup>65</sup>

Second, the members were able to introduce each other to their families and suggest the idea of building a community peace alliance for land restitution to the rest of the community. As they shared how they came to know one another with their family members and friends, they explored new common ground between them

60 Personal interview, second occupant woman, Nyanza-lac, Burundi, July 2017.

61 Personal interview, second occupant man, Nyanza-lac, Burundi, July 2017.

62 Personal interview, second occupant woman, Nyanza-lac, Burundi, July 2017.

63 Personal interview, second occupant woman, Nyanza-lac, Burundi, July 2017.

64 Personal interview, returnee woman, Nyanza-lac, Burundi, July 2017.

65 Personal interview, returnee man, Nyanza-lac, Burundi, October 2017.

in a friendly way. In this way, the peace agenda gradually became known: 'We are not just friends between us but even our families now have become close in the process.'<sup>66</sup>

Third, the team members prepared and carried out joint missions in order to reach out to their respective opponents in the land conflicts. As a united team, they decided to use their social connections in the different opponent groups to facilitate negotiated settlements:

When we agreed that members of the action team should make the first move and go to talk to the people they have land conflict with, it was going to be very difficult for me, as a returnee woman who does not even speak Kirundi well, to talk to this man who had been very arrogant in the past. However, my friend here [she points to one of the second occupant men] was able to talk to him ahead of me. And since they are good friends he mediated the process, and we are now able to understand each other and have reached an agreement which we will present to the CNTB.<sup>67</sup>

Fourth, the team organized joint visits to explain the vision of the community peace alliance for land restitution to community leaders, the communal administration, the CNTB, the judiciary and the police in Nyanza-Lac. They sought to garner support for the idea from all the relevant stakeholders. Finally, the team members were able to discover that they can share the skills they have among them:

I was building my house in August; little did I know that my friend here is a builder. As we shared a beer around a table, he told me that he builds houses and that this is the way he had been earning his bread as he waited to recover his land. So, I quickly asked him to build my house which he did very well. Now my other friend has also asked him to build him a kitchen.<sup>68</sup>

After eight months of structured and informal dialogues, 15 cases were resolved and the CNTB helped to formalize the dialogue agreements. Nine of the 15 cases involved one or two members of the action research team, while the rest involved only people in the wider community. Consequently, the dialogue model was adopted by different stakeholders, including the land commission, as an alternative, peaceful way to resolve land conflicts. At the end, the action team sat down to evaluate the intervention.

### Evaluation of Dialogues

The action research team agreed that the added value of dialogue is not that it comes up with 'miraculous' answers to their problems but that it gives all who go through the process time to explain their grievances, a sense of being listened to and access

66 Personal interview, second occupant man, Nyanza-lac, Burundi, October 2017.

67 Personal interview, returnee woman, Nyanza-lac, Burundi, October 2017.

68 Personal interview, second occupant man, Nyanza-lac, Burundi, October 2017.

to answers that are reasonable given the circumstances surrounding the conflicts. One participant said:

I feel like I was listened to and this is what I was always looking forward to. I am happy to be able to secure my investments on his [the returnee's] land. I know this was impossible with the CNTB decision.<sup>69</sup>

The negotiated process enables satisfaction on all sides. As they feel the solution is not imposed, participants are more satisfied by the conclusions and it is more likely that a peaceful climate will reign between the parties. The action research team felt that dialogue can achieve the idea of common ground and a sense of win–win. While imposed decisions could eventually lead to the same conclusion, the feeling by the parties is often that of lose–lose or lose–win. The sense of win–win is possible because dialogue significantly reduces ignorance, suspicion and prejudice as it increases understanding.<sup>70</sup>

The team also concluded that dialogue is less costly in terms of financial and human resources than the CNTB and CSTB processes. Without negating the role of the CNTB and CSTB, especially in settling some of the cases of confiscated land and other property conflicts that need serious investigation, the action research team felt that dialogue and community arbitration is more viable because it uses available community human resources and it is done free of charge. According to a participant:

I was wondering how I would go to Bujumbura after many visits to Makamba which had not helped me. I used money for transport while I am really struggling to even get food for my children . . . As a widow, I was almost at the point of giving up.<sup>71</sup>

The team further argued that dialogue pays dividends in terms of time. In less than a year, 15 cases were successfully concluded, while most cases take considerably longer (up to 10 years) with the CNTB and CSTB. What makes dialogue unique is that cases of appeal are less likely to happen in a context where solutions have been negotiated and agreed upon.

The team noted that dialogue and mediation are more ethical than other forms of land conflict resolution. Cases of corruption are less likely in the context of dialogue than in the situation of the land commission and special court. Agreements in dialogue emerge from consensus, therefore no party is compelled to abide by agreements they feel to have not been properly negotiated: ‘With dialogue, it is even impossible to have corruption.’<sup>72</sup> Further, the team recognized that dialogue resolves other land-related conflicts, as it addresses relationship issues as well.

69 Personal interview, second occupant man, Nyanza-lac, Burundi, December 2017.

70 O. Ramsbotham, H. Miall and T. Woodhouse, *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts*, 3rd ed. (Cambridge: Polity, 2011), 228.

71 Personal interview, returnee woman, Nyanza-Lac, Burundi, December 2017.

72 Personal interview, second occupant woman, Nyanza-Lac, Burundi, December 2017.

Finally, the team said that dialogue empowered them. As a capacity-building tool, it helped the team members to discover their power to understand their problems and resolve them. It also helped them to empower other members of the community as they went beyond mere exchange of information to the negotiation and co-creation of new and shared meaning.<sup>73</sup> The dialogue process thus gave rise to the realization that power is with ordinary people in the community and not just leaders. Participants discovered the capacity to use that power in a conflict-transformative way. This discovery of the social capital to address social issues is the major contribution that the dialogue process brought to the team and to their communities.<sup>74</sup>

In discussing the factors that contributed to the successes or failures of the intervention, the team noted, first, that an unbiased understanding of the other is a prerequisite to the peaceful settlement of land disputes. The team was unanimous that one of the contributions of the dialogue was mutual understanding. This understanding led to a change of position for the parties and eventually to a change of attitude towards one another:

It was after I understood that the second occupant of my land was risking losing his entire life's investment that I thought of looking for common ground. He gave me other land and part of my original land so that he could keep his houses and animals.<sup>75</sup>

They noted, second, that the parties would strike a deal if they realized that peace has more to offer than just getting a piece of land. It was clear that fear of violence played a traumatic role in the lives of the parties, to the extent that they were hoping for a better solution:

When he agreed to give me the whole land, and I realized that he remained with a small piece of land, I was very happy but I knew I needed to live with an equally happy man. I thought that I should give him a piece of land in return so that we may celebrate peace together.<sup>76</sup>

Third, the action research team noticed that there was a correlation between the nature of the land in dispute and a peaceful settlement. Whenever the land case involved family land – that is, land inherited from past generations of the family – it was almost impossible to reach an agreement unless it was total restitution. There was a strong feeling that an ‘outsider’ could not be allowed to have a share in land with a group of people of the same blood. The whole extended family tended to feel that they had a moral obligation to defend the land of their ancestors.

73 A. Crane and S. Livesey, ‘Are You Talking To Me? Stakeholder Communication and the Risks and Rewards of Dialogue,’ in *Unfolding Stakeholder Thinking 2: Relationships, Communication, Reporting and Performance*, In J. Andriof, S. Waddock, S. Rahman and B. Husted (eds.) (Sheffield: Greenleaf, 2003), 18.

74 L. Huyse, ‘Tradition-based Justice and Reconciliation After Violent Conflict: Learning from African Experiences’ (proceedings of the IDEA Conference, Brussels, Belgium, 2008).

75 Personal interview, returnee man, Nyanza-lac, Burundi, December 2017.

76 Personal interview, returnee man, Nyanza-lac, Burundi, December 2017.

Fourth, the team established that the political affiliation of participants did not influence the outcome of the negotiation. This was surprising, as I had thought the political differences of those in the team and communities would be a major hindrance to the success of the intervention. Indeed, it appeared from the preliminary research that there were alliances forged between politicians and parties to land conflicts. The new understanding brought about by the exchange of ideas during the various dialogue sessions led the action research team to understand that they are all victims and that politicians were using land conflicts for personal advantage.

Fifth, ethnic affiliation was similar to political affiliation. My preliminary research indicated that ethnicity was a major factor to take into consideration, even during the sampling of the action team. However, our observations led the team to conclude that there is no correlation between ethnic belonging and the success or failure of any of the agreements.

Finally, the team found that the double vulnerability of women played a role in creating new understanding within the team, to the extent that a special effort was made to assist the four women in the team to achieve a settlement. Only two of the cases were successful, however. Given how hard the team worked to assist the women, the fact that they did not succeed in half the cases is an indication that women, and widows in particular, find it difficult to claim property.

#### PERSONAL REFLECTIONS AND CONCLUSION

This research has led me to believe in action research as a way to bring together practice and reflection in a way that is faithful both to rigorous academic research and to community transformation. The research process contributed to peacebuilding in Burundi by highlighting the place of ordinary people in the transitional justice agenda in general and in property restitution in particular. Involving ordinary people in property restitution in Nyanza-Lac built their self-esteem and their capacity to achieve a common understanding of their problems and to plan and implement suitable solutions, as well as to constructively reflect on their intervention. It is therefore important to highlight here that transitional justice is not just the domain of experts.

In my view, dialogue is especially helpful when the people in conflict can see its immediate fruits, such as owning land for returnees and securing investments for secondary occupants. It is even more helpful when the settlements that result from dialogue offer the promise of long-term peace. What the CNTB cannot offer is a sense of inner peace from knowing that the other party in the conflict is satisfied by the decision. Our research found that even those who received their land remained in constant fear of what the other party could do in retaliation. The capacity that dialogue has for convincing parties to embark on a journey of building broken relationships cannot be contested. Relationship building, in my view, is key to peacebuilding, and there is little chance for transitional justice institutions like the CNTB and CSTB to provide this service.

Perhaps the most valuable aspect of dialogue is its capacity to lead to innovative solutions rather than pre-set ones. Who would imagine that, after negotiations, the returnee who had acquired his or her entire piece of land would think of donating

part of it to the secondary occupant in recognition of his or her cooperation during the negotiations?

Action research can be overwhelming, as it requires a great many decisions to be made, especially as one works with people who have real needs that require solutions. My experience proved the advisory team to be invaluable. The advisory team helped us as the action research team to take wise decisions and especially to avoid harming the communities with which we were working. It helped us at different stages, but I would like particularly to mention their assistance as they invited us to think about the exit strategy from the early stages of the intervention. They went on to help us establish strategic partnerships capable of managing the different aspects of the intervention after our time in the field.

In my opinion, dialogue achieved peaceful property restitution where other land restitution mechanisms failed. It is therefore both reasonable and practical for transitional justice processes to include ordinary people in their endeavour to reconstruct peaceful postconflict communities.