



Extracted from *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*

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CHAPTER 6

CHAPTER 6

The institution of *bashingantahe* in Burundi

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1. The Burundian conflict

1.1. *The beginning of a bloody conflict*

Burundi is a small country (27,834 km²) that has been independent since 1962. An administrative system of a dynastic monarchy had been in place for several centuries before it was colonized by Germany (1896–1912) and Belgium (1912–62). It is situated in the Great Lakes region of Africa with Rwanda to the north, the Democratic Republic of the Congo to the west, and Tanzania to the south and east. With agriculture accounting for 90 per cent of the economy and with one of the highest population densities in Africa (about 290 inhabitants/km²), the country continues to experience huge development difficulties. Its population consists of four groups that are usually qualified as ethnic groups (*ubwoko*)—the Bahutu, the Batutsi, the Baganwa and the Batwa. These ethnic groups speak the same language, share the same culture and history, and live in the same territory.

Despite this linguistic and cultural commonality, over four decades Burundi has experienced different violent conflicts of an ethnic and political nature. Since independence in 1962 it has gone through cycles of violence based on the issue of access to and retention of power, involving the manipulation and exploitation of the ethnic groups by the political elite in their power struggles.

The Kingdom of Burundi, a former German colony, was placed under the mandate of Belgium by the League of Nations in 1919. The ethnic cleavages which were to tear Burundi apart did not exist under the monarchy, which had developed a considerable degree of stability. The monarchy was a highly complex system of government with an intelligent share of ethnic and clan elements in its working machinery.

*The original French version of this chapter can be found at www.idea.int/rtn

Immediately prior to independence, Burundi experienced intense political upheaval. There were at least 26 political parties, some of which, like the Union Pour le Progrès National (Uprona), were fighting for immediate independence while others, supported by the colonial power Belgium, were in no hurry to achieve this. Uprona, a party which succeeded in mobilizing the Bahutu and Batutsi under the leadership of Prince Louis Rwagasore, and which led the country to independence, gradually came to be dominated by the Batutsi and remained in power from independence, obtained on 1 July 1962, until the advent of multipartyism, heralded by the electoral victory of the Bahutu-dominated Front pour la démocratie au Burundi (Frodebu) in 1993.

On 13 October 1961, Prince Louis Rwagasore, the hero of independence, was assassinated. On 15 January 1965 Prime Minister Pierre Ngendandumwe, a Muhutu and a close companion of the prince was also assassinated. After the assassination of these two great political and nationalist figures the country entered into a period of political instability and ethnic hatred. The enfeebled monarchy was swept away by a military coup in 1966, led by Captain Michel Micombero, who was deposed by Colonel Jean Baptiste Bagaza in 1976. Bagaza was evicted by Pierre Buyoya in 1987.

The year 1972 saw the outbreak of hostilities and inter-ethnic massacres between the Bahutu and the Batutsi on a national scale. By their very intensity and the trauma they left in the minds of Burundians, many of whom—especially Hutu intellectuals killed or forced into exile—fell victim, the tragic events of that year were a key factor in the recent history of Burundi. The authorities' management of the 1972 crisis was catastrophic. The great democratic impetus which had led to independence was drowned in blood after just a few years. Attempts to overthrow the government and other real or imaginary plots widened the chasm between the Bahutu and the Batutsi. For three decades the country was governed by military rulers from the same province succeeding each other via military coups and depending entirely on the only political party, Uprona, to rule the country.

1.2. August 1988: a half-hearted call for democracy

22 August 1988 marked a turning point in Burundi's recent history. After a series of massacres in the north, a group of Hutu intellectuals addressed an open letter to President Buyoya in which they expressed the desire to see Bahutu included in the defence and political leadership of the party. This letter had a significant impact both within and outside Burundi. As a result Buyoya initiated a so-called national unity policy. He appointed a Hutu prime minister and the make-up of his government became balanced in terms of ethnic representation. 'National unity' was symbolized in many different ways. In February 1991 a 'unity charter' was adopted and a 'unity anthem' composed. A 'government of unity' was the talk of the day, a 'unity monument' was erected on the heights of the city of Bujumbura, a 'unity flag' was hoisted beside the national flag, and even 'unity caps' went on sale. For the first time Burundians started publicly to debate the issue of ethnicity. Thanks to this policy of openness, hitherto taboo issues related to ethnicity were openly tackled (if sometimes clumsily); the social atmosphere seemed to

become less tense and the democratic process began to move forward. Despite sometimes justified criticism, it cannot be denied that this policy defused ethnic tensions to some extent, even if only superficially. But, despite the new policy of openness, inter-ethnic antagonisms remained.

1.3. Burundi in the wind of democratization

The wind of democratization that was blowing through Africa in the early 1990s after the 16th Franco-African summit forced Pierre Buyoya to initiate a democratization process in Burundi. The country acquired a new constitution based on multipartyism and freedom of the press.

In June 1993 Burundians went to the polls to elect a president. Three groups contested the election—Uprona, Frodebu and the Parti pour la Réconciliation du Peuple (PRP), a relatively new minority party with no apparent ethnic dominance, but composed mainly of Baganwa and Batutsi. Frodebu won the election and for the first time in the country's history a Muhutu, Melchior Ndadaye, took office as president of the republic. The whole world hailed this alternation of power and the country's new democratic experiment. In the event, the 'democracy in brackets' lasted only three months. Ndadaye, together with some of his close associates, was assassinated by Batutsi soldiers in October 1993, triggering large-scale ethnic massacres. Civilians, mainly Batutsi, were killed on the basis of their ethnic identity, resulting in close to 300,000 deaths, while 800,000 were displaced or forced to seek refuge in or outside the country.

Burundi experienced massive destruction of its socio-economic infrastructure and a crisis of moral values, on the one hand, and, on the other, the organization of an armed struggle by two Hutu armed movements—the Front National de Libération-Parti pour la Libération du Peuple Hutu (FNL-Palipehutu), and the Forces pour la défense de la Démocratie (FDD), the armed wing of the Conseil National pour la défense de la démocratie (CNDD).

1.4. Civil war and negotiations

It was in 1998 that Burundi started to engage in negotiations in an attempt to stop the war. Major Pierre Buyoya, who had taken power again in July 1996 in what he called 'a coup d'état unlike any other' and an 'initiative to save the country', began talks with the Hutu rebel army, which was increasingly gaining control on the ground. However, his coup was not welcomed by the international community. A total embargo was imposed, the effects of which worsened a situation that was already critical following years of political instability, growing insecurity and worsening socio-economic conditions.

For the purpose of negotiations the first meetings were secret and were held in Rome under the auspices of the religious community of San Egidio. Negotiations became

official in Tanzania with the involvement of former Tanzanian President Julius Nyerere, and finally of Nelson Mandela. The Arusha Peace and Reconciliation Agreement was signed on 28 August 2000. Under the terms of the agreement a transitional government was established, to be led by Buyoya, a Mututsi, for an initial period of 18 months, and by Domitien Ndayizeye, a Muhutu, for a second period of 18 months. As a follow-up to this process the United Nations Operation in Burundi (Opération des Nations Unies au Burundi, ONUB) was established on Burundian territory on 1 June 2004. It completed its mandate on 31 December 2006, with the creation of the United Nations Integrated Office in Burundi (Bureau Intégré des Nations Unies au Burundi, BINUB).

This mission was itself a response to the request of Burundian political stakeholders who, under the Arusha Agreement, protocol V, articles 7 and 8, and in line with the respective ceasefire agreements, spelled out the roles of the international community and the United Nations (UN) in terms of ensuring the implementation of the agreement.

From November 2003, after the signing of the Pretoria Agreement on power sharing between the government and the CNDD-FDD rebel movement, the security situation greatly improved, despite the absence of the FNL-Palipehutu, which finally joined the peace process in September 2006.

A series of reforms envisaged by the different peace agreements are currently being implemented, notably in the defence and security structures and the judicial system. Significant progress has undoubtedly been made both in terms of peace and security in Burundi and in the areas of democratization of the state institutions, the reform and reorganization of the defence and security forces, and the voluntary return of repatriated persons; but the situation remains precarious.

1.5. Stages in the development of transitional justice in Burundi

The different transitional justice mechanisms suggested for Burundi have changed several times since the August 2000 Arusha Agreement. That agreement provided for the establishment of a national truth and reconciliation commission (commission nationale vérité réconciliation, CNVR), and two international mechanisms—an international judicial commission of inquiry and an international criminal tribunal. The international judicial commission of inquiry and the CNVR would be mandated to investigate the cycles of violence that have plagued Burundi since independence in 1962, while the international criminal tribunal was to punish the guilty in cases where the commission of inquiry confirmed the existence of evidence of crimes of genocide, crimes against humanity or war crimes.

Although it was responsible for putting these mechanisms in place, the transitional government requested the UN secretary-general to set up the international judicial commission of inquiry on 24 July 2002.

Following a mission to Burundi, in May 2004 the UN assistant secretary-general, Tuliameni Kalomoh, submitted his report to the Security Council (the Kalomoh Report). It recommended that a national truth and reconciliation commission be established and that a special chamber be created within Burundi's judicial structure. This solution was intended to avoid duplication of functions between the CNVR and an international judicial commission of inquiry and to enable the Burundian judicial system to benefit from the international support expected for special chambers.

In its Resolution 1606 of 2005 the UN Security Council requested the secretary-general to start negotiations with the government, and to consult the Burundi people. The government formed a delegation of nine national experts with the task of negotiating the establishment of the proposed dual transitional justice mechanism. The first round of negotiations between the government and the UN delegation took place in Bujumbura in March 2006 on the basis of a memorandum (of 26 March 2006) put together by the government delegation. They reached several agreements but there was also much disagreement on some fundamental aspects of the proposed dual mechanism, namely the organization of broadly based consultations, the issue of amnesty, and the relationship between the proposed CNVR and the special tribunal.

In its Resolution 1716 (2006), the UN Security Council set up BINUB to replace ONUB and mandated it among other things to support the government in establishing transitional justice mechanisms for the promotion and protection of human rights and for the fight against impunity.

It should be noted that institutions that resulted from democratic elections are now operating at all levels, with a mandate of five years. However, there are still major challenges, particularly those facing the justice sector—impunity for offences and crimes; corruption in the judicial structures and other state services; the general propensity for popular revenge; the problem of truth; forgiveness and reconciliation; property problems; the rehabilitation of victims of war, and so on.

This (by no means exhaustive) catalogue of issues that must be addressed in order to restore the rule of law in Burundi calls for the involvement of all legitimate national institutions. After the period of violence the government, which has tackled the situation head-on, is struggling with the question of how to manage a past that is characterized by serious human rights violations in order to avoid the past negatively influencing the future, thereby perpetuating the cycle of violence. It is a question of analysing how the current system of government can respond to the imperative of upholding justice after a long period of impunity, by relying on both formal and informal judicial systems—such as the institution of *bashingantabe*.

The *bashingantabe* have always played an important role not only in traditional society but also during the crises that have regularly shaken the country. They demonstrated their influence particularly during the massacres of October 1993, when they intervened,

interposing themselves as a barrier between the warring parties and attempting to save many lives. In areas where a strong and operational body of *bashingantabe* existed, the damage in terms of loss of human lives was relatively limited and the Bahutu and Batutsi remained united thanks to these elders. Who are they? How do they operate? And how can they help Burundians to handle both the country's difficult past and the challenging task of promoting justice, democracy, peace and security today?

2. Traditional justice mechanism: the institution of *bashingantabe*

2.1. Description of the institution

2.1.1. The concept

In current usage, the term *bashingantabe* (singular *umushingantabe*) refers to men of integrity who are responsible for settling conflicts at all levels, from the top of the hill to the courts of kings. Formed from a combination of a root verb, *gushinga* (to plant, to bolt down), and the noun *intabe* (staff of justice), the word literally means 'the one who bolts down the law'. These men are referred to in this way because of the staff of justice with which they hit the ground rhythmically and in turns to invoke the wisdom of the ancestors buried beneath and to highlight the power of the judgements they give when arbitrating on conflicts. The noun *intabe* is used metonymically and symbolically to refer to equity and justice. F. M. Rodegem in his Rundi–French dictionary of 1970 translates the word *umushingantabe* as 'magistrate, eminent personality, councillor, umpire, assessor, judge, the one invested with judicial authority and who wields the rod (*intabe*) symbol of his authority', and for Ntabona (1999) the term *umushingantabe* refers to 'A man responsible for good order, for tranquility, for truth and peace in his environment. And this is not by virtue of some conferred administrative authority, but by his very being, by the quality of his lifestyle recognized by the society and for which it confers such powers on him'.

2.1.2. The origin and selection of the *bashingantabe*

According to legend, the institution of *bashingantabe* goes back to the late 17th century and a certain Ngoma ya Sacega, a wise elder famous for his judgements rendered during the reign of the first king, Ntare Rushatsi, mythical founder of the Burundian monarchy. This indicates that the origin of the institution is essentially judicial. It is made up of elders, people of irreproachable morality, and has played an important role for many decades, particularly during the era of the monarchy. It presided over the judicial organization of the country at all levels and played the role of check and balance on power. In a sense the *bashingantabe* constituted a peaceful and independent authority that contained, limited and controlled the power of the king and chiefs, while also ensuring that arbitrary judgement and lack of justice were curbed.

It is this function of the institution that constitutes its main strength—a strength that is also seen in the selection of the *bashingantahe*. To be selected, as research carried out countrywide has confirmed, a candidate must exemplify certain essential qualities such as experience and wisdom; a high regard and love for truth; a sense of honour and dignity; a love of work and the ability to provide for the needs of others; a highly developed sense of justice and fairness; a sense of the common good and social responsibility; and sobriety and balance in speech and action. Other moral and intellectual qualities are also needed, such as discretion, a keen intelligence, self-respect and respect for others, a spirit of temperance, courage and dedication. These qualities guarantee the moral integrity and authority of the *bashingantahe* and are the basic guiding principles for their behaviour and their performance of their duties. By tradition, only men are admitted to this noble institution.

The ancient institution of *bashingantahe* in Burundi is made up of elders, people of irreproachable morality. It presided over the judicial organization of the country at all levels and played the role of check and balance on power, ensuring that arbitrary judgement and lack of justice were curbed.

2.1.3. *The investiture of bashingantahe and the meaning of the oath*

The candidate for the institution of *bashingantahe* has to go through an initiation consisting of several stages during which he is observed, monitored and guided by the people around him, especially his mentor, whose role is to initiate and prepare the aspirant for his future duties (see box 9). The oath of loyalty represents not only the covenant between the people and the newly invested *umushingantahe* but also the commitment to fulfil the obligations that flow from it. It is an oath that integrates and fulfils the socio-political functions of inclusion and commitment.

Box 9: The investiture of an *umushingantahe* in Burundi

1. The aspirant at the beginning of his course. The candidate shows his desire to become part of the body of *bashingantahe*.
2. The first level. The candidate has to expressly request to be initiated. From then on he is carefully observed during his public speeches, in his behaviour and in his attitudes during official ceremonies at which he is assigned certain responsibilities, especially in relation to the sharing of drinks among the uninitiated men. The candidate is also authorized to participate in debates and to take the initiative of reconciling parties in conflict or to arbitrate in different cases.
3. The candidate awaiting investiture. A mentor monitors the candidate more closely, lavishing advice on him, initiating him into a deep knowledge of customs and skills of dispute settlement, which is the knowledge and information that he needs in order to perform his future duties.
4. The investiture. With the approval of his mentor the aspirant is accepted at an official investiture which is carried out during a grand festival that represents a ceremony of confirmation, affiliation and

elevation to the ranks of the *bashingantahe*. This ceremony is of great importance as it represents the candidate's strong commitment to this new status. The speeches delivered on this occasion deeply reflect the commitments and obligations to which the *umushingantahe* subscribes. The aspirant's membership of the *bashingantahe* is further concretized by the staff of justice that he receives and the oath he swears during the investiture.

2.1.4. *The original structure and operation of the institution*

Since the era of the monarchy, at all levels, every authority has had a body of *bashingantahe* which helped and advised it while playing the role of check and balance. Here, the structure is informal and it has a number of missions. On the other hand, in terms of jurisdiction, the institution has a formal structure, starting from family arbitration, continuing through local-level arbitration to arbitration of the deputy chief and from there to the arbitration of the chief and then the king's court. At these different levels of jurisdiction the *bashingantahe* settled various kinds of disputes relating to matters of succession and the sharing of property (land, livestock), family and social quarrels, neighbourhood conflicts or disputes on the hills, and so on. More important cases (murder or the theft of cattle) were resolved at the level of the tribunals of chiefs, while the tribunal of the king (*mwami*) handled disputes between higher chiefs and more serious cases, especially acts of *lèse-majesté* and cases calling for capital punishment. The institution worked according to a strict code with well-defined missions.

2.1.5. *Basic missions and principles of the institution*

The institution is assigned three essential missions—mediation, reconciliation and arbitration.

Mediation. By tradition, an *umushingantahe* was appointed to help the parties to a dispute to resolve their differences. Only if his efforts failed was the Council of *Bashingantahe* called in to find a compromise solution through conciliation. It should be noted here that conciliation is not exclusively linked to the resolution of a conflict; it is part and parcel of Burundian culture and is practised in other social settings such as the organization of ceremonies like marriages or even in rituals.

Conciliation. When a conflict or a dispute breaks out among members of the community, especially where members of the same family or neighbours are engaged in a dispute, the *bashingantahe* try to bring the parties to a peaceful resolution by means of counselling and proposing mutual forgiveness and reconciliation instead of claims for damages. In this context, conciliation is perceived as a necessary preliminary to all court action and consists of finding a common basis of understanding between the parties involved, with the focus being primarily on reconciliation, peacekeeping, social cohesion and harmony.

Arbitration. This complements and prolongs conciliation if the latter proves not to be effective. A judgement is handed down by the *bashingantabe*, who are considered in situations of this kind as real judges whose decisions are binding on the parties. The success of conciliation and arbitration requires mutual understanding and a willingness on the part of the complainants to put an end to their differences, as well as the presumed neutrality of the arbiter, who is not from the side of any of the parties. Depending on the nature of the conflict, a party that is not satisfied with the outcome of the arbitration can take the matter to the upper hierarchy right up to the arbitration of the king. Today, the party who feels aggrieved goes to the courts, presenting a copy of the official minutes of the judgements pronounced by the *bashingantabe* (e.g. in cases of conflicts over land property).

The institution of *bashingantabe* has three essential missions—mediation, reconciliation and arbitration.

2.1.6. The driving principles of the institution

These principles are reflected in the commitments undertaken by the *bashingantabe* during their investiture, and the leitmotif that guides their actions. They are as follows.

Neutrality and impartiality. These principles consist of giving equal treatment to all parties involved, a commitment not to be partisan in conflicts, which does not in any sense imply inaction or indecision. The *bashingantabe* have to listen to everyone, search for the truth and act with wisdom without allowing themselves to be influenced or take sides in any situation.

Collegiality. This principle has been given the force of law by Burundian tradition, which rejects the primacy of individual judgement in the course of a trial. Through regular consensus building, which is the mode of action of the *bashingantabe*, impartial judgements are handed down after a collegial deliberation that is free of any indiscretion. This method (see e.g. Ntahombaye and Manirakiza 1997b) is of great value in the quest to reveal the truth in a way that is consistent with objectivity and a basis in a verifiable reality that are fundamental to every sound system of justice. This collegiality is the basis of the official credibility of the judgements made by the *bashingantabe*—a view confirmed by the fact that currently over 70 per cent of them are confirmed by the resident tribunals (*tribunaux de résidence*, the state courts at the bottom of the judicial hierarchy) (Dexter and Ntahombaye 2005).

Transparency and respect for truth. Acting collectively, the *bashingantabe* bring progress reports on their work and the results expected or achieved to the attention of the public. They have to publish full information about their activities and therefore open themselves to observation and criticism. Moreover, both the *bashingantabe* and witnesses undertake to abide permanently by the truth.

Credibility. This principle helps to reinforce individual and institutional legitimacy. It

requires of the *bashingantabe* not only that they build a positive image but above all that they be careful about the views and judgements of others on the individual and on the institution. Without credibility, the legitimacy of actions undertaken is seriously undermined.

Legality and legitimacy. The institution draws its legality from the fact that it derives from customary law. Its legality is guaranteed as long as customary law is not abolished. Today, that legality is protected by various statutory enactments, in particular the constitution (of March 2005, article 68) as well as by the law on local government, which lends the institution legitimacy by providing that: ‘Under the supervision of the hill or suburb chief, the mission of the hill or suburb council is to . . . carry out arbitration, mediation, conciliation as well as the settlement of conflicts in the neighbourhood on the hill or in the suburb, with the *bashingantabe* of the entity’ (Loi no. 1/016, 20 April 2005).

Equity. This principle focuses on non-discrimination and inclusion. Here, equity complements, corrects and humanizes the law. It is the sense of natural justice present in the appreciation of what is due to each person. It is also the virtue present in whoever possesses this sense of natural justice.

Discretion and impartiality. Every member of the institution is committed to secrecy in their deliberations and any contravention of this rule will attract moral and social sanction, involving exclusion from the group. This highlights the importance attached to the role the *bashingantabe* are called upon to play in settling conflicts between citizens without being partisan and without any bias towards one or another party.

Free social service. All the tasks the *bashingantabe* undertake—conciliation, arbitration and providing judicial rulings—are unpaid. In principle, there is no fee for court proceedings or remuneration of any kind. The exception is in cases where those who seek their services are asked to provide a certain quantity of beer, commonly called *agatutu kabagabo*, which is shared by everyone and is a symbol that unity has been restored.

2.2. The evolution of the institution of *bashingantabe* from the colonial era to the republican regimes

The institution was an integral part of traditional Burundian society which, as is observed above, had clearly defined missions and played the role of check and balance. However, subsequent socio-political developments did not leave it untouched. In the course of its historical evolution it has both changed its form and lost some of its prerogatives.

2.2.1. Under the colonial regime

The colonial regime was the first to make significant changes to the traditional system of justice based on the institution of *bashingantabe*. From the early 1920s, the Belgian

administration undertook a reform of the judicial system by withdrawing certain prerogatives, particularly from the *bashingantabe*, the most important reform being the abolition of certain sanctions that were considered barbaric, and the checking of judgements rendered. These actions of the colonial authorities, which ‘arrogated the right to evaluate the authenticity of customs, for the first time denied the *bashingantabe* their fundamental mission of guaranteeing the continuity of traditional jurisprudence’ (Deslaurier 2003).

The colonial authorities established courts under chieftaincies and sub-chieftaincies, and appointed judges with responsibility for resolving conflicts. This was a significant intrusion into the functions of the *bashingantabe*, particularly those of bringing aggrieved parties together and conciliation. This coexistence, in which the chiefs of the new courts had the blessing of the colonial authorities, considerably weakened the role of the *bashingantabe*, who increasingly lost their influence in the community. In reality the power of social control shifted from the collective to the administrative centre of the country. Even so, the institution of *bashingantabe* remained a symbol of equity and justice and managed to maintain its influence among ordinary members of the community, and the *bashingantabe* have continued to render their judgements.

Equally, missionaries contributed to the weakening of the institution through the introduction of what were called *abajenama* (counsellors). These men, who were very close to the missionaries and were recruited from among the clergy of the parish, Catholic school teachers, had increasing influence among the Christian community, to the detriment of the *bashingantabe*.

2.2.2. After independence

A law of 26 July 1962 abolished all customary jurisdictions and created a single order embodied in the establishment of magistrates and judicial personnel. However, the Council of Bashingantabe of the Hill (the lowest level in the administrative hierarchy) was retained to resolve conflicts by conciliation in matters where they were permitted to do so by the law, to maintain public order, peace and calm.

Under the First Republic (1966–76), Uprona engaged in politicizing the institution, thereby contributing to its becoming distorted. In effect the authorities started to invest civil servants as *bashingantabe* without taking into account the time-honoured criteria for investiture outlined above. From this period onwards the term ‘*umushingantabe*’ was devalued and quite simply confused with the title of ‘Mr’ as used in referring to any male adult. This period ushered in the practice of conferring membership of the *bashingantabe* not on the sole basis of the criteria established by tradition, but rather on the basis of formal qualifications and intellectual status.

Under the Second Republic (1976–87), the practice of investiture was forbidden throughout the country because of the cost involved. Instead President Bagaza authorized

community administrators appointed by the authorities to appoint individuals to play the role of *bashingantabe* on the hills.

In 1987 a law reorganizing the judicial system restored the Councils of Bashingantabe of the Hill with a mission to seek conciliation between contending parties before they resorted to legal action. This decision should in principle have rehabilitated the institution. Unfortunately, however, there were no accompanying measures to establish the criteria for investiture which would take into account the current political context and the evolution of Burundian society.

Thus, all through the different regimes, colonial as well as post-colonial, the institution of *bashingantabe* experienced many vicissitudes and distortions of its basic values in the sense that it has sometimes been oppressed and forgotten, and sometimes been used as a tool for the programmes and policies of successive administrations. It has been used and manipulated: the *mushingantabe* hat has been worn by political dignitaries or servants of the ruling regime who possessed nothing of the *bashingantabe* qualities in the real sense of the term but saw membership of the group as a means to climb the political ladder without having the corresponding commitment and conviction.

3. The institution of bashingantabe today

Despite this situation, the institution has not completely lost its credibility in the community it serves, which continues to resort to its wisdom. This section analyses the role it has been able to play during the various events the country has experienced over the past decade or so, the impact of these events on its functioning, and its overall place in society.

3.1. The impact of the 1993 crisis on the institution

The 1993 crisis was a further difficult test for an institution already seriously affected by the vicissitudes of the colonial and republican regimes. The role it played during the inter-ethnic massacres that plunged the country into mourning over a decade cannot be passed over. A study undertaken by the University of Burundi in collaboration with the Life and Peace Institute (Ntahombaye and Kagabo 2003) in ten different representative communities in different regions of the country showed that many *bashingantabe* who had been invested in the traditional way tried to play their full role as fathers within their own

In the 1993 crisis many traditionally invested *bashingantabe* tried to protect persecuted individuals, save victims from the criminals and organize themselves to arrest killers and looters. Many are considered heroes in their local communities. Following the return of calm, in several areas these men started to organize themselves to engage in a process of reuniting and reconciling communities.

social setting by protecting persecuted individuals, saving victims from the hands of criminals and organizing themselves to arrest killers and looters. Numerous sources testify that many *bashingantabe* are considered heroes (*inkingi z'ubuntu*) in their local communities—a term comparable to ‘The Just’, the title of honour bestowed by the state of Israel on people from all over the world who have risked their own lives to save Jews from extermination.

Following the return of calm, in several areas these men started to organize themselves to engage in a process of reuniting and reconciling communities which had been tearing themselves apart along ethnic lines, and with the intention of restoring dialogue and progressive reconciliation among their members. Enquiries and interviews conducted by several experts (Ntahombaye and Kagabo 2003) report cases of public requests for forgiveness and reparation for wrongs being made as a result of the initiatives of *bashingantabe* in their communities. These initiatives are not isolated cases, but they were limited to certain places.

However, this mission of serving as custodians of morality and as mediators has not been easy for the *bashingantabe*, who often found themselves confronted with numerous obstacles. There are records of *bashingantabe* being assassinated for trying to save lives or for having taken custody of the property of victims; others suffered the same fate just because they were potential witnesses to atrocities. Some were even prevented from taking any action by manipulated and inflamed youths who considered anyone of their own ethnic group a traitor if they did not participate in the barbaric acts, which they termed a crusade (*isekeza*). Some invested elders gave in to temptation and participated in the atrocities that were being committed around them, while others failed to address the appalling situation out of fear or because of lack of resources.

All in all, eyewitnesses and media reports acknowledge that in places where the *bashingantabe* were still active, human lives were indeed saved. These men of integrity were able to stop atrocities before irreparable damage occurred, and they succeeded in restoring calm and peaceful coexistence in their respective social environments.

3.2. The rehabilitation of the institution

The revival of the *bashingantabe* institution was initiated in the wake of the National Reconciliation Policy which sought to create a framework for dialogue and consultation between the different factions of the Burundian people with regard to the basic challenges facing the country. The commission charged with studying the question of national unity had recommended that the institution be adapted to the current context: ‘It does not have to be mythologized but rather to be revived and given back the honour it deserves while taking into account the new state of affairs in Burundian society’ (Ntahombaye and Kagabo 2003). The rehabilitation process, which was of particular interest to the *bashingantabe* who had been invested in the traditional way, began at the time of the debate on the Charter of National Unity (1991–2) and of the democratization of Burundian institutions.

From 1996 onwards the *bashingantabe* enjoyed real support as much from the government as from Burundian civil society and the international community. The latter considered the *bashingantabe* as offering a way out of the crisis and built upon the capacity of the institution's members to mobilize their fellow citizens around the ideals of peace and harmony and the positive role that they can play in the life of society.

In its 'Support for the Promotion of Good Governance' project, carried out between 1999 and 2001, the United Nations Development Programme (UNDP) supported activities aimed at identifying *bashingantabe* who had been invested in the traditional way all over the country. In all, more than 34,000 households of traditionally invested and active *bashingantabe* were identified in the 17 provinces of Burundi. This operation made it possible to better understand the real situation of these *bashingantabe*, as well as their number (which would be around 64,000 if one bears in mind that most households consist of a man and a woman: normally women are invested with their husbands).

In 2002, the UNDP launched a second phase of implementation of the 'Support for the Rehabilitation of the Bashingantabe Institution' project. This achieved varied results, including support to the self-structuring of the institution from the lowest level (Conseil de Colline) right up to the top (Conseil National, National Council) and through the local and provincial structures, with democratic elections held each time at different levels. This project helped not only to facilitate communication among the *bashingantabe* but also to rectify certain operational mistakes that had been fostered by years of acting in isolation, and sometimes actions dictated by the government in contradiction of the traditional philosophies of the institution.

The different organs of the institution and their respective powers and duties were entrenched in writing in the Bashingantabe Charter, adopted in April 2002 at an extraordinary congress which brought together five elected representatives from the invested *bashingantabe* in each province.

The institution took the gender dimension into account by including 33 per cent of women in its management committees. The presence of women at management levels constituted a definite asset which helped to trigger positive reflection on the conditions for investiture of women in their own right—something which up until then Burundian tradition had not permitted.

Since 2002 the institution has been progressively recovering its former vitality. Investiture takes place in broad daylight, both in rural and in urban settings. According to available figures, today Burundi has nearly 100,000 *bashingantabe* (men and women) who have been invested in the traditional way ('Rapport de la Mission Indépendante' 2003: 24 ff.).

The evaluation report on the UNDP project notes the steps taken to rehabilitate the institution, and recommends that efforts be focused on activities aimed at reinforcing the capacity of the *bashingantabe* at the grass roots through training in different domains

such as juridical function, general law, property law, family law, techniques for the prevention and settlement of conflicts, and basic literacy ('Rapport de la Mission Indépendante' 2003: 24). The implementation of these recommendations ought, however, to take the philosophy and ethics of the *bashingantabe* institution into account and to involve the members, some of whom have a good level of education in different areas and who should themselves be in charge of implementing the programmes of rehabilitation.

In addition, there is the issue of strengthening the technical capacities of the *bashingantabe* and their involvement in development work in order that they may learn to better apply the principles of gender equality and better manage issues related to succession and matrimonial laws, as well as support self-sufficiency in food and people's material well-being—important criteria for being invested as an *umushingantabe*.

Today, the institution has advantages which reinforce its legitimacy at the political and institutional level. The Arusha Agreement acknowledges that the *bashingantabe* constitute a unifying factor on the hills and that the institution is part of the judicial system.

As a customary jurisdiction, the institution of *bashingantabe* has always had a place in Burundian society, which accords it a certain authority. It has some strengths but also some weaknesses, which should be rectified if it is to play its role in the establishment of the rule of law in Burundi.

4. Strengths, weaknesses, opportunities and threats

We now analyse the strengths and weaknesses of the institution of *bashingantabe* in order to spell out the role it could play in establishing the rule of law in Burundi, at a time when it is critical to determine ways and means of helping Burundians to stop the infernal cycle of violence and put in place appropriate mechanisms of justice.

This also provides us with an opportunity to revisit the weaknesses and challenges inherent in the ethical basis and code of conduct of the *bashingantabe* themselves, since these could be an obstacle to the effective implementation of the institution's mission.

4.1. Strengths

The strengths of this secular institution, which has traditionally played a primary role in the organization of Burundian society, are found in the way it is organized, its mission and the principles that guide its actions.

4.1.1. A factor for social cohesion

On the social front, the institution was a factor for social cohesion, order, the resolution of conflicts, and reconciliation between individuals and families. It developed a complete code of behaviour which guaranteed social harmony and stability—‘Security without the police, without the military, without prisons’ (Ntahombaye and Manirakiza 1997a). According to Ntahokaja (1977), the *bashingantabe* are official representatives of the people and spokesmen for their constituencies. They are negotiators drawn into the problems that arise between rulers and the ruled.

At the moral and cultural level the *bashingantabe* were custodians of customs and practices and served as models in their environments for the promotion of the virtues of mutual respect, dignity, integrity and truth. At the political level, they represented the main pillar of the Burundian political system by means of a network of advisers reaching from the hill right up to the royal court. They represented a restraint on the exercise of power. In recognition of their values and moral integrity, the king and local chiefs alike were obliged to take note of the views of these wise men.

These advantages which were the strength of the institution in traditional society remain relevant today, or at least represent goals to be achieved through the rehabilitation of the institution. Currently, the institution is seeking to position itself as a point of reference to exercise a positive influence on society, and to ‘re-gild its coat of arms’ by inviting its members to return to the values cited above. It has the capacity to do this and the resources needed to enable it to fulfil its mission.

4.1.2. Its national dimension

The institution has a national dimension: its members are active in all provinces right down to the hill (village) level, and membership is not limited to a particular ethnic group or clan. As a result, it can exercise moral authority and influence in society, and participate in the moral reconstruction of public life and in community harmonization. This will enable it to participate actively in the work of the CNVR and in strengthening the rule of law.

4.1.3. A democratic institution

The institution is also democratic from the standpoint of the modalities by which candidates accede to the ranks of the *bashingantabe*. The procedures prescribe consultation with the people, not nomination by the authorities. Investiture is and always has been a public affair. Opposition from any citizen, regardless of their age or rank, can contribute to an application for the status of *bashingantabe* being annulled.

It is also founded on universal values, especially the concern for justice, a high regard for

truth and a deep respect for the common interest. Taking a comparative approach, Ngorwanubusa (1991) describes the *umushingantabe* as an ‘honourable man’, and demonstrates the existence of similar institutions across Africa and in the rest of the world. He cites the *silatigi* in Saharan West Africa, the *chaman* among the Indians of South America and the *imfura* of Rwanda and others as examples.

4.1.4. *The justice of proximity*

Its strength also resides in its capacity to render the justice of proximity in all its main missions, namely mediation, conciliation and arbitration. Citizens have always needed a permanent service of mediation, conciliation and arbitration. For a dispute to be settled and to end in a sustainable solution it does not necessarily have to be taken before the police, or to the courts or tribunals. These forms of formal, essentially repressive justice, do not always favour conciliation of parties in conflict. This function is often particularly important in rural contexts, where the *bashingantabe* arbitrate in conflicts of all kinds guided by a spirit of conciliation and peace.

During a post-conflict period, the judicial and administration system is sometimes incapable of rendering justice, providing restitution for stolen property, or effecting reparations for victims. It is thus important to find mechanisms that are complementary to the judicial approach to delivering justice, restoring the rights of victims and defusing social tensions.

During the current large-scale repatriation of refugees and internally displaced persons, the institution of *bashingantabe* is widely sought after for the settlement of family conflicts and property conflicts resulting from the seizure of property by individuals, and in some cases by the state itself. In a post-conflict period, questions of justice, reconciliation and forgiveness surface regularly, yet the judicial and administrative system is sometimes incapable of rendering justice, providing restitution for stolen property, or effecting reparations for victims. It is thus important to find mechanisms that are complementary to the judicial approach to rendering justice, restoring the rights of victims and defusing social tensions. This is why the institution of *bashingantabe*, with its missions of mediation, conciliation and arbitration, can play a part in the establishment of a state of law.

For these reasons, and above all in the light of the fact that it is difficult for orthodox justice to provide adequate responses to the many issues raised by gross violations of human rights, it is important that transitional justice intervenes in a complementary fashion. In this context the *bashingantabe* should be associated with and even play a potentially central role in any national transitional justice mechanism established to facilitate a return to peace and harmony in Burundian social life.

With regard to their judicial function, it is not easy to quantify how far the effectiveness of the *bashingantabe* has improved. However, information obtained from resident tribunals indicates that in 70 per cent of cases where the opinions of the *bashingantabe* has been

sought, these have been upheld by official tribunals (Dexter and Ntahombaye 2005).

Those interviewed in the study conducted by the Réseau de Citoyens Network Justice et Démocratie (Réseau de Citoyens Network 2002) were of the view that the *bashingantabe* system has to be encouraged insofar as the *bashingantabe* are close to those who are to be tried. Moreover, they know the root causes of the conflicts which they are called on to

The institution of *bashingantabe* is a factor for social cohesion, a national institution, democratic in nature and founded on universal values. It delivers a justice of proximity: litigation does not necessarily have to be taken before the police, or to the courts or tribunals.

resolve, both in general and in the minutest detail, and the truth is thus easily discovered. In the absence of this ‘voluntary justice’, formal tribunals would be choked with litigation and thereby prevented from performing their normal functions. In many instances cases are fully settled by the *bashingantabe* without the need to transfer them to the formal tribunals.

The *bashingantabe* are also of great help to the tribunals with regard to the delicate task of executing judicial decisions, particularly in relation to land property litigation. In cases relating to the demarcation of property, legal tribunals often resort to the *bashingantabe*, who are both reliable witnesses and legitimate authorities in cases of relapse. Above all, they are there to ensure that the decisions made are respected and to guarantee their validity over successive generations.

4.2. Weaknesses

4.2.1. Weaknesses in judgements

In a few instances judgements made by the *bashingantabe* may not be in conformity with the law, or could be handed down without due consideration of the law by reason of ignorance of the law. Thus the legitimate rights of a person in terms of the written law may on occasion be infringed, and some judges confirm that it is sometimes difficult to rely on the arrangements proposed by the *bashingantabe*. The latter do not formally belong to the ‘judicial world’ and are guided mainly by common sense and fairness in relation to custom, without reference to written law. Certain magistrates prefer to treat them, if not as eyewitnesses, at least as witnesses capable of providing credible testimony.

These shortcomings do not, however, appear to outweigh the advantages of the institution. For example, the fact that the decisions of the *bashingantabe* are taken without direct reference to the law is not necessarily a disadvantage. In some instances it can be an asset in the sense that social peace is sometimes more easily attained through an equitable solution reached without strict regard for the formal legal norms in force.

In the light of this weakness, it would be helpful if a more detailed study could be

undertaken of the various areas of civil and criminal law in which the *bashingantabe* are called upon to intervene, these proceedings being understood as preliminary to hearings in the courts under state jurisdiction. This analysis should relate both to the legal texts currently in force and to litigation that has been brought before the resident tribunals, the relevant jurisdiction of first instance. The outcome would support reflection on the direction of judicial reform with the end of giving voluntary justice the tools it needs to improve its functioning, and to remove ambiguities about its indispensable complementary relationship with formal justice.

4.2.2. *The ambiguous position of women*

Among the criticisms levelled at the institution is its exclusion of women, which tradition has established in contradiction to the modern-day principles of the equality of men and women and of equity. In effect, tradition does not accept the investiture of women in their own right and it has not set out the procedures for women to be invested as *bashingantabe* or to be prepared for this function.

However, the status of women must be understood in relation to culture and socially sanctioned values (the education of children, initiation into adult life, the patrilineal tradition, the respective rights and responsibilities of men and women, the division of labour, the system of taboos, proverbs and sayings, religious rites, funeral rites and so on) as well as the natural harmony envisaged by the country's institutions. The institution of *bashingantabe* is a link in the chain of traditional institutions. It would thus be mistaken to claim, for example, that the social practices which lend support to the exclusion of women were invented, protected and transmitted forward by the institution of *bashingantabe*. The element of male domination that is present in the institution stems from the cultural system described above, which the traditional woman accepts against her will. In our view, however, the current inferior status of Burundian woman compared to their male counterparts can be improved in the context of ongoing efforts to rehabilitate the institution of *bashingantabe*.

The Bashingantabe Charter adopted in 2002 stipulates that women are invested together with their husbands (article 3). They take the oath but do not receive the rod of wisdom (article 29). On the day of the investiture, women are recognized as persons of integrity on the same basis as their husbands. The *intabe* symbol is given to the head of the household, to be kept under the conjugal roof and to remind them of their common commitments—commitments which refer more to their responsibility to the community than to their individual social prestige. From this point onwards the couple are expected to serve as social role models, to receive complaints relating to neighbourhood conflicts and to intervene whenever the need arises in relation to the maintenance of social order. They are expected to act in solidarity with the circle of those invested, transparently and with unfailing collegiality. A woman thus has no place in the institution of *bashingantabe* except in her capacity as a wife. However, a widow can be nominated in her own personal capacity if she fulfils the requisite conditions.

With the process of rehabilitation of the institution, some women have been elected to the National Council of Bashingantaha. In 2005 the representation of women in the council stood at 35.48 per cent (National Council of Bashingantaha 2006b). Initially, these women are nervous when they sit with the *bashingantaha* on the hills and in the suburbs to participate in the deliberations. The opportunity for free expression exists, and the status of women can change as a result of their own dynamism and active participation. However, to increase their representation to 50 per cent in line with the complexity of the challenges of modern society and the proven efficiency of women in the field of conflict transformation, the conservative social climate will first have to be overcome.

The weaknesses of the institution of bashingantaha are that their judgements may not always be in conformity with the law, or could be handed down without due consideration of the law by reason of ignorance, and that the position of women within it is ambivalent.

4.3. Opportunities

4.3.1. The process of self-rehabilitation of the institution

It is important that the institution is able to adapt itself to the modern context in order to participate fully in the process of reconciliation and of consolidation of peace, while taking into account the specificities of the political, social, economic and security context of the country.

Among the key controversies that require serious reflection are the ways in which the institution of *bashingantaha* can be rehabilitated in urban environments (HDPR-Shingarugume 2003), the selection of *bashingantaha*, the way in which they are invested, the precise definition of their areas of competence, their collaboration with other structures of conciliation (for example, company councils in the workplace) and, above all, how the institution can play its role in the current post-conflict period when the concern is to establish mechanisms of transitional justice that will promote peace and stability in Burundi.

Anxious to find responses to this imperative, the National Council of Bashingantaha embarked on a process of rehabilitation aimed at adapting the institution to the modern context. This rehabilitation starts with capacity building for its members so that they can respond adequately to the different needs of their environment, and to empower them to address current challenges in a context in which forgiveness, the healing of wounds, reparation and reconciliation are preconditions for the reconstruction of the country.

Burundian society has judged the activities of the institution in a positive light. According to an opinion poll, 73 per cent of those interviewed gave a positive evaluation of the work already done within the institution of *bashingantaha* (HDPR-Shingarugume 2003: 18). A study undertaken by CARE (CARE 2002) revealed that among the local

structures responsible for resolving conflicts (heads of families, heads of the hill, zonal chiefs and administrators), the institution of *bashingantabe* is one of those most often applied to, despite a number of failures. Other research carried out, in particular by the International Crisis Group and the Africa Centre for Technology Studies, suggests that, apart from needing certain corrections in its general operational approach, particularly with regard to local participation in the rehabilitation process, the *bashingantabe* institution is viewed as capable of defusing the ‘property bomb’ that could explode in the wake of the large-scale repatriation of refugees (International Crisis Group 2003: 11–12).

4.3.2. Strong membership of intellectuals

The institution of *bashingantabe* has long been viewed as something essentially relating to rural people and intended for a rural setting. A few rare cases existed of intellectuals being invested by their village *bashingantabe* within their own villages, but not until 2002 did urban intellectuals began to take an interest in the institution. In 2002, some 50 such persons were officially invested with much publicity and, since then, the practice of investiture has gained currency in urban no less than rural areas. On the one hand, the investiture ceremonies have generated much interest among Burundians, particularly among the young people, many of whom had never previously heard of the institution. On the other hand, this development has also generated sharp criticism, especially from political actors. The criticisms levelled at the institution led to efforts to clean up the investiture procedure. Today a variety of *bashingantabe* councils include intellectuals who have been invested in conformity with the requirements of tradition and are resolutely committed to the institution. The membership of intellectuals can only boost its popularity and legitimacy, thereby enabling it to participate fully in the return to peace and stability in Burundi.

The institution of *bashingantabe* is currently rehabilitating itself, aiming to adapt to the modern context. Burundian society has judged the activities of the institution in a positive light. The growing membership and commitment of intellectuals from urban areas can only boost its popularity and legitimacy.

4.4. Threats

Although the *bashingantabe* currently function within the sphere of civil society, they are confronted by many challenges—the conservatism of some members of the institution, the problem of leadership in an unfavourable political context, questioning of the institution’s legitimacy, and socio-economic problems, to mention but a few.

4.4.1. Pointless conservatism

The institution of *bashingantabe* is strongly established in rural settings where the influence of tradition is in constant conflict with modernity. Examples include the gender dimension, the management of conflicts, the inclusion of Batwa as members, and the opening up of the institution to other African and international experiences. There are many important aspects to be considered but they face some resistance from conservatives who are determined to safeguard customs and find it difficult to tolerate any form of innovation. Today, however, the investiture of women and the inclusion of Batwa are occurring in drip-feed fashion in some regions of the country. This often triggers unexpected reactions from certain *bashingantabe*, who reject the changes and are ready to oppose all initiatives or decisions taken in this regard. The place of the institution in the modern world will depend on the pace at which the *bashingantabe* themselves embrace the principles of good governance in the rehabilitation process.

4.4.2. The relationship between the *bashingantabe* and locally elected officials

There is a problem of demarcation between the authority and mandate of the people who are elected locally and those of the *bashingantabe*. On the one hand, the institution of *bashingantabe* derives its legitimacy from both tradition and contemporary law, which has assigned it a place within the judicial apparatus (Law no. 1/004 of 14 January 1987, relating to the organization of judicial competences); on the other hand, locally elected officials draw their legitimacy from the ballot box. Consequently, both categories—the locally elected officials and the *bashingantabe*—exercise legitimate leadership and enjoy a mandate.

Even though the new law on local government, article 37, #2, stipulates collaboration between the hill council and the *bashingantabe* (without spelling out the modalities), people continue to consider the voluntary justice exercised by the latter as the resort of first instance, before going to the official courts. Moreover, the constitution of March 2005 requires all Burundian citizens to respect and promote the cultural values (article 68), and gives the National Commission on Unity and Reconciliation responsibility for proposing ways and means of rehabilitating the structure and making it an instrument of national cohesion (article 269).

The institution of *bashingantabe* has been affected by sudden and violent political and structural changes which have influenced its operation and on occasion contributed to weakening it. The advent of multipartyism in particular can be seen as a tempest that struck it and placed it in a politically controversial position. In some places those elected in the 1993 election quickly took to denigrating the *bashingantabe* of the hills, which they called ‘Upronistes’ (a reference to the Uprona party which ruled the country for decades), defeated and outmoded men, unfit and old-fashioned. The *bashingantabe* were completely lost in this situation: they were very disorganized and weakened by sheer lack of a platform for communication and expression. The crisis of 1993 came suddenly, and

at a time when the *bashingantabe*, weakened by the vicissitudes of the colonial era and beyond, did not have the means or strength to face the resulting changes.

With the electoral propaganda of 2005, a similar phenomenon could be seen all over the country. An open leadership conflict broke out between the *bashingantabe* and locally elected officials. The latter refused to cooperate with the *bashingantabe* in some regions and denied them any legitimacy. More specifically, elected officials aimed to replace the invested *bashingantabe* in all areas of their traditional responsibility on the basis of the fact that they alone enjoyed the legitimate mandate of the people. The *bashingantabe*, however, considered their position as legitimate in their mission of conciliation and arbitration and as custodians of customary practices.

Following diverse initiatives taken by the Ministry of the Interior and Public Security, the reciprocal polemics are now beginning to die down. An example worth mentioning is the collaborative platform for the two groups established following a dialogue workshop organized by the ministry with the support of the United States Agency for International Development (USAID) and IFES (formerly the International Foundation for Election Systems) in March 2006.

The government is conscious of the need to properly define the place of the institution of *bashingantabe* within the overall organization of the country. In a letter referenced 100/CAB/115/2006, the head of state requested the Ministry of the Interior and Public Security to follow relations between local government officials and the *bashingantabe* closely. As a result of the laudable political will displayed and practical initiatives that have been implemented since March 2006, cooperation is gradually being restored between the councillors of the hills and the *bashingantabe* in the majority of local authority areas. Nonetheless, the need remains for the government to clarify the modalities of collaboration between the administration and the institution of *bashingantabe* by means of an organic law.

This conflict, the motivation for which can be partly if not exclusively explained in terms of the real or supposed material interests or political motivation of the parties, should not have arisen in the first place. In reality, ever since the era of the monarchy the *bashingantabe* have always existed side by side with the administration, serving as intermediaries between the leaders and the citizens while also attempting to safeguard the interests of the latter.

4.4.3. *The impact of poverty*

Poverty is a source of weakness and sometimes leads to behaviour that is contrary to the values of the *bashingantabe*, such as begging and weakness when confronted with attempts at corruption. The *bashingantabe*, like at least 81 per cent of the population of Burundi, live below the poverty line.

Traditionally, a certain level of well-being that was synonymous with the independence

and stability given by honestly acquired material wealth, and in particular an occupation, were required for an individual to be accepted as a candidate for investiture. This did not mean that financial considerations were a criterion for investiture as an *umushingantabe*, but men had to be found who would be able to act in complete independence and without seeking any form of remuneration—in other words, men of integrity who were capable of providing for their own needs. Voluntary service was a fundamental value expressed in the oath pronounced by all candidates on the day of their investiture.

Nonetheless, some members of the institution (incorrectly) saw access to the function as the springboard to a better life and, contrary to the ethics of the institution, looked forward to the imagined material benefits of investiture.

The voluntary nature of the service, which is its most valued aspect, has diminished with monetization and the increasing spread of poverty at all levels of the society. Will respect for this spirit of voluntary service endure among the *bashingantabe* in an increasingly monetized world? This question must be addressed in order to avoid possible shortcomings in the institution or side-slipping. Realism forces us to reflect on alternative solutions that will preserve the spirit of voluntarism which has always characterized the institution while also adapting its functioning to the challenges and exigencies of modernity.

4.4.4. *The permanent spectre of politicization*

In urban centres, at the City Hall of Bujumbura and to a lesser extent in rural areas, some citizens accuse the present *bashingantabe* of having been invested without adequate preparation. There was even talk of alleged ‘investiture inflation’ in 2002, a year in which the institution saw unprecedented rehabilitation in Bujumbura, with heightened media coverage and public visibility. Some condemned what they called ‘prestige *bashingantabe*’, invested not for their exceptional qualities or not even possessing the qualities required for acceding to this distinguished function. Rightly or wrongly, some of the dignitaries invested have been called opportunists for seeking political position via the institution of *bashingantabe*. These criticisms point to a serious weakness not with regard to the institution as such but rather in relation to the criteria for investiture. *Bashingantabe* are called to serve their fellow citizens in a body of men that cannot be tainted by irregularities.

The members of the National Council of Bashingantabe should not ignore these criticisms but instead analyse them with a view to improving the position of the institution in contemporary society. Measures have thus already been taken, in particular extending the period of observation of candidates for investiture. This is fixed at at

The *bashingantabe* face many challenges—the conservatism of some members, the relationship with locally elected officials, the impact of poverty, the impact of the monetization of society on the value of voluntarism, and the permanent threat of politicization.

least a year in order to give time for members of the community to express their views concerning the qualities of the aspirant, and to avoid developments that could sully the image of this noble and prestigious institution.

5. Conclusions and recommendations

The respected institution of *bashingantabe* is the crucible of national values. For a long time it has offered Burundian society a basis on which its communities could be held together and prevented from collapsing. The *bashingantabe* have served as lubricants to the wheels of traditional Burundian society. At the time of the monarchy the functions delegated to them went beyond the purely judicial: they served as custodians of tradition, and their mores were a force for social cohesion and the maintenance of order, and exercised a regulatory role within the politico-administrative system.

The evolution of the institution from the colonial era up to the Third Republic is marked by periods of darkness. With the intrusion of civil servants, the manipulation of the institution, its politicization and the forbidding of investiture, it has been denatured and has lost some of its substance. Happily, however, it has survived all forms of adversity and remained alive and vibrant up to this day. The time has come for it to be rehabilitated and modernized in order to adapt it to current challenges and needs so that it can contribute to the restoration of social harmony and the reconstruction of the country. This is a condition of its survival. It does not necessarily mean a revival of ancestral customs simply for the sake of remaining faithful to tradition. It is rather a question of drawing out the essential from tradition and integrating it with the positive dimensions of modernity in order to derive an organic synthesis from the process. It is a question of building something new upon the old, of adapting the institution to contemporary challenges.

Here, great efforts have already been made by the *bashingantabe* themselves, with the support of a range of actors drawn from civil society and the international community. In particular, the institution has been restructured from top to bottom, with *bashingantabe* councils established at all levels. Initiatives to enhance their capacity have been undertaken, in a number of instances with the assistance of donors operating in Burundi that are convinced of the important role this body can play in the current post-conflict period.

The institution of *bashingantabe* has survived all forms of adversity, and has remained alive and vibrant. It is now being rehabilitated to adapt it to current challenges and exigencies.

The importance of this traditional mechanism, which has already proved its worth in the settlement of social conflict in both traditional and contemporary Burundian society, does not require further demonstration. In this regard, for example, the formal judicial

system recognizes that the *bashingantabe* possess certain competences in local-level arbitration and conciliation.

Peace remains fragile in states that are recovering from conflict. As with all countries that have recently emerged from conflict, Burundi needs to establish benchmarks that will enable it to climb the path towards the full recovery of stability, and here the restoration of the rule of law is a prerequisite.

During the current post-conflict period the country is confronting many challenges. In this context it is particularly important that Burundians endeavour both to heal a past that is characterized by gross violations of human rights and to prevent this from negatively influencing the future, thereby perpetuating the cycle of violence. How can this past be addressed without causing undue hurt, at a minimum without destabilizing a society that is composed of both victims and perpetrators of gross human rights violations? The victims are calling resolutely, albeit without much hope of success, for justice, while the perpetrators wish to escape justice at all costs. How can these two points of view be reconciled?

Currently the preferred means of seeking a lasting solution to conflict is regional and international mediation, and Burundi has had recourse to such an approach. It is our conviction, however, that the wrongs committed in a particular country are best dealt with by those who are familiar with their root causes and the parties involved—those, in other words, who have suffered directly and have issued pleas for help to political leaders who are not always able to provide answers to the challenges at hand. Political transitions can sometimes appear like a no man's land where all kinds of evil practices go on behind the scenes, with crimes and a prevailing culture of impunity only serving to increase the number of victims. This in turn is why macro-political efforts should always be accompanied by initiatives that operate close to the people, on a human scale that enables the resolution of conflicts at the grass-roots level.

In Burundi transitional justice can serve as a complementary element to existing judicial structures that have either broken down or been rendered ineffective by the conflict and the painful experiences of many. As a traditional institution for managing conflict the institution of *bashingantabe* can act as a safeguard guaranteeing community harmony and reconciliation.

Increasingly, the *bashingantabe* see themselves as guardians of social cohesion. Moreover, as was noted in a public declaration of the president of the National Council of Bashingantabe, the institution hopes that Burundians will remain aware of the role that the *bashingantabe*, persons recognized for their integrity, can play in the establishment of transitional justice institutions, particularly the proposed CNVR and special tribunal. 'Everything possible must be done to ensure that truth, justice, reparation and reconciliation triumph' (Conseil National des Bashingantabe 2006a). Before the CNVR is set up, however, the National Council of Bashingantabe recommends an extensive awareness campaign aimed at preparing the minds of the people, and it expresses its

readiness to provide a modern adaptation of traditional mechanisms for the resolution of non-judicial conflicts.

With regard to the proposed special tribunal for Burundi, the National Council of Bashingantabe proposes that the tribunal should draw inspiration from traditional justice mechanisms. 'In fact, the *bashingantabe* will very much be able to contribute to the special tribunal, as persons nominated and oath bound, thanks to their competence gained from tradition in the areas of restorative and reparative justice, which they are in the process of adapting to modernity in order to make contributions that go beyond punitive justice and aim to put a end to cycles of vengeance' (Conseil National des Bashingantabe 2006a).

However, the council laments the fact that Burundian society does not give sufficient credit to this illustrious institution, which has not as yet had the opportunity to give of its best and thereby contribute to the transformation of conflicts in the country. Accordingly, the council calls on the public authorities to 'take the institution seriously and allow it to contribute its maximum to the healing of the Burundian people' (Conseil National des Bashingantabe 2006a).

Major challenges remain, mainly involving a tendency to trivialize the institution and the development of sound collaboration between the authorities and the *bashingantabe*. Additional problems such as the integration of young people into the institution, and the investiture of women in their individual capacities, independently of their husbands, as well as the role they can play in the present context of a country recovering from crisis, also need to be resolved. These are significant challenges, but they should be tackled sensitively, without unduly disrupting an already fragile Burundian society.

Culture does not change overnight. Mindful of this, once it is back on its feet the institution of *bashingantabe* can play its full social and political regulatory role in the maintenance of peace and social cohesion and as a moral and cultural reference point. Additionally, it can play a significant role in the process of reconciliation in a society which has torn itself apart in the course of recent years, but is today committed to the path of reconciliation and reconstruction. To help achieve this goal, the following recommendations are put forward to relevant stakeholders.

5.1. General

1. Encourage the National Council of Bashingantabe to reconstitute itself so that the provincial, communal and hill representations are made up only of persons of proven exemplary behaviour who reflect models of positive values and do not hold a brief for any particular political party.
2. Within the framework of civil society, conduct inclusive dialogues regarding critical issues requiring the intervention of the political and administrative authorities.

3. Implement fully the positive initiatives already undertaken within the framework of rehabilitation of the institution of *bashingantabe*.

5.2. To the government of Burundi

4. Establish the CNVR as an independent commission, the composition of which should at all costs be non-partisan, and which will take care that article 269 of the constitution, relating to the rehabilitation of the *bashingantabe*, is applied.

5. Collaborate with the National Council of Bashingantabe on all questions relating to the rehabilitation of the *bashingantabe* institution as well as on the issues of pardons and national reconciliation that are pivotal to future national development.

6. Associate the *bashingantabe* with the work of the CNVR.

7. Recognize and protect the role of the *bashingantabe* in the management of property disputes.

8. Restore the central and important role of the *bashingantabe* in the management of litigation by voluntary justice mechanisms.

9. Educate the people of Burundi to respect cultural values (article 68 of the constitution).

10. Carefully develop an organic law regarding the application of the law on local government, article 37, #2, to define clearly the mode of collaboration between the *bashingantabe* and locally elected officials.

5.3. To the National Council of Bashingantabe

11. Preserve at all times the autonomy and non-political character of the institution of *bashingantabe*.

12. Improve the representation of women within the structures of the institution towards a target of 50 per cent.

13. Document and disseminate the experiences of conciliation, mediation and arbitration achieved at the community level.

14. Publish the declarations of the National Council of Bashingantabe in its ordinary and extraordinary meetings, and transmit the advice of the Council Secretariat to the relevant authorities.

15. Punish all *bashingantabe* who are guilty of corruption stemming from abuse of the practice of *agatutu k-abagabo* in a transparent way in order to maintain a positive image of the institution.
16. Increase the number of inter-provincial meetings of *bashingantabe* so that they can share experiences and correct possible operational errors.
17. Adopt all measures capable of putting collaboration between the *bashingantabe* and locally elected officials at the level of the hill on a sound footing without compromising the basic role and rationale of the institution.
18. Draw up a strategy which will enable the *bashingantabe* to exercise visible influence in the political arena in relation to ongoing efforts to inject a moral dimension into public and political life.
19. Develop promotional activities, for example, involving musical and theatrical performances, for the values advocated by the institution, particularly that of reconciliation.
20. Create a framework for interaction with civil society, including women's organizations, the academic community, human rights organizations, religious groups and youth organizations.
21. Popularize the official legal texts—the constitution, the code of persons and the family, the property code, the code of criminal procedure, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and so on.
22. Invested and fully trained *bashingantabe* should assist in educating and training their counterparts in rural areas to help them integrate democratic principles and values without compromising the ethics and philosophy of the institution.
23. Emphasize the need for the institution of *bashingantabe* to have the financial resources required to enable it to function efficiently.
24. Take note of the criticisms and recommendations already outlined by a number of civil society stakeholders and donors with a view to promoting a genuine process of reconciliation.

5.4. To the international community

25. Build the capacity of the institution through education, institutional support and the provision of knowledge tools.

26. Help it to open up to other African and international experiences of conflict management, local voluntary assistance and local governance.
27. Coordinate interventions intended to support the *bashingantabe* with a view to avoiding overlap.
28. Integrate the values promoted by the *bashingantabe* both within and across development assistance programmes.
29. In collaboration with the government and the National Council of Bashingantabe, participate in the process of rehabilitation of the institution.
30. Strengthen the non-remuneratory justice mechanisms provided by the *bashingantabe* in the areas of conflict management and reconciliation.

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