



An investigation into Challenges and Prospects Facing the National Commission of Lands and other Assets in Peace and Stability in Burundi

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Abstract

The purpose of this study was to investigate the challenges and prospects being faced by the National Commission of lands and other Assets (CNTB) in its quest to return the lands or other properties to the owners. The research outlined the background of the study, the problem statement, the significance of the study, aim and objectives of the study, the research questions, delimitations and limitations of the study. The research looked at both theoretical and empirical literature reviews. The latter focused on empirical reviews on various challenges found according to studies conducted on land disputes and other properties in Zimbabwe, Pakistan, South Africa, Chiapas and Mexico. The study used a qualitative method to collect data using the (CNTB) as an organisation, the Bashingantahe and the returnees using purposive sampling method to selected employees who filled the questionnaires and those who participated in the interviews. A descriptive analysis of the data was used to draw conclusions on the challenges facing the (CNTB). From the investigation into the challenges faced by the (CNTB), the findings indicated that the CNTB is facing some challenges which include, insufficient finances, resistance from people who grabbed the properties, corruption, the currents conflicts of land disputes are political, lies, and the incompetency. This has also impacted on the CNTB not deal with the issue of land fast. The researcher outlined various recommendations to be undertaken among the CNTB's members, the Bashingantahe, the government, to improve the way of doing things in order to redistribute some portions of land to returnees.

Key words: Restorative Justice, Land Disputes, Reconciliation, Peace and Stability.

1.0 Introduction

Burundi is a small country with 27,834 sq km and is larger than Wales and smaller than Belgium. More than half its area is over 1,500m above sea level, rising to 2,685m. The total population is already 8 million. Burundi was one of a number of centralised kingdoms in the Great Lakes region and, though its boundaries changed as a result of civil wars, its shape on the map stabilised after 1850 and this was the kingdom that was incorporated, along with Rwanda, into East Africa from 1980. Burundi was colonised by Germany and Belgium.

In response to the challenges of land disputes, the government of Burundi established the National Commission for Land and Other Properties (CNTB) under the office of the first vice-president in May 2006. The CNTB is charged with, among others, solving disputes relating to land and/or other properties; assisting vulnerable people to reclaim their land and/or other properties or to obtain compensation where their land and/or other properties have been destroyed; and updating the inventory of state-owned lands; and so on (Jenny, 2009).

The CNTB is mandated with settling land disputes which mainly relates to incidents in 1972 where a large part of the population, mainly Hutu, was evicted from their territory.

2.0 Research Objectives

The objectives of the research are:

- To identify the challenges and prospects that National Commission of land and other assets are facing in discharging its mandate.
- To assess the role played by the National Commission of Land and Other in strengthening peace and stability among Burundians

3.0 Significance of the Study

The study will enlighten the government of Burundi on what contribution it should give for the success of the National Commission of Land and other Assets. This study will provide guidance on how the National Commission of land and other Assets can help in strengthening peace and stability in the Burundi war torn country. The research will also contribute to the existing literature in the area of peace building.

4.0 Literature Review

4.1 Theoretical Framework - Restorative Justice

Restorative justice is as old as human history (Braithwaite, 1999; Zehr, 2002). (Johnstone, 2002: 36) argues that 'restorative justice survived as the routine response to 'crime' only in distant simple societies'. Daly (2002), however, is unconvinced that the ancient ways of doing justice were restorative. Nils Christie (1977) conceived a restorative justice system that is contrasted with the criminal justice system through the de-professionalization of justice process. Howard Zehr (1990) agreed that restorative justice is the opposite of retributive justice, itself being the end product of the criminal justice system.

Zehr (1990), explains restorative Justice as an attempt to address some of the needs and limitations. Restorative Justice is based upon an old, common sense understanding of wrongdoing. According to Braithwaite (2004), restorative justice is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process.

Information, truth telling, empowerment, and restitution are the types of needs of crime victims that seem to be especially neglected. The theory and practice of restorative justice have emerged from an effort to take these needs of victims seriously (Harris, 1989).

4.2 The Mediation to land disputes

Mediation is generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision making power but who assists the parties in voluntarily reaching the mutually acceptable settlement of issues in dispute (Moore,1996). Most proponents of restorative justice appeal in visionary, optimistic, and aspirational terms of a new human sensitivity to emerge from the transformative effects of dialogue, conversation, empowerment, and understanding, from individual juvenile offender advocates to architects of the most complex truth and reconciliation governmental processes of formal state institutions, such as problem solving courts.

Mediation eludes easy and quick definition and categorisation. There is no single analytical model of mediation; on the contrary, mediation processes vary greatly in and between societies (Boulle 2005; Folberg & Taylor 1984). Moore (2003) has documented that mediation exists in virtually every culture and is one of the oldest of dispute resolution known to humanity.

5.0 Research Methodology

5.1 Research Design

Dooley (2001) states that the qualitative research refers to social research based on field observations that are analyzed without statistics. In addition to the qualitative method, the researcher used interviews and questionnaires.

5.2 Sample

In this research, the researcher used a purposive sampling method which is used in qualitative research. The process of selecting a portion of the population to represent the entire population is known as sampling (LoBiondo-Wood & Haber 1998:1998:250; Polit & Hungler 1999:95). This method is purposive sampling.

5.2.1 Purposive Sampling

Aggarwal (1988) says purposive sampling differs from stratified random sampling in that the actual selection of the units to be included in the sample in each group is done purposively. The researcher collected data from different people, especially displaced people whose properties were taken and also the persons who went to complain to Courts that their belongings were taken. In addition, the (CNTB) also will give the information; the records of names of people who can come to ask if the CNTB can help them to return their properties.

5.2.2 Data Collection Procedure

The researcher used 30 questionnaires were dispatched in each of the three provinces namely Bujumbura rural, and Bururi and Makamba. 5 questionnaires went to the members of the CNTB. Furthermore, 10 questionnaires were issued out to the institution of the Bashingantahe while the remaining 15 were given to people involved in land disputes who are the returnees.

In addition to questionnaires, 10 interviews were conducted with different people representing the civil societies.

6.0 Findings and Discussions

6.1 Responses from members of the CNTB and the Returnees

The Role of the National Commission of land and other assets (CNTB)

According to the responses received from all 4 members of the CNTB, the role of the commission is to assist the vulnerable people in most of the cases those returnees who come back from exile to access their goods or grabbed properties. They also pointed out that the major role is to strengthen the peace and stability and bring reconciliation between those people who remained in the country and those who fled it but who have returned back.

On the side of responses from the returnees, the information acquired was that the CNTB took a long time in resolving the conflicts linked to lands and other properties. They hinted that the CNTB did not give them anything because in some instances, the returnees inherited portions of lands through a familial sharing exercise. However, the same people whom they shared land with grabbed their shares in their absence. They added that CNTB constitutes the first key of the introduction of the national reconciliation before the other commission named “ the commission of truth and reconciliation” which the government is trying to put in place as part of the recommendations inherited from the peace agreement which was broke by the former South African president Nelson Mandela. The other responses from returnees hinted that the CNTB plays the role of promulgating a rule for establishing the restoration of properties damaged during conflicts and also to provide sufficient finances for the campaign of their organization.

The Challenges being faced by the CNTB

The information gathered from the members of the CNTB revealed that the organization suffers from insufficient financial constraints, which do not permit them to perform their duties successfully. In their explanations, they hinted that

the current conflicts of lands and other properties arise in several provinces, districts and villages of the country. This implies that they are obliged to travel long distances in order to find exactly what happens country wide.

Another problem that they are facing is that given that the number of returnees increases, such conflicts linked to lands and other properties also rise. They also mentioned the resistance from those people who grabbed other people's properties because they are powerful people who occupied various position of leadership during one party regime or military dictatorship.

Another challenge is that tribunals and courts are only dominated by the magistrates who belonged to the old one party regime; they are not favourable to the restoration of damaged properties. In many instances, the members of the CNTB have to deal with a land or a property whose people in conflicts possess both papers attesting that the property belongs to them. In this case, it makes the conflict more complicated and takes them more than enough time to resolve the case amicably. Therefore, this hinders the role of the CNTB of consolidating peace and stability among Burundians.

According to the same sources, respondents mentioned that the other challenge faced by the CNTB is that the current conflicts of land dispute are used by politicians and the civil organisation as an ethnic conflict for the reason of political propaganda. They link this problem with the fact that most of the people whose lands and other properties were grabbed belong to Hutus while those who grabbed those properties are in most of the cases their counterparts Tutsis. In the process, the majority of CNTB members belong to the Hutu tribe. This makes the Tutsi community try to politicise the conflicts to use it as a tool in their quest to win elections. The direct impact of this challenge is that it divides people along ethnic lines making the reconciliation exercise more complicated.

The respondents raised corruption by occupants as another challenge, the negative solidarity of occupants as well as threats of occupants. Many of the respondents hinted that even those who really try to be witnesses when such conflicts arise fear for their security. This means that, if witnesses rule in favour of returnees as the common trend shows, the other occupants threaten them to the extent of losing their life. For example, in his questionnaire, one respondent indicated that the challenge that the CNTB faced was that this organization wanted to reallocate the land to a returnee, whereas he bought it from another person, and this becomes a chain reaction involving a series of owners and buyers.

Enquiry on the number of people claiming their land through the CNTB

The findings from the responses from members of the CNTB indicated that some returnees approached them and claimed that their properties were destroyed and stolen by the Burundian Army. However, these people are not able to identify the person who did that because of the war situation and the numbers of the army personnel involved during war period. Of course, it was common that during the period of wars, many soldiers massacred innocent people, stole and grabbed some properties and the owners cannot identify them.

The CNTB responses indicate that 90% of victims are Hutus, but there are some other cases where Tutsis are victims. The owners of properties are Hutus and Tutsis. However, findings showed that those people who grabbed lands and other properties belong to the Tutsi tribe. This can be explained by the fact that Burundi is a country which has been under minority military group made of Tutsi this during over years and years. In this regard, the biggest portion of land is owned by Tutsis. In contrast more than 80 percent of Burundi inhabitants are Hutus, who own a smaller portion of land as compared to that owned by their counterpart Tutsis. This came as a result of several wars which were initiated by the Tutsi military regime, which managed to displace Hutus away, through threats and harassment.

Findings also highlight that returnees claim their lands because they cannot survive without land given that Burundi is an agriculture country where close to 90 percent of the people survive on agriculture. So far according to the responses from CNTB there are almost 30.000 hectares of land which have been returned to their owners.

The views gathered from some members of the CNTB who responded to the questionnaires, revealed that between 50 and 60 families have been reallocated their land. Apart from the land conflicts' resolved the same sources revealed that more than 10 families managed to get their houses back.

CNTB assistance to the returnees to reclaim the land and other properties

The findings on the data collected from returnees showed that in general, it took a long time for the CNTB to resolve conflicts linked to land and other asserts. For example, some conflicts took between two to three years, sometimes more than that. Another category of respondents hinted that they were yet to approach the CNTB in order to reclaim their land and the reason being that they did not have financial means to travel to where CNTB members operate from.

Other responses from returnees also indicated that these people expected material help from the government through the CNTB such as land being issued with government (i) since the government possesses some unutilized land; (ii) since there are individuals with vast portions of land. The returnees highlighted these pleas because they were crying over unprecedented poverty, which combined with tough weather conditions were likely going to harm returnees and their dependents while waiting for a possible resolution of the land disputes in the country.

The challenges faced by the returnees when reclaiming their lands

The information collected from returnees showed that it took them some years before they got their land back. Meanwhile, they could not engage in any agricultural activities because they had no land hence they had difficulties in feeding themselves and their dependents. For example, one of the returnees hinted that his properties were destroyed and stolen by the Burundian militias. However, he managed to report the case to the CNTB against the person who was utilising his land. He was also waiting for a final verdict from that organization. In general, the majority of returnees face an insurmountable task of attempting to evict their neighbours or relatives from their land. Another respondent for example, claimed that he was not yet reclaimed their land back despite that they presented the evidence of ownership of the land.

6.2 Responses from the Bashingantahe

The role of the Bashingantahe in resolving land disputes

The respondents from this category stipulated that their role was to settle disputes in the way of reconciliation so that people live together in peace. Another one said that the Bashingantahe have the principal role of reconciling two parties in conflict so that the disputes can be resolved amicably as it has been the culture in the country way before the various inter ethnic conflicts which paralyzed the country for some decade. In this regard, the Bashingantahe role was also to preserve peace and stability that the country has been enjoying for the past 10 years.

One Mushingantahe for example, reminded the role of the institution of Bashingantahe during the old days. He described it in a parable as “where the Bashingantahe are present, no stone is thrown there”. He elaborated this as saying that these Bashingantahe were involved in resolving all forms of conflicts in order to preserve and reinforce peace and reconciliation nationally. He described Burundi as a nation of brothers and sisters who were born from one father and father. Hence, he did not expect conflicts of any kind, and in case of a possible misunderstanding such issue must be solved peacefully without prejudice.

In general, the Bashingantahe play an important role in the society or community and they are respected chiefs with dignity. When there is an understanding between two people who are fighting over land or something else, they are advised to report the matter to the Bashingantahe, so that they resolve the conflict. In theory of Restorative justice which is the approach to justice that focuses on the needs of the victim who is the displaced person and the offender who is the person who occupied the land, which does not belong to him, it is said that they should satisfy the victim and the offender to be punished.

The challenges faced by the Bashingantahe when resolving the land disputes

The findings indicated that the challenges that the Bashingantahe are facing are corruption and lies characterising the occupants. Respondents stated that sometimes these conflicts are merely political and these Bashingantahe are no longer respected as it was in the past as well as a negative solidarity among the occupants. These Bashingantahe are no longer trustful because they can be corrupted and be on the side of the person of the same tribe. In Restorative justice, the information, truth telling, empowerment and restitution are the types of needs of victims. When returnees state what caused them to flee and show proof of ownership to their lands and properties, the Bashingantahe would accept their concern so that they can fulfil their needs without corruption. Majority of respondents said that normally, the Bashingantahe are well placed to say the truth so that they can resolve the conflict and also they should help the government to find solution to the land disputes. The Bashingantahe are people who were supposed to welcome returnees, and honest to the returnees. They are supposed to settle the disputes but because of their incompetency, they are corrupted or get to deal with the witnesses who are already corrupted.

Another major challenge faced by the Bashingantahe is that they are not empowered by the government as it used to be before the CNTB was instituted in the country. This makes the members of the CNTB to be drawn from the members of the ruling party, who must also work for the benefit of the political party. However, given that the Bashingantahe stay in the same villages together with the returnees and people who grabbed their properties, they are in most of the cases well informed than the members of the CNTB. In addition, in their responses, the Bashingantahe lamented that they are not paid by the government yet their counterparts CTNB members are paid.

Findings also showed that the number of returnees has been on a rise since 2003, when the government shared between the former guerrilla movement and the existing party in power that time. The implication of this massive influx of returnees increased the number of conflicts linked to land and other properties. This explained that most of the returnees had large families yet they did not have means to feed them. Hence poverty among returnees worsened the relationship between them and those who occupied their properties in their absence. This presented a challenge to the Bashingantahe given that they could not assist in some instances and call for the government to embark on a quick intervention to come to the rescue of the returnees before the disputes get settled.

Ineffectiveness of Bashingantahe’s implementation of land policies

From the research findings, the land disputes are caused by shortages of land itself. For example, one returnee said that it took him a long time before the institution of the Bashingantahe attends to the plea he brought against an occupant who grabbed his land, in which the culprit has since then put up a structure. This made the returnee to take the case to the CNTB because for him, the Bashingantahe were like a toothless bulldog. In addition, most of the respondents indicated that because politics plays an important role in Burundian life, the politics of land for the displaced people had not been well planned so that it provides good results. The problem of land as outlined by the majority of the respondents is caused by an increase in number of inhabitants given that Burundi is a tiny country compared to the number of the inhabitants. Furthermore, given the nature of primary economic activities, there is almost no life in Burundi for people in rural areas without land.

The hindrance of the Bashingantahe in helping Returnees

In her findings, the researcher noticed that the actual political regime plays a major role. According to the same source, the various conflicts which disturbed the country are found to be the root cause of what is happening today because the Burundian community has been polarized. This sometimes makes the Bashingantahe biased towards people of their tribe. Likewise, the judiciary system is still in the hands of the ethnic group which confiscated people land, the reason why it becomes difficult for the Bashingantahe to restore the properties of returnees.

The findings have also indicated that many witnesses are liars especially when they get a bribe from the occupants of a certain land or property. Given this situation, it takes quite long time for the Bashingantahe to find the truth. Results also state that all the Bashingantahe are not holy such that some of them, due to poverty, they can easily be corrupted. Sometimes they issue a land to the person over a sum of money.

The government contribution towards land redistribution

Responses collected from the various groups present mixed reactions. For example, some respondents claimed that the government, through the CNTB has done a lot to resolve the land disputes. However, other parties indicated to the researcher that the government has not done much because they claim that the government empowered the CNTB in order for its members to make money. This is the case, in some provinces like Makamba and Bururi where CNTB members are accused of conniving with some parties in conflicts in order to sell the property and share the money when the matter is settled as highlighted by the same sources.

4.5 Responses from the Interviews

The views on possible challenges faced by CNTB in resolving conflicts linked to land and other properties

The views raised by some members of Burundi civil societies were that the CNTB takes time to resolve the land disputes. Others indicated that some people approached the CNTB over land confiscation cases but that it sometime took over 5 years before such matters were resolved.

A common sentiment was that members of the CNTB were appointed by the current president and are members of the president's political party; hence the expectation was that the commission must work to satisfy the wish of the president.

Other findings indicated that, the Peace Agreement which was signed in Arusha Tanzania, had advocated for the creation of National Commission of Truth and Reconciliation of Burundians commonly known as "Commission de Vérité et de Réconciliation (CVR) in French, before the creation of the CNTB. It is with this background the work the CNTB was viewed as a backbone of the CVR. Unfortunately, the CNTB was created before the CVR and most of the respondents wonder why it was done in that way.

The Views on Burundi government success of peace building through the CNTB

The response from the interviewee is that it is still waiting for the government's intervention because it is almost 10 years, another one is said that the government did not do anything, that his waiting for the CNTB.

Nditije Pascal tried to convince someone who occupied his land to surrender it but he refused. Again, an old neighbour tried to engage him into a dialogue, to reconcile but failed to yield. The research assistant continued to interview the returnees, whereby the returnee occupied land which he had bought from someone and later sold to another individual. The CNTB takes time to put things in order and are what making people taking long to get their properties. It's true the challenges which they have is because the CNTB has taken a lot of cases of people in order to work on their problem so that they give them back their lands, because of a lot of the problems they are facing linked to the CNTB that makes the returnees spend more time before they get their land back despite the poverty and family concerns they must address.

Civil society views on concerns linked to the land disputes

The responses from the interviewees, who lead non political institutions, raised a number of concerns linked to land disputes. The respondents comprised of both males and females. They highlighted that the restoration of lands and other properties cases with resistance. However, they also supported that the achievement of such resolution of conflicts constitute a positive move to the entire Burundian community.

Some of the respondents acknowledged that the non resolution of disputes affect negatively the parties in conflicts especially returnees. These concerns are linked to the importance of land in the daily life of Burundi citizens, which ranks the agriculture sector as the main economic activity in the country. The responses indicated that in so many instances, the parties in land disputes did not have where to cultivate so that they derive revenues and wealth to use for precautionary purposes.

7.0 Conclusions and Recommendations

7.1 Conclusions

The study clearly showed that an increase in numbers of people returning back to Burundi from exile is the root cause of the land disputes' problem. Political and economical problems faced by returnees can be attributed to poverty and the insufficient of lands. This was made complicated by the fact that such returnees had big families to take care of yet their financial means were in critical conditions.

Faced with these challenges, the government created the CNTB, in a bid to resolve such land and other properties' disputes. This was also envisaged as a way to strengthen peace, stability and reconciliation among the various ethnic groups in the country. This also aimed to assist vulnerable people such as returnees to reclaim their land or properties which had been grabbed or destroyed by their neighbours or relatives.

The CNTB was created in addition to the traditional institution of the Bashingantahe and challenges increased instead of being solved completely. Some of these challenges were said to be corruption of both CNTB members and the Bashingantahe, land occupants threats towards both these two categories, returnees and also the witnesses. Other challenges were thought to be the lack of financial support of the CNTB and the institution of the Bashingantahe as well as the non empowerment of the Bashingantahe in their quest to contribute in solving land disputes. Challenges are also explained by the interference from politicians who use the conflicts for furthering their political agenda. In addition, ethnic tendencies play a very crucial role in the non success of the CNTB and the Bashingantahe because members of these two entities lean towards people of their tribes.

The non creation of the Commission of Truth and Reconciliation which would have prevailed over the CNTB constitutes a challenge as well as a danger in strengthening peace and stability in Burundi.

Returnees were disadvantaged because they needed to survive like others and needed to exploit their lands so they could get something to eat and feed their families, this through farming because 86 percent of such people are ordinary

farmers. Therefore, in general the research findings hinted that peace and stability were at stake.

7.2 Recommendations

The following intervention measures are believed to bring reasonable contribution to the restoration of reconciliation and peace stability in the country on the one hand, and to enable returnees to reclaim their grabbed land and other properties on the other hands.

- The government should not undermine the role played by the CNTB. This can be achieved through empowering the CNTB by receiving financial support from the government. In this way, the CNTB members will be able to reach the remote areas of the country where returnees are not accessing their services.
- There is a need for the members of CNTB to be impartial when resolving the problem of land and they should listen to the neighbours, returnees who know the truth about the land in dispute. To enhance this, the government should put in place mechanisms which will monitor the work done by the CNTB. The government should create the Commission of Truth and Reconciliation which would prevail over the CNTB. This commission should not be appointed from political parties, but their members should be drawn from church organisations, civil societies and the Bashingantahe.
- The CNTB should investigate before taking the decisions that is when two parties come to report about the land, the CNTB should not take any decisions before they check the disputed land in question so that the CNTB should also collaborate with the community, neighbours and the displaced people because they know the truth.
- The government should embark on a census of the huge properties that are owned by former rulers under the one party state so that it can redistribute some portions of land to returnees, especially if findings show that these properties were acquired in obscure manner. The government should also look for sufficient funds that can be used to support returnees for a short period while they land reclaiming exercise be resolved.
- The government should redistribute the state land which is unoccupied to people without land, especially those who do not have shelters. The government should also make it possible for the CNTB to work together with the Bashingantahe because they have a better understanding of what is on ground. The CNTB should not be corrupted and allowing people to give them accept bribes so that they get land because it impacts negatively on the returnees living without land.
- The government should organize awareness campaigns on behalf of Burundian people so that the cultural identity can be restored. These campaigns will readdress all parties in lands and other properties' disputes as well as the witnesses to tell the truth in order to bring to book recalcitrant culprits and take punitive measures upon them.
- The government needs to also call for voluntary restoration of land and other properties by those who grabbed them without consulting their owners. In return, the government should compensate in a way or in another these loyal citizens who would surrender such properties. This would bring relief to both parties without a lot of losses and improvement on returnees' lives.

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