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A Critical Analysis on Burundi Efforts Towards Perpetual Positive Peace

Masabarakiza, Justin; Sous la direction de : Prof. Dr. Jean Marie Barambona

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FACULTE DES SCIENCES POLITIQUES ET JURIDIQUES

2020-2021

A CRITICAL ANALYSIS ON BURUNDI EFFORTS TOWARDS PERPETUAL POSITIVE PEACE

Par

MASABARAKIZA Justin

MEMOIRE

Présenté et défendu en vue de l'obtention du

Diplôme de Master Complémentaire en Droits de l'Homme et Résolution Pacifique Des Conflits

Sous la direction de :

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Bujumbura, septembre 2022

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MEMBERS OF THE JURY

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2. Prof. Dr. Emery NUKURI; Secretary
3. Prof. Dr. Jean Marie BARAMBONA; Member

DEDICATION

This memoire is intentionally, deliberately and sympathetically conferred to my dear parents the **Rev. Canon Emmanuel NSENGIYUMVA** and **Madam Priscilla NIZIGAMA** as well as any Human Rights violation victim and all perpetual positive peace seekers.

ACKNOWLEDGEMENT

The task of preparing this work was not an entertainment for how tough it was. Remarkably, during the process of writing this memoire I received assistance from several people with distinct status. They include government officials, private officials, religious leaders, students, my brethren and common citizens.

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Also, I thank Mr. Jean Christy MUHETO, Mr. Celeus HABONIMANA, Mr. Cyprien MANIRAKIZA any person who supported me either materially, morally, spiritually or psychologically. I have nothing for payment but God will bless them and our State (Burundi).

The most thanks are to The LORD of all, the Creator and facilitator of all matters!

ABSTRACT

This memoire presents the concepts of Human Rights and perpetual positive peace in Burundi. There have been several Human Rights violations in Burundi particularly in 1972, 1988, 1993 and 2015. The country experienced assassinations, oppression, cruelty and lack of freedom. Currently, it is relevant to suspect the population minds to be characterized by fear of human rights violation basing on particular perspectives. This situation fetters the implementation of Human Rights Law efforts in Burundi and retains the need of lasting positive peace.

Through library research, interviews, questionnaire techniques and internet sources research methodology the researcher has analyzed the Human Rights paradigm in Burundi. Chapter One exposes historical background and hypothetical perspectives in the country. In Chapter Two the author deepens the description on the meaning and history of the main themes of the work. Chapter Three depicts Burundi reality through the findings from the field sample.

The findings of a research have discovered that roots of Burundian Human Rights violation throughout history are unequal resource distribution, power sharing and legitimacy of power. As a means of solving the three roots of problems citizens tend to base on their ethnic groups and political manipulations to access wealth and power which results into intensive violation of Human Rights. The findings show that 95.7% of the respondents argue that Burundians live with fear while 4.3% of the respondents argue that Burundians live without fear of Human Rights infringement. The aforesaid empirical statistics unfold that there is still a ray of hope to win against the existing fear and mistrust in Burundi to achieve the perpetual positive peace ideal. The emergence of a significant level of fear and mistrust among of some Burundians is one of the factors leading to the insufficient citizens' participation in the matters that affect their lives.

In Chapter Four, the researcher exposes his position by outlining recommendations for positive peace achievements in the Republic of Burundi. The author concludes that, Burundians should keep in minds that all essences for implementation of Human Rights Law to attain perpetual positive peace in the State are found within themselves first. All citizens are invited to understand the significance of loving their Mother Land, working for the public interest and to prestigiously present national culture, values and heritage across the territory. The spread of Burundi's heritage of UBUNTU (love and unity in details) would intensify Burundians common moral language that encourages both Human Rights Law implementation and achievement of the so called Perpetual Positive Peace.

RESUME

This memoire presents the concepts of Human Rights and perpetual positive peace in Burundi. Human Rights violations in Burundi particularly include 1972, 1988, 1993 and 2015 where assassinations, oppression, cruelty and lack of freedom were experienced. It is suspected that the population minds are characterized by fear of violation. This situation fetters implementation of Human Rights Law efforts and retains the need of lasting positive peace.

Through library research, interviews, questionnaire techniques and internet sources research methodology, the researcher has analyzed the Human Rights paradigm in Burundi. These are historical background and hypothetical perspectives in the country; description on the meaning and history of the main themes of the work; and Burundi reality through the findings.

The roots of Burundian violation throughout history are unequal resource distribution, power sharing and legitimacy of power. As a means of solving the three roots of problems, citizens tend to base on their ethnic groups and political manipulations to access wealth and power which results into intensive violation of Human Rights. About 95.7% of the respondents argue that Burundians live with fear while 4.3% argue that Burundians live without fear of Human Rights infringement. The subsequent empirical statistics unfolds that, there is still a ray of hope to win against the existing fear and mistrust in Burundi to achieve the perpetual positive peace ideal.

The researcher recommends that, for positive peace achievements in the Republic of Burundi, Burundians should keep in minds that all essences for implementation of Human Rights Law to attain perpetual positive peace in the State are found within themselves first.

CONDENSE EN FRANCAIS

A. LE CADRE CONCEPTUEL

Un chercheur a adopté un sujet restreint et spécifique en affirmant que **"A CRITICAL ANALYSIS ON BURUNDI EFFORTS TOWARDS PERPETUAL POSITIVE PEACE".** Le titre de ce mémoire découle d'une logique répandue selon laquelle, *"if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights."*[1] La présence de paix signifie l'absence de conflit, et vice versa. La paix peut être définie comme une situation de sécurité et d'harmonie entre les individus d'une société donnée. L'individu pacifique est en paix avec Dieu, avec chaque élément de l'univers, avec lui-même et avec les autres, et n'éprouve aucun conflit avec eux.[2] Le conflit désigne un état d'hostilité existant entre les individus.

La notion de dignité humaine désignait un statut personnel et un charisme. McCrudden Christopher affirme que:

> *The concept of dignitas hominis in classical Roman thought largely meant 'status'. Honour and respect should be accorded to someone who was worthy... in scattered classical Roman writing was a second, broader, concept of dignity present, particularly in Cicero [Marcus Cicero, 43BC], where dignitas referred also to the dignity of human beings as human beings, not dependent on any particular additional status*[3].

L'application du droit international de l'homme et l'intervention des autorités nationales sont des solutions miraculeuses pour transformer les nations en situations de guerre, de paix négative ou de paix temporaire et les conduire à une paix durable et positive. *"[T]he relationship between war and other violent conflict is complex and dynamic...violation of human rights can be both causes and consequences of violent conflict"*[4].

B. LE PROBLEMATIQUE DU CONTEXTE

Le contexte de ce dilemme remonte au 15ème siècle. Le Burundi possédait un système de gouvernement centré sur un roi divin *(mwami)* dont les fonctionnaires étaient issus de la famille des princes royaux *(ganwa)*. La population était composée de Tutsis (14%) (classe dirigeante), de Hutus (85%) (majorité) et de Twas (classe minoritaire) (environ 1%), marginalisés économiquement et socialement. L'identité sociale, les privilèges et les obligations sociales

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[1] Beitz, Charles R. (2009). *The idea of human rights*. Oxford: Oxford University Press, pg.1

[2] Taheri M. A., and Dehghan M., "*Academic World Education and Research Center, Procedia - Social and Behavioral Sciences; 4th World Conference on Psychology, Counselling and Guidance WCPCG-2013, definition of peace and its different types as approached by halqeh mysticism". Malaysia*: Elsevier Ltd., 2013, pg. 56

[3] McCrudden C., "*Human Dignity and Judicial Interpretation of Human Rights; The European Journal of International Law",* Vol. 19 no. 4, EJIL, (2008), pg. 656-657

[4] Sriram C. L., *et alii*., *War, Conflict and Human Rights; Theory and Practice*, 2nd Ed., London and New York: Routledge Taylor and Francis Group., 2014, pg. 4

dépendaient d'un ensemble de facteurs tels que le lignage, la possession de bétail et la profession. Le pays vivait en paix et les mariages mixtes entre Tutsis et Hutus étaient favorisés. Dans la seconde moitié du 19ème siècle, des conflits éclatèrent au sein des *ganwa* (les Bezi et les Batare). Les *Bezi* centralisèrent l'administration du royaume en contrôlant l'accès à la terre et au bétail par l'intermédiaire du roi. "In *this way Tutsi and Hutu identities lost their fluidity and took on the features of a ridged caste structure*".[5]

Au contraire, selon **Janvier D. Nkurunziza** ;

> *The kingdom of Burundi was one of the strongest kingdoms in the African Great Lakes region for several centuries, until the end of the 19th century when it became a German colony until the end of the First World War and thereafter, a Belgian colony… Therefore, weakening the traditional state became the Belgian colonists' modus operandi to stamp their authority on the country. They undermined the traditional system of governance by introducing "divide and conquer" policies that broke the secular identity of the people of Burundi.*[6]

L'affaiblissement du système traditionnel burundais par les Belges indique que, traditionnellement, les Hutus étaient agriculteurs tandis que les Tutsis étaient éleveurs. Des différences de statut régional existaient parmi les Tutsis, le clan Tutsi-Banyaruguru se trouvant principalement dans le nord du pays et le clan Tutsi-Bahima principalement dans le sud. Les Tutsis-Banyaruguru dominaient généralement le Burundi précolonial, tandis que les Tutsis-Bahima dominent le Burundi depuis l'indépendance. La société était initialement organisée autour de loyautés familiales et claniques. À partir du XVIe siècle, ces liens ont été adaptés pour inclure une monarchie tutsie. Une classe princière *(ganwa)* intervenait entre le roi *(mwami)* et les masses, maintenant les Tutsis et les Hutus ordinaires sur un pied d'égalité.

Après la Seconde Guerre mondiale (1939-1945), les dirigeants burundais perpétuèrent l'héritage belge face à la fragilité de la population. Ils commencèrent à organiser des partis politiques qui serviraient des intérêts de tous les groupes ethniques. Les chefs traditionnels du Burundi se virent refuser le statut légal du parti politique en 1955, mais trois ans plus tard, l'Unité pour le Progrès National (UPRONA) fut créée au Burundi. En 1959, le *Mwami* devint monarque constitutionnel au Burundi. Le chef du parti était le prince Louis RWAGASORE, un Tutsi, fils aîné du *mwami* MWAMBUTSA. Son assassinat, depuis le 13 octobre 1961, déclencha une crise dont le pays peine à se relever. Malgré cette crise, le Burundi accède à l'indépendance le 1er juillet 1962. En janvier 1965, Pierre NGENDANDUMWE, un Hutu, accède au poste de Premier ministre pour la deuxième fois, à la demande du monarque constitutionnel, Mwami MWAMBUTSA. NGENDANDUMWE est assassiné par un tutsi armé le 15 janvier avant d'avoir pu former un

[5] EISA, African Democracy Encyclopaedia Project; Pre-Colonial Burundi (c1300-1890), (April 2010)

[6] Nkurunziza J.D., *The Origin and Persistence of state Fragility in Burundi*, United Nations Conference on Trade and Development (UNCTAD), (2017), pg. 7

gouvernement. Joseph BAMINA, un autre Hutu, occupe alors le poste de Premier ministre jusqu'à la tenue d'élections plus tard dans l'année. Bien que les élections aient donné aux Hutus une nette majorité de sièges à l'Assemblée nationale, MWAMBUTSA ignore les résultats et nomme un Tutsi, Léopold BIHA, comme secrétaire particulier et Premier ministre. MWAMBUTSA insiste sur le fait que le pouvoir restera entre les mains de la Couronne, même lorsqu'il choisit de quitter le pays après un coup d'État manqué mené par un groupe d'officiers hutus en octobre ; il décrète que son fils, le prince Charles NDIZEYE, gouvernera en son absence.

Janvier D. Nkurunziza ajoute que :

> *Months before the country's independence, Prince Louis Rwagasore, the highly respected national hero who fought for the country's independence, was assassinated by political opponents "who seemed to have acted with the tacit approval of Belgian authorities". Within the Unité pour le Progrès National (UPRONA) party, Rwagasore had been able to unite Hutus and Tutsis behind his independence project, which was coupled with a clear development vision. After his assassination in October 1961, Burundi went through a period of turmoil, as Hutu and Tutsi political leaders were locked into leadership disputes*[7].

Nigel Watt dans son ouvrage, *Burundi; Biography of a Small African Country*, déclare que ;

> *Having effectively excluded the Hutus (most of whom were kept out of the army by a rule that recruits had to be of a certain height and girth.) Micombero set about creating a dictatorship, abolishing parliament and running the country through a National Revolutionary Council. Micombero accused Belgium of supporting a minor revolt by Hutus in 1969. Belgium withdrew military aid and France eagerly stepped in. A plot in 1971 by Tutsis from Muramvya who felt excluded from power was followed by a serious Hutu revolt on 29 April 1972… All educated Hutus, even teenagers at secondary school and especially anyone wearing glasses, was targeted.*[8]

C. ÉNONCÉ DU PROBLÈME

Le concept de paix positive perpétuelle remonte au règne d'*Abami* au Burundi, entre les années 1400 et 1960. Être pauvre ou riche, appartenir à un groupe ethnique particulier, avoir une appartenance religieuse ou régionale, n'a jamais été un facteur de désunion ni de conflit.

L'accession au pouvoir du capitaine Michel Micombero a marqué les conflits burundais.

> *King Mwambutsa...had been on the throne for the entire period of Belgian rule... in October 1965 Hutus in the police and army started a revolt. The Tutsis saw this revolt as an attempt at ethnocide. They reacted by excluding Hutus from the army and from political power. From this moment, history started to look different depending on your ethnic standpoint. 1966 marked the end of the monarchy. King Mwambutsa was deposed by his son, Ntare V, who was himself almost immediately removed by Captain Michel Micombero, a young army officer from Bururi whom the new king had appointed as Prime*

[7] Nkurunziza J.D., *The Origin and Persistence of state Fragility in Burundi,* United Nations Conference on Trade and Development (UNCTAD), (2017), pg. 8

[8] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg.33

> *Minister. Micombero was the first, and worst, of the three Tutsi military presidents, all of the Hima clan, from Rutovu commune...*[9].

Après cette crise ethnique en 1976, le colonel Jean-Baptiste Bagaza, originaire de la commune de Rutovu, prit le pouvoir par un coup d'État sans effusion de sang. Les Burundais prirent alors pleine conscience de la vulnérabilité de chacun face aux atteintes et aux droits fondamentaux. Des stratégies visant à préserver la paix et le développement perdus commencèrent à être mises en place.

Nigel Watt rapporte que :

> *He seemed proud to have reformed the administrative and tax system, prevented corruption, developed industries (coffee, sugar, cotton) and created infrastructure (roads, electricity, drinking water, new villages). He was successful in getting aid from Arab states, the Soviet bloc and China as well as from the West... his government had seen everyone as Africans rather than... Hutus or Tutsis*[10].

Les conflits de même nature se reproduisent sous le règne de Major Pierre Buyoya en 1988. *"In an outbreak influenced by Palipehutu and Rwanda's Hutu government and provoked by repressive local officials and the killing of a Hutu family, 300 Tutsis were killed... At least 20,000 Hutus were killed and many more escaped to Rwanda"*[11].

Plus tard, une calamité conflictuelle similaire s'est reproduite en 1993. **Nigel Watt** dit que ;

> *The result was to draw up a Charter of Unity ('Ubumwe'), approved by referendum in 1991, with a special unity flag and anthem... The failure to create real unity became clear in the 1993 election...took place on 1 June 1993. Pierre Buyoya ran for Uprona, Melchior Ndadaye for Frodebu and there was a royalist candidate, Pierre-Claver Sendegaya... A ... group of soldiers rose in revolt before the parliamentary vote and again before Ndadaye's inauguration... The leader of this coup attempt said,... he was only carrying out Buyoya's orders... 21 October... Hutu-led democratic government came to an abrupt end... Colonel Bikumagu, the army chief, gave the green light for a coup and Ndadaye was killed...*[12].

La réalisation du droit international de l'homme a commencé avant la promulgation de la Constitution intérimaire du Burundi de 2005.

Richard Barltrop a écrit que,

> "*In …1995, at the prompting of former Tanzanian President Julius Nyerere, the presidents of Burundi, Rwanda, Uganda and Zaire (as Democratic Republic of Congo was still known) announced the 'Regional Peace Initiative on Burundi.' With Uganda as chair and Nyerere in the role of regional 'facilitator' or chief mediator for the peace process, two initial meetings were held with FRODEBU and UPRONA …in…1996."*[13]

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[9] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg. 31-32
[10] Ibid., pg. 39
[11] Ibid., pg. 41
[12] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg. 42-45
[13] Barltrop R., *The Negotiation of Security Issues in the Burundi Peace Talks*, Center for Humanitarian Dialogue, (2004), Switzerland, pg. 17

Les pourparlers de paix ont été initiés et modérés par Mwl. Julius K. Nyerere, ancien Président de la Tanzanie. Après sa mort en 1999, l'ancien Président sud-africain Nelson R. Mandela a assumé le rôle de médiateur. L'Accord d'Arusha pour la paix et la réconciliation (APRA) de 2000 est le modèle contemporain de mise en œuvre des lois au Burundi.

En 2015, le Burundi est entré dans d'autres conflits et une partie de la population a fui le pays. La candidature de Pierre NKURUNZIZA à un troisième mandat a suscité une controverse, poussant certaines personnes, y compris des membres haut placés du CNDD-FDD, à affirmer que cela violerait les termes de l'Accord d'Arusha de 2000 ainsi que la Constitution du pays. Les partisans de Pierre NKURUNZIZA ont fait valoir que son premier mandat ne comptait pas pour la limite de deux mandats, mais pour celui du Parlement.

Par conséquent, les deux organes chargés de l'application de la législation électorale burundaise sont la Commission électorale et la Cour constitutionnelle ; La Cour constitutionnelle a statué le 4 mai 2015 en réponse à une demande d'interprétation de la Constitution. Elle a jugé qu'un éventuel troisième mandat de Pierre NKURUNZIZA ne constituait pas une violation de la Constitution, ce qui a alimenté les protestations.

L'auteur déclare que :

> *On 27 April 2015, 14 CNDD-FDD senators… asked the Constitutional Court for an interpretation of articles 96 and 302 of the Constitution… the Court ruled that the APRA did not permit a third presidential term but that the Constitution drafters in 2005 wrongly5 interpreted the APRA. …under the transitional article 302, an exceptional presidential mandate was created that had nothing to do with article 96. …one final renewal of the (then) current presidential term was not contrary to the Constitution...*[14]

Récemment, des écrits ont souligné la nécessité d'améliorer le respect des droits de l'homme dans le pays. Le rapport sur les droits de l'homme précise notamment que :

> *Human rights violations perpetrated by the Burundian authorities and to a lesser extent by armed rebel groups vary widely in terms of the types of crime committed, both in the provinces and in the capital… arbitrary arrest and detention, summary and extrajudicial execution, targeted assassination, torture and abuse, rape and other acts of sexual violence, persecution, inciting racial hatred and violence, inciting genocide, concealing bodies in common graves, pillaging, and holding to ransom, ... others*[15].

En 2021, quel que soit le processus de paix en cours, le gouvernement s'efforce de garantir aux citoyens qu'il n'y aura ni crise ethnique ni crise politique dans le pays.

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[14] Vandeginste S., *Legal Loopholes and the Politics of Executive Term Limits: Insights from Burundi*, (2016), GIGA German Institute of Global and Area Studies, Institute of African Affairs in co-operation with the Dag Hammarskjöld Foundation Uppsala and Hamburg University Press, pg. 52

[15] Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2018 United States Department of State*

D. OBJECTIFS ET IMPORTANCE

L'objectif principal de cette recherche est de promouvoir des mécanismes spécifiques de protection du droit international de l'homme au Burundi en vue d'une paix positive perpétuelle. Cette promotion des mécanismes efficaces comprend la révision des législations et politiques nationales afin de les rendre conformes aux normes juridiques internationales.

Les objectifs et implications spécifiques de ce document incluent l'analyse de la conception des droits de l'homme au Burundi et la détermination des mécanismes adoptés pour leur mise en œuvre. Il s'agit également d'identifier les lacunes du système juridique national afin d'aider la société à protéger les droits de l'homme dans l'intérêt de tous, non pas comme un simple privilège, mais comme une question de droit, afin d'inciter les citoyens à élaborer des interventions appropriées pour parvenir à une paix durable.

E. HYPOTHÈSE

Cette recherche part du principe que le droit international des droits de l'homme est connu de certains Burundais, mais que la répartition des ressources humaines et naturelles, le partage du pouvoir ou de l'autorité et la présence d'un néo-patrimonialisme influencent l'existence de conflits non résolus.

D'autres variables contribuent à la persistance des conflits dans l'histoire du Burundi :

i. Des blessures psychologiques non traitées, dues à des expériences douloureuses passées, subsistent.

ii. Faible niveau de promotion et de protection du rôle des civils dans la sécurité nationale.

iii. Nécessité d'adopter des lois nationales spécifiques sur des sujets spécifiques.

iv. Les lois nationales comportent des mesures ambiguës de protection de droit de l'homme.

v. Inefficacité de l'éducation civique auprès des citoyens, ce qui entretient la peur.

F. PORTÉE DE L'ÉTUDE ET ÉCHANTILLONNAGE DE LA POPULATION

La délimitation de cette recherche couvre la multitude de questions concernant le Burundi ainsi que les caractéristiques internationales relatives à la mise en œuvre du droit international de l'homme. Cette étude examinera dans quelle mesure le Burundi dispose d'un ensemble complet et distinct de lois de fond et de procédure applicables aux personnes en conflit avec le droit de l'homme.

G. REVUE DE LA LITTÉRATURE

Nigel Watt[16]; Une paix durable exige la justice, et non l'impunité. Avant la crise, le système judiciaire burundais était faible et ethniquement très partial ; il nécessite une réforme en profondeur. L'absence de condamnation des véritables coupables dans des affaires notoires comme l'assassinat du Président Melchior NDADAYE, mais aussi dans des milliers d'affaires moins médiatisées, a créé une culture d'impunité.

Boshoff H. *et al.*[17]; Les auteurs indiquent que l'organe central du Mécanisme pour la prévention, la gestion et le règlement des conflits de l'Union africaine, a tenu sa 91ème session ordinaire à Addis-Abeba, en Éthiopie, le 2 avril 2003, afin d'examiner la Mission africaine au Burundi. Le mandat de la MIAB pour le rétablissement de la paix au Burundi devait être d'un an et renouvelable pour six mois. Les principaux objectifs de la MIAB étaient de superviser la mise en œuvre des accords de cessez-le-feu ; de soutenir le désarmement, la démobilisation et la réintégration des ex-combattants ; de créer des conditions favorables à la présence d'une mission de maintien de la paix des Nations Unies ; et de contribuer à la stabilité politique et économique du Burundi. Les auteurs ajoutent que, *"AMIB will have fulfilled its mandate after it has facilitated the implementation of the ceasefire agreements, and the defence and security situation in Burundi is stable and well managed by newly created national defence and security structures."*

H. MÉTHODOLOGIE

Le chercheur doit utiliser des méthodes de recherche qualitatives et quantitatives. Il doit utiliser la méthode qualitative en recherchant des informations à partir de témoignages personnels et de documents fiables permettant de révéler des faits pertinents au sujet de recherche. Il doit s'appuyer sur deux principes de la méthode qualitative : les entretiens avec des informateurs clés (EIC) et les discussions de groupe. Le chercheur doit consulter des représentants du gouvernement, tels que des avocats, des agents de sécurité, des professeurs d'université, le HCR, le ministère de l'Intérieur, la CVR, des tribunaux, des étudiants, des réfugiés rapatriés et de simples citoyens. Ces personnes ont une influence sur ce document car elles travaillent dans le domaine des droits de l'homme et sont concernées par ces droits.

Le chercheur doit également utiliser une méthode quantitative pour rechercher des données numériques ou mesurables sur le sujet de la recherche. Il doit effectuer des recherches documentaires, mener des entretiens, utiliser des questionnaires et consulter des sources Internet,

[16] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg. 157
[17] Boshoff H., Vrey W. and Rautenbach G., *The Burundi Peace Process; From Civil War to Conditional Peace*. Pretoria, South Africa: Institute for Security Studies (ISS), 2010, pg. 51-52

car l'information est plus facilement accessible que par des méthodes quasi-expérimentales ou expérimentales.

I. CHAPTERISATION

Le premier chapitre présente l'ensemble du mémoire.

Le deuxième chapitre aborde l'évolution de droit relatif au droit de l'homme et des concepts de paix.

Le troisième chapitre présente le dispositif juridique relatif au droit de l'homme au Burundi en lien avec les aspects de la paix positive perpétuelle.

Le quatrième chapitre présente les conclusions générales et les recommandations.

J. CONCLUSIONS ET RECOMMANDATIONS

Depuis 2017, plus de 120 000 Burundais sont rentrés dans leur pays malgré la pandémie de COVID-19, près de 41 000 réfugiés sont rentrés au Burundi en 2020 en provenance de Tanzanie, du Rwanda, de la République démocratique du Congo, d'Ouganda et Kenya. [18]

Un rapatrié qui s'est réinstallé au Burundi depuis 2013 a expliqué que même s'il savait qu'il avait le droit d'accéder à des toits en tôle au moment de la construction de sa maison, il n'a pas reçu de tels matériaux ni d'instructions fiables pour répondre à ses attentes.[19] D'autres rapatriés ont de graves problèmes fonciers car certaines de leurs terres ont été confisquées par d'autres personnes qui ne sont pas parties en exil tandis que d'autres terres ont été prises par le gouvernement pour des projets de développement sans fournir de compensation aux propriétaires.[20]

La réintégration des enfants de réfugiés burundais rapatriés dans les programmes éducatifs constitue un défi, en particulier pour les réfugiés ayant étudié dans les pays d'accueil dans des systèmes éducatifs différents de celui du Burundi. L'Université du Burundi a inscrit un étudiant ne maîtrisant pas le français pour poursuivre ses études de droit en anglais.[21]

L'hypothèse du chercheur est que, si le droit international de l'homme est connu de certains Burundais, la répartition des ressources humaines et naturelles, le partage du pouvoir et l'existence d'un néo-patrimonialisme influencent l'existence de conflits non résolus. La population a constaté que les principales causes des violences ethniques et politiques et des guerres au Burundi sont la pauvreté économique, la soif de pouvoir et le manque de légitimité des dirigeants.

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[18] Sibomana E., "*UNHCR and UNDP, 2021 Burundi Refugee Return and Reintegration Plan, January - December 2021"*, pg. 2

[19] In a dialogue with returned refugees of 2013 in Rumonge province

[20] Loc.cit

[21] Personal observation during the stay in Bujumbura, from 2020 to 2022

La population affirme que si les besoins économiques sont satisfaits, les conflits entre citoyens pourraient être évités, comme ce fut le cas par le passé.[22] D'autres considèrent que la source du conflit réside dans la répartition inégale des richesses, la mauvaise gouvernance, le partage inéquitable du pouvoir et l'émergence d'importantes disparités socio-économiques entre les citoyens. L'émergence d'une grande disparité entre les pauvres et les riches au sein du pays décourage les Burundais de se sentir appartenir à leur pays. Ce complexe d'infériorité les conduit à ne pas participer aux affaires qui les concernent.[23]

Concernant l'existence d'une peur de leur sécurité parmi la population burundaise actuelle, la première catégorie de personnes a observé que les Burundais n'ont pas peur de vivre sur le territoire car les gens sont libres de se déplacer d'un endroit à un autre à tout moment sur un territoire.[24]

La deuxième catégorie comprenait non seulement un groupe de personnes interrogées par l'Université Chrétienne de Bujumbura, mais aussi d'autres personnes interrogées par le biais d'entretiens avec des informateurs clés.[25] Vingt-deux répondants sur 23, soit 95,7 % de l'échantillon, ont affirmé que la peur et la méfiance règnent parmi les citoyens. Un répondant sur 23, soit 4,3 %, a observé l'absence de peur.

À la lumière d'autres variables hypothétiques contribuant à la poursuite des conflits dans l'histoire du Burundi, le chercheur a constaté que :

i) Des blessures psychologiques non traitées, dues à des expériences douloureuses passées, subsistent.

ii) Les citoyens participent peu à la promotion de la sécurité nationale.

iii) Il n'existe aucune lacune juridique pour la promulgation d'une nouvelle législation.

iv) Le chercheur n'a pas pu déterminer l'ambiguïté des lois relatives aux droits de l'homme en raison de la barrière linguistique ; les lois burundaises sont en français.

v) L'émergence d'une éducation civique insuffisante parmi les citoyens entretient des craintes ; il a été constaté que les citoyens craignent toujours pour leur sécurité, notamment lorsqu'ils dénoncent des actes répréhensibles ou des omissions, ainsi que des violations de droit de l'homme.

K. CONCLUSION

Les Burundais sont conscients que la paix est le fruit du respect de droit de l'homme et de la réalisation du développement durable. Ils estiment que l'éducation dans tous les domaines de la

[22] In a dialogue with a citizen named Christy on 22nd March 2022 in Bujumbura
[23] Hon. George NIKIZA, the Head of 'Office Nationale du Tourisme', on 17th March 2022 in Bujumbura
[24] Loc.cit
[25] In dialogues with several people whose names are hidden

vie est essentielle pour atteindre l'objectif (atteindre une paix positive et durable). L'éducation civique des Burundais n'est pas claire ; en particulier, les trois étoiles figurant sur le drapeau national ne sont pas clairement comprises par les citoyens.

L. RECOMMANDATIONS

Les conclusions de ce mémoire invitent le lecteur à garder à l'esprit que toutes les clés de la mise en œuvre des droits de l'homme en vue d'une paix durable et positive au Burundi se trouvent d'abord chez les Burundais. Les citoyens doivent faire preuve d'une volonté patriotique et scruter avec intelligence les améliorations et, ou les mécanismes supplémentaires pour y parvenir. Le chercheur appelle tous les patriotes du pays à penser non pas au bien-être particulier mais au bien-être général et à promouvoir la confiance entre les individus et entre les individus et les institutions de l'État.[26]

[26] United Nations General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff*, 9th August 2012, pg. 11

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LIST OF ACRONYMS AND ABBREVIATIONS

AMIB	African Mission in Burundi
APRA	Arusha Peace and Reconciliation Agreement
BC	Before Christ
BCE	Before Current Era
CEJP	*Commission Episcopale Justice et Paix*
CENI	Commission Electorale Nationale Indépendante
CNL	*Le Congrès National pour la Liberté*
CNDD-FDD	The National Council for the Defence of Democracy Forces for the Defence of Democracy
CNTB	*Commission Nationale Terres et Autres Biens*
CNIDH	*Commission Nationale Indépendante des Droits de l'Homme*
CVR	*Commission Vérité et Réconciliation*
DRC	The Democratic Republic of Congo
EAC	East African Community
EALA	East African Legislative Assembly
ECOSOC	Economic and Social Council
EISA	Electoral Institute for Sustainable Democracy in Africa
FI	*Fontaine Isoko*
FNL	*Force Nationale pour Libération* (National Liberation Forces)
HRBA	Human Rights-Based Approach
HRL	Human Rights Law
ICCPR	International Covenant on Civil and Political Rights
IJCI	Truth and Reconciliation Commission of Inquiry
INCHR	Independent National Commission of Human Rights
ILO	International Labour Organisation
INEC	Independent National Election Commission
JRRRP	Joint Refugee Return and Reintegration Plan
MSD	Movement for Solidarity and Democracy
NGO's	Non-Government Organizations
OAU	Organization of African Unity
PRIO	Peace Research Institute in Oslo
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNDP	United Nations Development Program

UNIPROBA	*Unissons-nous pour la Promotion des Batwa*
UPRONA	*Unité pour le Progrès National*
SGBV	Sexual and Gender Biased Violence
SOCABU	*Societé d'Assurance du Burundi*
WCCI	World Council of Curriculum and Instruction
WWI	World War

CHAPTER ONE

INTRODUCTION

1.1. THE CONCEPTUAL FRAMEWORK

The term peace in relation to conflicts among society members as far as International Human Rights Law is concerned has a historical standpoint. Previously, a researcher intended to explore Human Rights implementation in relation to permanent peace in Burundi with a generalized title articulated that, *A CRITICAL ANALYSIS ON THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW BY BURUNDI TOWARDS PERPETUAL POSITIVE PEACE.* For the purpose of ensuring an intensive study the researcher has adopted a narrowed and specific topic stating that **"A CRITICAL ANALYSIS ON BURUNDI EFFORTS TOWARDS PERPETUAL POSITIVE PEACE".** The doctrine of Human

Rights in International Law practice within the framework of International Law, regional and global institutions as well as in the policies of States and the activities of non-governmental organizations has been a cornerstone of public policy around the entire world. The title of this memoire is derived from a prevalent logic that, ***"if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights."***[27]

Definition of conflict has a negative connotation from that of peace. Presence of peace means absentia of conflict and vice versa. Peace may be defined as the situation of security and harmony among of the people in a given society. The peaceful individual is at peace with God, with every single constituent of the universe, with one's self, and with others, and has no conflict with any of them.[28] In another hand side, conflict could be defined as an existing state of disagreement or hostility between two or more people. The two terms are symmetrical to the effect that adjustment of the first shapes the emergence of the second.

A Human Rights Law philosophy can be traced back in the Roman Legal system. Human dignity notion was meant a personal status and charisma. **McCrudden Christopher** says that;

> *The concept of **dignitas hominis** in classical Roman thought largely meant **'status'**. Honour and respect should be accorded to someone who was worthy... in scattered classical Roman writing was a second, broader, concept of dignity present, particularly in Cicero [Marcus Cicero, 43BC], where **dignitas** referred also to the dignity of human beings as human beings, not dependent on any particular additional status.*[29]

Perpetual positive peace is the Burundian ideal rooted in what is exactly meant to be experienced in human life. Political parties, Non-Government Organizations (NGO's), religious institutions and individuals in Burundi strive to seek for permanent peace situation.

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[27] Beitz, Charles R. (2009). *The idea of human rights*. Oxford: Oxford University Press, pg.1

[28] Taheri M. A., and Dehghan M., "*Academic World Education and Research Center, Procedia - Social and Behavioral Sciences; 4th World Conference on Psychology, Counselling and Guidance WCPCG-2013, definition of peace and its different types as approached by halqeh mysticism". Malaysia*: Elsevier Ltd., 2013, pg. 56

[29] McCrudden C., "*Human Dignity and Judicial Interpretation of Human Rights; The European Journal of International Law",* Vol. 19 no. 4, EJIL, (2008), pg. 656-657

International Human Rights Laws imply to the conviction of unified international community which aspires promotion of situations of peace and accord to people. Implementation of these laws is the primary pill to cure nations from war situations, negative peace or temporary positive peace into perpetual positive peace state. Secondarily, national legal authorities have responsibility of combating against the concerned phenomenon for peace efficacy. *"[T]he relationship between war and other violent conflict is complex and dynamic...violation of human rights can be both causes and consequences of violent conflict".*[30]

In light of the above author, humanity is naturally vulnerable to derogation of the inherent rights in all levels of a given community. The victims of violation of fundamental rights may include individual, family, group area, an association, national or international levels with political and religious affiliations. The implementation of International Human Rights Laws by Burundi perhaps is still a legend of genuine practical innuendo. This work shall provide a legal enlightenment suggesting the framework for implementation of Human Rights Laws in Burundi and shall encourage a legal path towards perpetual positive peace in our State.

1.2. THE PROBLEMATIC BACKGROUND

The background of this dilemma dates back since 15thC. Burundi had a ruling structure centered on a divine king (*mwami*) whose officials were drawn from royal princes' family (*ganwa*). The population composed of the Tutsis 14% who were (ruling class), the Hutus 85% (majority) and the Twas (minority class) perhaps 1% who were economically and socially marginalized. They shared a common language, religion and ethno-political identity. Social identity, privileges and social obligations depended on collection of factors like lineage, cattle ownership and occupation. They lived in peace and enhanced intermarriages between Tutsis and Hutus. In the second half of the 19th C conflict within the *ganwa* (the Bezi and the Batare) emerged. The Bezi centralized the administration of the kingdom by controlling access to land and cattle through the king who distributed resources in a society. "In *this way Tutsi and Hutu identities lost their fluidity and took on the features of a ridged caste structure*".[31]

Contrarily, according to Janvier D. Nkurunziza;

> *The kingdom of Burundi was one of the strongest kingdoms in the African Great Lakes region for several centuries, until the end of the 19th century when it became a German colony until the end of the First World War and thereafter, a Belgian colony. As an illustration of the strength of Burundi's state, when an army of Arab slave traders penetrated the country in 1884 in search of slaves, they were inflicted a humiliating defeat by the country's army. Burundi never experienced slave trade, unlike some other kingdoms in the region. Belgian colonists' attempts to subjugate the population of Burundi faced similar resistance. Several missionaries, who were among the first Europeans to penetrate into Burundi, were killed. Therefore, weakening the traditional state became the Belgian colonists' modus operandi to stamp their authority on the country. They undermined the traditional system of governance by introducing "divide and conquer" policies that broke*

[30] Sriram C. L., *et alii*., *War, Conflict and Human Rights; Theory and Practice*, 2nd Ed., London and New York: Routledge Taylor and Francis Group., 2014, pg. 4

[31] EISA, African Democracy Encyclopaedia Project; Pre-Colonial Burundi (c1300-1890), (April 2010)

the secular identity of the people of Burundi.[32]

The weakening of Burundian traditional system by Belgians denotes that traditionally, the Hutu have been farmers while the Tutsi have been pastoralists. Some regional status differences existed among the Tutsi, with the Tutsi-Banyaruguru clan found primarily in the north of the country and the Tutsi-Bahima primarily in the south. The Tutsi-Banyaruguru generally dominated pre-colonial Burundi while the Tutsi-Bahima have generally dominated Burundi since independence. Society was originally organized around family and clan loyalties. Beginning in the 16th century, these ties were adapted to include a Tutsi monarchy. Intervening between the king (*mwami*) and the masses was a princely class (*ganwa*) that kept the ordinary Tutsi and Hutu on equal footing. The relationship between the two groups began to change during the colonial period, when the German and Belgian colonial administrators favored the Tutsi over the Hutu. The societal standards held a rich Hutu could be identified as a Tutsi and a poor Tutsi could be identified as a Hutu.

There were no social or ethnic groups' conflicts in Burundi until the coming of colonialism when there was an emergence of dangerous clashes between the Hutus, Tutsis and Twas. The English explorers Richard Burton and John Hanning Speke were the first Europeans to visit Burundi, entered the country in 1858. They explored Lake Tanganyika as they searched for the source of the Nile. In 1871 Henry Morton Stanley and David Livingstone also explored the lake. Burundi, Rwanda and Tanganyika became part of the German Protectorate of East Africa in 1890 but Burundi and Rwanda were awarded to Belgium after World War I, when Germany lost its colonies. Under the Belgian colonial administrators, Burundi was reorganized in the late 1920_s with the result that most chiefs and sub chiefs were eliminated.

The author clarifies this argument that;

> *More specifically, between 1928 and 1934, the Belgian colonists introduced far- reaching administrative reforms that favoured the Tutsis, who were considered as superior and born to rule, at the expense of the Hutus who were described as backward peasants. For example, traditionally, the chiefs that were appointed by kings as regional governors were drawn from the Hutu, Tutsi and Ganwa groups. Colonial administrative reforms replaced all sitting Hutu chiefs with Tutsis and Ganwa. The proportion of Hutu chiefs went from 20% in 1929, to zero in 1945. This interference with traditional leadership practices not only marginalised the Hutu political elite but also instituted a rigid system of domination of the Hutu and Twa by the Ganwa and Tutsis. As expected, the policy created resentment among the Hutus, inducing them to make several unsuccessful attempts to capture power from the Tutsis and Ganwa by force. In contrast, the Tutsi elite acted to strengthen and perpetuate the system as it favoured them… the Tutsis used Hutu attempts at capturing power as an excuse to mercilessly repress them, which enabled the Tutsis to tighten even further their political control over the country.*[33]

The colonial power distinguished Burundians by physical characteristics and used the ethnic

[32] Nkurunziza J.D., *The Origin and Persistence of state Fragility in Burundi*, United Nations Conference on Trade and Development (UNCTAD), (2017), pg. 7

[33] Nkurunziza J.D., *The Origin and Persistence of state Fragility in Burundi*, United Nations Conference on Trade and Development (UNCTAD), (2017), pg. 8

differences found in their own countries as models, Germany and especially Belgium created a system whereby the categories of Hutu and Tutsi were no longer fluid. The Tutsi-because of their generally lighter skin and greater height and as a result of European bias toward those physical characteristics-were considered superior to Hutu and given preference in local administration. Power continued to be concentrated in the Tutsi minority.

After the World War II (1939-1945) Burundian leaders perpetuated the seed of Belgians to the fragility of the population. They began to organize political party that would serve the interests of all ethnic groups. The traditional leaders of Burundi were denied legal status for a political party in 1955 but three years later the Unity for National Progress (Unité pour le Progrès National; UPRONA) was established in Burundi. In 1959 the *mwami* was made a constitutional monarch in Burundi. The party leader was Prince RWAGASORE, a Tutsi and the eldest son of *Mwami* MWAMBUTSA. His assassination on October 13, 1961, ushered in a crisis from which the country has struggled to recover ever since. Despite this crisis, Burundi became independent on July 1, 1962. In January 1965 when Pierre NGENDANDUMWE, a Hutu, took office as prime minister for the second time, at the request of the constitutional monarch, *Mwami* MWAMBUTSA. NGENDANDUMWE was assassinated by a Tutsi gunman on January 15, before he had a chance to establish a government. Joseph BAMINA, another Hutu, then served as prime minister until elections could be held later that year. Although elections gave the Hutu a clear majority of seats in the National Assembly, MWAMBUTSA ignored the results and appointed a Tutsi-Léopold BIHA, his private secretary-prime minister. MWAMBUTSA insisted that power would continue to rest with the crown, even when he chose to leave the country after an unsuccessful coup led by a group of Hutu officers in October; he decreed that his son, Prince Charles NDIZEYETO, was to rule in his absence.

Janvier D. Nkurunziza adds that,

> *Months before the country's independence, Prince Louis Rwagasore, the highly respected national hero who fought for the country's independence, was assassinated by political opponents "who seemed to have acted with the tacit approval of Belgian authorities". Within the Unité pour le Progrès National (UPRONA) party, Rwagasore had been able to unite Hutus and Tutsis behind his independence project, which was coupled with a clear development vision. After his assassination in October 1961, Burundi went through a period of turmoil, as Hutu and Tutsi political leaders were locked into leadership disputes*[34].

Nigel Watt in his work, *Burundi; Biography of a Small African Country* states that;

> *Having effectively excluded the Hutus (most of whom were kept out of the army by a rule that recruits had to be of a certain height and girth.) Micombero set about creating a dictatorship, abolishing parliament and running the country through a National Revolutionary Council. Micombero accused Belgium of supporting a minor revolt by Hutus in 1969. Belgium withdrew military aid and France eagerly stepped in. A plot in 1971 by Tutsis from Muramvya who felt excluded from power was followed by a serious*

[34] Nkurunziza J.D., *The Origin and Persistence of state Fragility in Burundi*, United Nations Conference on Trade and Development (UNCTAD), (2017), pg. 8

> *Hutu revolt on 29 April 1972… All educated Hutus, even teenagers at secondary school and especially anyone wearing glasses, was targeted*[35].

Many Hutu civilians approximately 300,000 were massacred. As a result, the huge number of Hutus left the country as refugees in 1972. Most of them fled to Tanzania refugees camps.

1.3. STATEMENT OF THE PROBLEM

The researcher undertakes to provide a precise description related to the problem which should be investigated and to address important predicaments to be solved. The statement of a problem intends to show that problem manifests itself in the society as expressed by data sources like newspapers, journals and books which emphasize that the problem exists.

The concept of perpetual positive peace is interconnected to the fact that emergence of conflicts in Burundi is seem to be continuous throughout history. During the reign of *Abami* in Burundi from 1400's to 1960's, Burundians lived in a tolerable harmonious life. All citizens had the same rights and obligations to each other and to the community. Being a poor or rich, being a member of a particular ethnic group, religious affiliations or regional differences never became factors of disunity and fighting.

The landmark of Burundi conflicts was emergence of Captain Michel Micombero into power;

> *King Mwambutsa...had been on the throne for the entire period of Belgian rule... in October 1965 Hutus in the police and army started a revolt. The Tutsis saw this revolt as an attempt at ethnocide. They reacted by excluding Hutus from the army and from political power. From this moment, history started to look different depending on your ethnic standpoint. 1966 marked the end of the monarchy. King Mwambutsa was deposed by his son, Ntare V, who was himself almost immediately removed by Captain Michel Micombero, a young army officer from Bururi whom the new king had appointed as Prime Minister. Micombero was the first, and worst, of the three Tutsi military presidents, all of the Hima clan, from Rutovu commune...*[36].

After that ethnic crisis, in 1976 Colonel Jean Baptiste Bagaza from Rutovu commune came to power by a bloodless coup. Burundians became much aware that every person is vulnerable to the infringement of fundamental human rights. The strategies of retaining a lost peace and development began. Concerning government reformed laws and policies, **Nigel Watt** reports a response of Colonel Jean Baptiste Bagaza in their dialogue that;

> *He seemed proud to have reformed the administrative and tax system, prevented corruption, developed industries (coffee, sugar, cotton) and created infrastructure (roads, electricity, drinking water, new villages). He was successful in getting aid from Arab states, the Soviet bloc and China as well as from the West... his government had seen everyone as Africans rather than... Hutus or Tutsis*[37].

Still, the author says that;

> *...Under Bagaza Hutus were often prevented from going to school and from succeeding in exams [Hutu candidates' papers were marked with a small 'u' and Tutsis with a small 'i' so that Tutsis could be assured of better marks]. It was hard for even the few well qualified Hutus to get jobs-and they were still traumatised after 1972. These frustrations as well as*

[35] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg.33
[36] Ibid., p. 31-32
[37] Ibid., pg. 39

> *bitterness over 1972, were what drove Rémy Gahutu to found Palipehutu in 1980... Bagaza's policies, even when they were not ill- intentioned, frightened Hutus...*[38].

Regardless of the government efforts for retaining peace, the conflicts of the same nature reoccurred during reign of Major Pierre Buyoya a Tutsi from Rutovu in 1988. *"In an outbreak influenced by Palipehutu and Rwanda's Hutu government and provoked by repressive local officials and the killing of a Hutu family, 300 Tutsis were killed... At least 20,000 Hutus were killed and many more escaped to Rwanda"*[39].

After this tragedy, the government made other efforts to ensure peace and unity in the country.

However, a similar conflicting calamity reoccurred in 1993. **Nigel Watt** says that;

> *The result was to draw up a Charter of Unity ('Ubumwe'), approved by referendum in 1991, with a special unity flag and anthem... The failure to create real unity became clear in the 1993 election...took place on 1 June 1993. Pierre Buyoya ran for Uprona, Melchior Ndadaye for Frodebu and there was a royalist candidate, Pierre-Claver Sendegaya... A ... group of soldiers rose in revolt before the parliamentary vote and again before Ndadaye's inauguration... The leader of this coup attempt said,... he was only carrying out Buyoya's orders... 21 October... Hutu-led democratic government came to an abrupt end... Colonel Bikumagu, the army chief, gave the green light for a coup and Ndadaye was killed...*[40].

The issue of protecting International Human Rights Law began before the enactment of the Interim Constitution of Burundi of 2005. **Richard Barltrop** wrote that, "*In November 1995, at the prompting of former Tanzanian President Julius Nyerere, the presidents of Burundi, Rwanda, Uganda and Zaire (as Democratic Republic of Congo was still known) announced the 'Regional Peace Initiative on Burundi.' With Uganda as chair and Nyerere in the role of regional 'facilitator' or chief mediator for the peace process, two initial meetings were held with FRODEBU and UPRONA at Mwanza in Tanzania in April and June 1996."*[41]

Peace talks were initiated and moderated by Mwl. Julius Kambarage Nyerere, former president of Tanzania but following Nyerere's death in 1999, the former president of South Africa Nelson Rolahlahla Mandela assumed the role of mediator. The contemporary mark for implementation of these laws in Burundi is the Arusha Peace and Reconciliation Agreement (APRA) of 2000. Parties to conflict committed themselves to refrain from any act or behavior contrary to the provisions of the Agreement and to ensure that they respect and implement all orders to ensure the attainment of genuine unity, reconciliation, lasting peace, security for all, solid democracy and on equitable sharing of resources in Burundi. The agreement was "*...finally concluded on 23 July 2001that the transition period laid down in the Arusha accord would start on 1 November 2001, with Pierre Buyoya... and Domitien Ndayizeye..."*[42].

That was not an end of conflicts in the country. In 2015 Burundi entered into other conflicts and

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[38] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg 40
[39] Ibid., pg. 41
[40] Ibid., pg. 42-45
[41] Barltrop R., *The Negotiation of Security Issues in the Burundi Peace Talks*, Center for Humanitarian Dialogue, (2004), Switzerland, pg. 17
[42] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg.75

some people fled from the country to secure their lives. The negative peace experienced after negotiation process by the African Mission in Burundi (AMIB) retarded into obvious physical conflict. It can be traced to the third term of Presidential post by the Late President Pierre NKURUNZINZA in 2015. This was not an ethnic conflict but rather a political because none claimed for any ethnic reasons. A controversy was that NKURUNZIZA's bid for a third term made people, including some high-ranking CNDD-FDD members, claimed that it would violate the terms of the 2000 Arusha Agreement as well as the country's constitution; both of which limited the President to two elected terms. NKURUNZIZA's supporters argued that his first term did not count toward the two-term limit because he had been elected by Parliament not by the people. This controversy combines the ambiguity interpretation of two Constitutional Articles: Art. 96 and 302 of the Constitution of 18 March 2005.

"Article 96 states that the President of the Republic is elected by direct universal suffrage for a mandate of five years, renewable once while Article 302 which is included in a transitional chapter states that "As an exception, the first President of the Republic in the post transition period shall be elected by the National Assembly and the Senate […], with a two-thirds majority of the members. […] The President elected in the first post-transition period cannot dissolve Parliament."

In the process of solving a controversy, **Stef Vandeginste** depicts a significant role of the East African Community that;

> *Speaking at a meeting of the East African Legislative Assembly (EALA) in Bujumbura on 19 March 2015, Tanzanian president Jakaya [Mrisho] Kikwete made four suggestions to Burundi's leaders. First, he urged them to respect the Constitution and the APRA to the letter and the spirit. Applied to the third-term debate, this could logically be read (and was indeed read) as an opposition to the third term. Second and third, he urged them not to resort to violence but to opt for dialogue. Fourth, he called upon Burundians to "involve the laws of Burundi when you feel the Constitution or the electoral laws have been violated".*[43]

Following that the two bodies in charge of applying Burundi's electoral legislation are the electoral commission and the Constitutional Court; the Constitutional Court ruled on 4 May 2015 in response to a request for interpretation of the Constitution. The Constitutional Court ruled that a potential third term for Pierre NKURUNZIZA did not violate the Constitution which further fueled protests. The author states that;

> *On 27 April 2015, 14 CNDD-FDD senators (all of them close to Nkurunziza) asked the Constitutional Court for an interpretation of articles 96 and 302 of the Constitution. On 4 May 2015, the Court ruled that the APRA did not permit a third presidential term but that the Constitution drafters in 2005 wrongly5 interpreted the APRA. According to the Court, under the transitional article 302, an exceptional presidential mandate was created that had nothing to do with article 96. On that basis, the Court concluded that one final*

[43] Vandeginste S., *Legal Loopholes and the Politics of Executive Term Limits: Insights from Burundi*, (2016), GIGA German Institute of Global and Area Studies, Institute of African Affairs in co-operation with the Dag Hammarskjöld Foundation Uppsala and Hamburg University Press, pg. 50

> *renewal of the (then) current presidential term was not contrary to the Constitution. The ruling was the most controversial decision ever handed down by Burundi's Constitutional Court.*[44]

Recently, there are writings with a view that there is a necessity of improving observance of Human Rights Law in the country. Particularly, the human rights report says that;

> *Human rights violations perpetrated by the Burundian authorities and to a lesser extent by armed rebel groups vary widely in terms of the types of crime committed, both in the provinces and in the capital. These include: arbitrary arrest and detention, summary and extrajudicial execution, targeted assassination, torture and abuse, rape and other acts of sexual violence, persecution, inciting racial hatred and violence, inciting genocide, concealing bodies in common graves, pillaging, and holding to ransom, ... others*[45].

The law governing the International Bill of Human Rights procedure on the Civil and Political Rights; Economic, Social and Cultural Rights; and the Universal Declaration of Human Rights does not qualify a total payoff of what constitutes Human Rights. This situation retains a latent conflict between the two major social groups, the Hutus and the Tutsis, which may eventually erupt. Burundians have a paramount aspiration of peace as their (our) best interest. The government of Burundi for the purposes of restoring former peace it has been establishing law reform committees for mobilizing citizens to love their (our) country and develop it in unity. Despite of the government to introduce judicial and legal reforms after every crisis to ensure every Burundian conforms to the legal duty of promoting, protecting and respecting human rights; conflicts have been prevalent. Currently, in 2021, regardless of the situation of peace process to be manifested, the government is still making efforts of entrusting citizens that there shall neither be ethnic nor more political crisis in the country.

These wars caused many deaths of people including the innocent persons like children. Many citizens became displaced people, refugees and there were several unrests in the country. The emergence of the consecutive serious ethnic wars and political struggles does not independently signify that the parties to conflict feel that were born to fight and hate each other. There must be an entity behind a curtain as the unique germ towards perpetual effectiveness of safeguarding these rights for peace to all.

1.4. OBJECTIVES AND SIGNIFICANCE

The research endeavors the main objective of promulgating particular specific mechanisms for protection of the International Human Rights Law in Burundi towards the so called perpetual positive peace. This promulgation of effective mechanisms includes revision of the National legislations and policies for assessment in the guide of international legal standards.

Below is a list of specific objectives and significances of this paper:

i) To analyze how does Burundi hold the notion of human rights and determine the adopted mechanisms for implementation of these rights.

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[44] Ibid., pg. 52

[45] Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2018 United States Department of State*

ii) To find *lacuna* in the national legal system as to help society in protecting Human Rights for the interests of all not as a mere privilege but a matter of law.

iii) To benefit Burundians including common citizens, officials together with the National Assembly and the Senate for the procedure of adopting laws and their implementation towards permanent positive peace.

iv) To promote citizens in developing appropriate interventions in a journey towards the lasting peace.

v) To facilitate rational efforts of preventing and reinforcing Human Rights Law. Every person needs and has an inherent right to suitable concern in accordance to the law not as an exemption.

1.5. HYPOTHESIS

This research has assumptions that the International Human Rights Laws are known by some Burundians but distribution of both human and natural resources, sharing of power or authority and presence of neo-patrimonialism influence existence of unsolved conflicts.

Other variables contributing to the continuation of conflicts in Burundi history include:

i. There are untreated psychological wounds of the past painful experiences.

ii. Low level of promoting and protecting any civilian's role to national security.

iii. There is a need of legislating particular specific subject matter national laws.

iv. The national laws have ambiguous protective measures of Human Rights.

Poor civic education among citizens which retains fear.

1.6. SCOPE OF STUDY AND POPULATION SAMPLING

The delimitation of this research coats the multitude of issues concerning Burundi as well as International features *qua* the implementation of International Human Rights Law. This study shall cover the facts pertaining to the extent to which Burundi has a separate, comprehensive set of substantive and procedural laws that apply to people in conflict with Human Rights Law. The bottlenecks on enforcement of Human Rights Law in Burundi shall also be noted. This study shall deal with the entire national issue of perpetual positive peace.

1.7. LITERATURE REVIEW

According to **Nigel Watt[46];** lasting peace requires justice, not impunity. The judicial system in Burundi was weak and ethnically very one-sided before the crisis and needs thorough reform. The failure to convict real culprits in notorious cases such as the killing of President NDADAYE but also in thousands of low-profile cases has created a culture of impunity. The author does not suggest kinds of reforms and he has suggested retributive justice. This paper shall clarify specific reforms and the significance of participatory restorative justice for all.

Boshoff H. *et al.*[47]; say that the Central organ of the Mechanism for conflict Prevention,

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[46] Watt N., *Burundi; Biography of a Small African Country*. London: Hurst & Company Pbl. Ltd., 2008, pg. 157

[47] Boshoff H., Vrey W. and Rautenbach G., *The Burundi Peace Process; From Civil War to Conditional Peace*. Pretoria, South Africa: Institute for Security Studies (ISS), 2010, pg. 51-52

Management and Resolution of the African Union held its 91st Ordinary Session in Addis Ababa, Ethiopia on 2nd April 2003 for reviewing African Mission in Burundi (AMIB). The AMIB mandate for restoration of Burundi peace was argued to be employed by one year term and be renewed for six months. The main objectives of AMIB were to supervise the implementation of the ceasefire agreements; to support the disarmament demobilization and reintegration of ex-combatants; to care favorable conditions for the presence of a UN Peacekeeping mission; and to contribute to political and economic stability in Burundi. The authors add that, the *"AMIB will have fulfilled its mandate after it has facilitated the implementation of the ceasefire agreements, and the defence and security situation in Burundi is stable and well managed by newly created national defence and security structures."* In this memoire, the author shall determine whether the International Human Rights Law has a suitable implementation framework that would correspond to the efforts of AMIB for peace and suggest what should be adopted to stabilize the current peace to be durable.

Encyclopedia describes that;

> *In April 2003 Ndayizeye succeeded Buyoya…, and later that year Ndayizeye and rebel leaders signed peace accords that largely ended the civil war… [President Pierre Nkurunziza] … was elected by a two-thirds majority of Parliament, rather than by universal suffrage. The following year, the last remaining Hutu rebel group signed a peace agreement with the…government, and there was hope that Burundians would be able to focus on promoting unity and rebuilding the country… the UN Human Rights Council warned that crimes against humanity were still being committed in the country, led primarily by the Imbonerakure and government… against activists,…and opposition...*[48].

The encyclopedia contents may be edited from time to time, the cited contents above are similar to what Peace and Security Section of the United Nations Department of Public Information wrote that in "*November 2003-President Ndayizeye and FDD leader Pierre Nkurunziza sign an agreement to end the civil war at a summit of African leaders in Tanzania. Nkurunziza and other FDD members are given ministerial posts. Smaller Hutu rebel group, Forces for National Liberation (FNL), remains active."*[49]

The authors of encyclopedia exclude themselves from suggesting measures to solve a conflict. The author of this memoire shall point out several patriotic recommendations for true peace building encompassing justice that would yield to the flourish of unity, work and progress.

Leah Alexis NDIMURWIMO[50]; analyzed the root causes of systematic violations of human rights and the failure to implement an effective transitional justice model in post-conflict Burundi. The author stated that *"…nine years after the adoption of the post-transition Constitution of 2005, arbitrary detentions, extra judicial killings, torture and ill-treatment of*

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[48] https://www.britannica.com/place/Ruvubu-River (Accessed on 28th January 2021)

[49] *United Nations Department of Peacekeeping Operations, United Nations Operation in Burundi and BBC News Ltd. 2006*, Peace and Security Section of the United Nations Department of Public Information - December 2006

[50] Ndimurwimo L. A., "*Human Rights Violations in Burundi: A Case Study in Post-Conflict Reconciliation and Transitional Justice",* A Thesis Submitted in Fulfilment of the Requirements for the Degree of Doctor of Laws, North-West University-Mafikeng Campus, July 2014, pg. 326-327

minorities continue unabated."[51] She found that the predominant problem among others is the lack of political will to address human rights issues with the necessary strictness.[52]

She analyzed data from both Burundian and non-Burundian respondents who suggested manners of stopping violations of Human Rights in Burundi. Profoundly, she based on non- Burundian respondents whereas she wrote that,

> *The majority of the respondents proposed the adoption of programmes to promote awareness of human rights among civilians (62.5%), intervention of international bodies (43.8%) and the promotion of accountability and good governance (43.8%). Other views expressed by the respondents included investigation of past deeds through a truth and reconciliation commission (37.5%) and promotion of justice through the hearing of cases related to violation of human rights in courts of law (37.5%). A few of the respondents also had opinions on educating the army (25.0%), re-grouping tribes in the country (12.5%), promotion of equitable distribution of resources (6.3%) and imposing sanctions/embargo on the country (6.3%).*[53]

She calls for further research and reviews to be conducted in terms of policy making, legislative and judicial reforms.

Regardless her 2014 publication, in 2015 Burundi experienced Human Rights violation as well as peace deterioration. The memoire writer shall extremely focus his research to Burundian respondents as long as they comprehend national problems than non-Burundians. This strategy shall enable a researcher to provide the most connect and realistic perspective in the community. The researcher shall conduct a part of suggested legal reform to deal with Human Rights violation problems of the past and current as well as to focus on prevention of future violence which hinders national peace.

1.8. METHODOLOGY

A researcher intends to involve both qualitative and quantitative research methods. He shall use qualitative method by searching information from personal accounts and reliable documents applicable in disclosing the fact corresponding to the research topic. He shall rely on two principles of qualitative method: Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs). The researcher shall consult government officials like Legal Advocates, Security Officers, Universities Professors, UNHCR, the Ministry of Home Affairs, the C.V.R, Tribunals, Courts of Law, university students, refugee repatriates and common citizens. These people are influential to this paper because they work in the Human Rights field and others are subjects of such rights.

The researcher shall also use quantitative method in looking for numeric or measurable data on the research tittle. He shall conduct a library research, interviews, questionnaire techniques and internet sources because information could be very available than through either quasi-experimental or experimental methods (participatory techniques). The researcher shall present

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[51] Ibid., pg. 10
[52] Loc.cit
[53] Ibid., pg. 323

the findings in charts, graphs and tables when deemed fit.

Through these methods the researcher shall be analyzing on how does legal framework guide people in spheres of Human Rights Law as well as to determine if such framework is conducive or needs adjustments for advanced implementation of HRL. The researcher shall use both of the two methods in this memoire paper because they are effective.

1.9. CHAPTERIZATION

Chapter one provides the introduction of entire memoire.

Chapter two discusses the development of Human Rights Law and peace concepts.

Chapter three comprises of Human Rights Law machinery in Burundi in relation to perpetual positive peace aspects.

Chapter four shall cover general conclusion and recommendations.

CHAPTER TWO

THE DEVELOPMENT OF HUMAN RIGHTS LAW AND PEACE CONCEPTS

2.1. THE GENESIS OF INTERNATIONAL HUMAN RIGHTS LAW

The concept of Human Rights Law should distinctively be observed from a notion of the International Human Rights Law as far as their difference in their history is concerned.

Firstly, the historical origin and development of Human Rights is very interesting. Some scholars trace its origin in ancient Greeks. They elucidate it with the Greek play called Antigone whereas Sophocles describes that Antigone's brother was killed for rebelling against the king. His burial was prohibited by the King Creon. In disobedience of the King's order, Antigone buried her brother. When she was arrested for violating the order she pleaded that she had acted in accordance with the immutable unwritten laws of heaven which even the king could not supersede.

Jacqmin A. says that,

> *The drama of Antigone is that of a woman who wants to bury her deceased brother, Polynices, but who is prevented in doing so by State law. Indeed, the King Creon has adopted a proclamation that forbids the burial of the traitors of Thebes, among which there is Polynices. In view of this law, Antigone opposes her own moral commitment toward honouring her brother, regardless of his behaviour during his lifetime… she disobeys the law and buries the body. However, when discussing with her sister and when judged by Creon, the protagonist never refers to her own morality to justify her action: rather, she appeals to the law of gods, a law that is intrinsic in the nature of things and beyond human control, that asks men to respect the body of the dead, as part of nature, to mourn their relatives, and to honour the sacred relation among family members… claims that her duty, and right, to bury the body is prescribed by divine norms…The violation of such a law, … is thus* ***contra naturam***[54].

Stoic philosophers in Greece contributed much on the development of the notion of natural rights of man. Their contribution on natural rights emerged after the break down of the Greek City States which existed from 700 B.C to 335 B.C.

The author says that,

> *In 700 B.C, Greek City-States emerge; 594 B.C, Athens expands citizenship; 507 B.C Sparta adopts constitution; 490 B.C, Sparta wins Peloponnesian War and in 338 B.C, Philip II [of Macedonia] conquers Greece… Each city-state had its own government and laws. The average city-state contained between 5,000 and 10,000 citizens. Workers born outside Greece,…women, children, and enslaved people, were not citizens. Only citizens could vote, own property, hold public office, and speak for themselves in court. In turn, they were expected to defend their polis [the City of Polis] in time of war or conflict*[55].

Basically, Stoic philosophers developed natural law theory through which they explained the

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[54] *Law, Obedience, Disobedience: Socio-Legal Perspectives; "If Antigone Were a Human Rights Activist". Available at:*
https://d1wqtxts1xzle7.cloudfront.net/53523105/Antigone_as_human_rights_activist_-_
(Accessed on 26th May 2021)

[55] The City States (700B.-335B.C). Available at:
https://www.cdschools.org/cms/lib04/PA09000075/Centricity/Domain/527/chap10.pdf
(Accessed on 26th May 2021)

nature and universality of human rights possessed by every human being by virtue of being human being. The principles of natural law theory are superior to positive law that could be comprehended and obeyed because human beings have common possession of reason and capacity to develop and attain their virtue. The Stoic formulation of natural law theory was best suited to the Roman disposition because in principle they believed that a man should improve himself both rationally and morally.

Polly Vizard wrote that,

> *In Ancient Greece, the Stoics developed Aristotle's emphasis on the exercise of rational capacities, and formulated what has been described as the "distinctive claim" of natural law theories-the claim that the natural law, the law of nature, is the law of human nature, and that this law is reason. It was in this form that the idea of natural law was transmitted to the Roman and Medieval Worlds*.[56]

The same author added that,

> *…slavery was common-place in ancient Greece-with slaves working in domestic service, mining, farming, small-scale industries and public works…although the Stoic idea of an inner freedom was of particular appeal to slaves, most Greek philosophers took the institution of slavery for granted. Plato challenged slavery for Greeks while taking for granted the institution of slavery and assuming that the enslavement of foreigners would continue... Aristotle acknowledged that some people "regard the control of slaves by a master as contrary to nature". In their view, the "distinction of master and slave is due to law or convention", and that the relation of master to slave is based on force, with "no warrant in justice"[57].*

Secondly, the concept of International Human Rights Law began after the end of the First World War (1914-1918). This was not universalization of Human Rights because the Treaty basically intended to deal with German after losing the War and it did not concern Human Rights in other parts of the world like Africa and Asia. At this level, the international community conducted the Versailles Treaty was signed to promote Human Rights across its State Parties which were USA, Britain and France as well as German. Since the judicial conscience of the civilized world was much in the favor of safeguarding the rights of individuals against its violation by states; it was consistently realized that the right of individual must be universalized so that it may be guarded against its violation by such particular state.

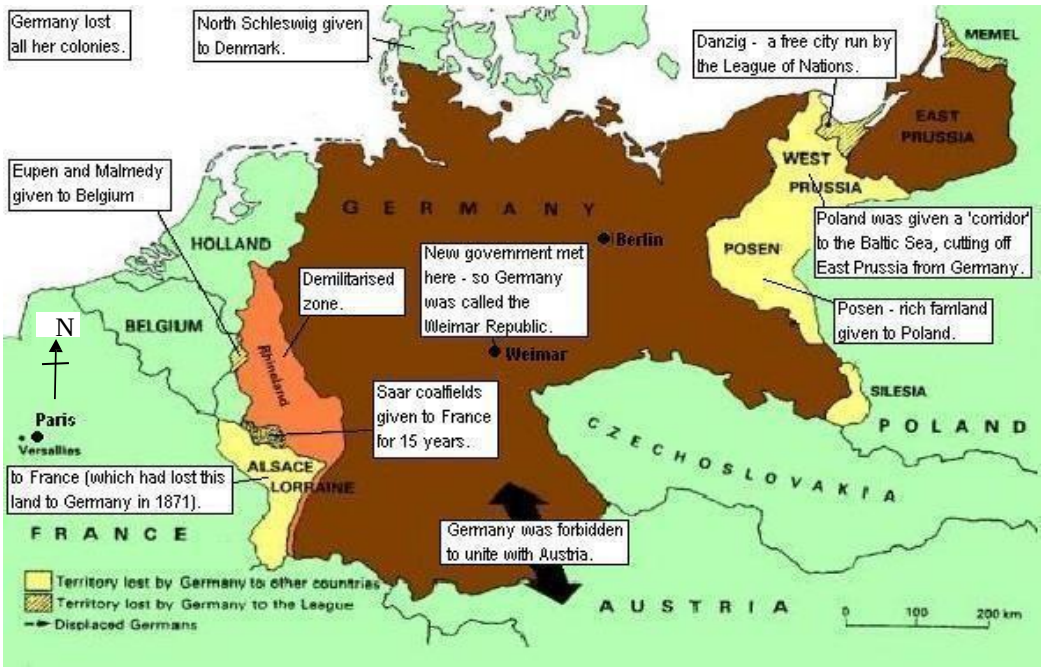
Unnamed author says that,

> *The Treaty was drawn up at the Paris Peace Conference, which was held in Versailles in France. The purpose of the Conference was to allow the leaders of the victorious powers to meet in order to decide how to deal with the defeated powers. The Conference last for a year, with the Treaty of Versailles finally being signed in June 1919. The Leaders were Georges Clemenceau (Prime Minister of France), David Lloyd George (Prime Minister of Britain) and Woodrow Wilson (President of the USA)… France had suffered very severely in terms of damage to the country and loss of life during WWI. They were determined not to allow such devastation to ever happen again. They wanted Germany to pay for all of the damages from the war… Lloyd George was aware that there would have to be*

[56] Vizard P., *Human Development Report 2000 Background Paper; Antecedents of the Idea of Human Rights: A Survey of Perspectives*, pg. 3
[57] Ibid., pg. 25

> *compromises… His main aim was to stop Germany from having a navy as he wanted Britain to 'rule the seas' so that they could maintain their empire… [USA] proposed the Fourteen Points, which he believed would end the war fairly and prevent another war in the future*[58].

Nevertheless the fact that some of the Woodrow Wilson's *"Fourteen Points"* were not included in the Treaty and that after he returned back to USA "*the Senate refused to join the League of Nations and even refused to sign the Treaty of Versailles"*[59]; the Treaty had legal implications for state's obligation to respect, prevent and implement Human Rights as a result German was obliged to pay reparations to France among of other things.



2.1. A Map Showing Reparations of German for the Loss of World War I (1914-1918)[60]

Moreover, the Versailles Peace Treaty of 1919 led to the reestablishment of the state of Poland. **Goetz Henning von Thadden** says that *"…the Polish Republic was founded in November 1918, Europe saw a country reemerging that had disappeared from the map for 123 years. There had been several Polish attempts before to regain statehood, but none of them had been successful. It was only the changing political atmosphere…"*[61]

Furthermore, he adds that,

> *During World War I, Germany and Austria created a Kingdom of Poland in 1916, when they needed Polish recruits, and, shortly afterwards, the Russian revolution addressed the Polish people in a reminder of self-determination…at the end of 1918, Germany and Austria lost the war and their monarchs abdicated, while, at the same time, Russia was paralysed by revolution, was the historical chance given that the Polish people could take their future into their own hands. The foundation of the Polish Republic was one of the consequences of the outcome of World War I*[62].

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[58] Treaty of Versailles Revision Notes, pg. 2. Available at: https://history-groby.weebly.com/uploads/2/9/5/6/29562653/treaty_of_versailles_revi (Accessed on 26th May 2021)
[59] Ibid., pg. 3
[60] Treaty of Versailles Revision Notes, pg. 2. Available at: https://history-groby.weebly.com/uploads/2/9/5/6/29562653/treaty_of_versailles_revi (Accessed on 26th May 2021)
[61] Thadden G. H., *Inflation in the Reconstruction of Poland* 1918-1927, *(*2014), ProQuest LLC, London, pg. 9
[62] Ibid., pg. 9

The new Poland intensified efforts to restore its historical, economic and political facets especially from 1921. Particularly, the protection of minority rights and the redrawing of frontiers in Central Europe after the Peace Agreement of 1919 were significant steps for such restoration.

> *The gaining of power and the drawing of the borders were the two most obvious tasks necessary to define the country. They established the Polish Republic internationally. Once this was achieved, the next steps had to be to reconstruct what the wars had destroyed and to define the state internally, i.e. to build up those institutions which the functioning of the state machinery depended on*[63].

These measures led to the creation of successor states after the dissolution of the Austro-Hungarian Empire who won the First World War and supported Poland's stability.

Also, **Thadden G. H.** adds that,

> *When peace was concluded in 1921 and the state machinery had begun to be working, a first stabilization attempt was made under Finance Minister Michalski in the autumn of that year…the reforms collapsed after only a short period of fiscal and monetary stability. The fate was the same for the second stabilisation attempt under Finance Minister Grabski in the spring of 1923. The treasury inflation was only brought to an end in the beginning of 1924 after the highest peak of inflation…workers had demonstrated against the fall in their real wages causing blood-shed…the police interfered. It was only then that political consensus was reached about the need for reforms. Grabski was again commissioned to stabilise public finances…he was successful and in April 1924, the inflationary Polish mark was replaced by the stable zloty*[64].

However, this Treaty proved weakness due to the emergence of the Second World War in 1939-1945. There was massive Human Rights violation during this war which impacted entire world through the main participants of the fighting.

Stewart Waters and **William B. Russell III** wrote that;

> *…the violation of human rights during World War II helped spark a global movement to define and protect individual human rights. Starting with the creation of war crimes tribunals after the war, this newfound awareness stimulated a concerted international effort to establish human rights for all, both in periods of war and peace. These endeavors resulted in a historic milestone when the United Nations adopted the Universal Declaration of Human Rights (UDHR) in 1948.*[65]

For the purposes of describing the causes of the Second World War, the author cites a historian, Iris Chang in his book named *The Rape of Nanking: The Forgotten Holocaust of World War II*. He outlines several historical perspectives on the starting point of the World War II from various continental views as he quotes that;

> *Americans think of World War II as beginning on December 7, 1941, when Japanese carrier-based airplanes attacked Pearl Harbor. Europeans date it from September 1, 1939, and the blitzkrieg assault on Poland by Hitler's Luftwaffe and Panzer divisions. Africans see an even earlier beginning, the invasion of Abyssinia by Mussolini in 1935. Yet Asians must trace the war's beginning all the way back to Japan's first steps toward the military*

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[63] Ibid., pg.54-55
[64] Ibid., pg. 10
[65] Waters S. and William B. Russell III, Social Education 76(6), pp 301-305, 2012 National Council for the Social Studies, "*The World War II Era and Human Rights Education*", pg. 301

domination of East Asia-the occupation of Manchuria in 1931[66].

The contemporary notion of the International Human Rights System could be traced back to the efforts made by the international community after an outbreak of the Second World War. In 1945 many world countries met in San Francisco and adopted the UN Charter as the universal guide for Human Rights system. The Charter in addressing Human Rights, it promotes peace and security in the work as the fundamental freedom. The main objective was that people should be treated in conformity to the Charter as minimum standards of civilized behavior not be discriminated within their member states because of their race, sex, language or religion.

The United Nations report explains that;

> *Delegates of fifty nations met in San Francisco, California, USA, between 25 April and 26 June 1945… These were the nations which had declared war on Germany and Japan and had subscribed to the United Nations Declaration. One of these nations- Poland-did not send a representative because the composition of its new government was not announced until too late for the conference…but on 28 June such a government was announced and on 15 October 1945, Poland signed the Charter, thus becoming one of the original 51 Members*[67].

The author adds that;

> *More than five thousand documents were considered at the Conference: a compilation of the principal documents was published under the title "Documents of the United Nations Conference on International Organization, San Francisco", Volumes I to XX, 1945-1954. The Charter of the United Nations, together with the Statute of the International Court of Justice which forms an integral part of the Charter, was adopted unanimously at the end of the Conference, on 25 June 1945 at the San Francisco Opera House, and was signed the following day at the Herbst Theatre auditorium of the Veterans War Memorial Building. It entered into force, in accordance with its Article 110, paragraph 3, on 24 October 1945, following the deposit of the instruments of ratification of the five permanent members of the Security Council and a majority of all other signatories*[68].

The existence of the UN did not come only by signing the Charter. The author states that;

> *In many countries the Charter had to be approved by their congresses or parliaments. It had therefore been provided that the Charter would come into force when the Governments of China, France, Great Britain, the Soviet Union and the United States and a majority of the other signatory states had ratified it and deposited notification to this effect with the State Department of the United States. On 24 October 1945 (now observed annually as United Nations Day) this condition was fulfilled and the United Nations came into existence.*[69]

The existence of United Nations intensified the modern international development of interdependence in all aspects. The rate of development growth has the link to a global use of the International Human Rights notion.

Joseph Oloka-Onyango says that;

> *Contemporary international standards of human rights and the international machinery*

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[66] Waters S. and William B. Russell III, Social Education 76(6), pp 301-305, 2012 National Council for the Social Studies, "*The World War II Era and Human Rights Education*", pg. 301

[67] United Nations, *"The San Fransisco Conference of 1945"*

[68] Ibid.

[69] United Nations, *"The San Fransisco Conference of 1945"*

> *erected for their protection are rooted in the obligations established under the UN Charter to promote universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The essential point is that despite the distinctive African "cultural fingerprint" implicit in several of its provisions, several aspects of the Charter provide evidence of a general acceptance of the normative standards (such as non-discrimination, equality of all persons, fundamental freedoms and liberties, for example) enshrined in the international instruments.*[70]

Also, the author quoted **Kofi Annan** who needed UN member States to abide to all human rights requirements that;

> *…human rights implications of the phenomenon [the phenomenon of globalization. Although traditionally conceived as an economic phenomenon] are only just beginning to be critically engaged and comprehensively understood. As United Nations Secretary General Kofi Annan has pointed out: "Globalization has an immense potential to improve people's lives, but it can disrupt-and destroy-them as well. Those who do not accept its pervasive, all-encompassing ways are often left behind."*[71]

2.2. THE HISTORY OF THE INTERNATIONAL BILL OF RIGHTS

The concept of Human Rights was included in the International Covenant of the League of Nations. This League led to the creation of the International Labour Organization (ILO) in 1919 in response to the destructive WWI. During 1945 when the San Fransisco Conference was held the purpose among other things was to expose the most significant rights of persons.

The author of UN Fact Sheet wrote that;

> *At the 1945 San Francisco Conference, held to draft the Charter of the United Nations, a proposal to embody a "Declaration on the Essential Rights of Man" was put forward but was not examined because it required more detailed consideration than was possible at the time. The Charter clearly speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1, para. 3). The idea of promulgating an "international bill of rights" was also considered by many as basically implicit in the Charter*[72].

The establishment of the UN Charter of Human Rights was the landmark of establishing and implementing Human Rights values in the contemporary era. This process has been vested in the International Bill of Human Rights. It is useful to understand what the International Bill of Human Rights is and how it came into existence. **Article 1 of the UN Charter** sets the main objective which is to encourage international cooperation for the respect of Human Rights and fundamental freedoms to every person regardless of their race, sex, religion or language.

For the purposes of achieving such target, **Articles 13,55,66,68 and 76 of the Charter** are described in a fascinating legal language by using the word "shall" so as to signify the extent to which the international community is commitment to observe Human Rights and the fundamental freedoms. The aforesaid term has an obligatory impact in legal interpretations.

Also, **Article 61 of the UN Charter** establishes the Economic and Social Council (ECOSOC) as

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[70] Onyango J. O., *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?*, Human Development Report 2000 Background Paper, pg. 8

[71] Ibid, pg. 2

[72] United Nations, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, (June 1996), Geneva, pg. 1

an organ vested power to "make recommendations for the purpose of promoting respect for, and observance of, Human Rights and fundamental freedoms for all." Thus, the ECOSOC was to set up commissions in economic and social fields and for the promotion of Human Rights according to **Article 68 of the UN Charter**. Another organ of the UN besides the ECOSOC is the International Trusteeship System which is established by **Article 76 of the UN Charter**. One of its purposes is "to encourage respect for Human Rights and fundamental freedoms without distinction as to race, sex, language or religion, and to encourage recognition of the inter-dependence of the peoples of the world..."

The UN General Assembly in conforming to **Article 13 of the UN Charter** conducted its First Session of December 1946. During such session it resolved to transfer the question of the drafting of an International Bill of Rights to a Commission established in accordance with the same Charter.

The International Bill of Rights is composed of three legal instruments namely the universal declaration of human rights (UDHR) of 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, and the International Covenant on Civil and Political Rights (ICCPR) of 1966 and its two Optional Protocols.

Immediately after the closing session of the San Francisco Conference, the Economic and Social Council, at its first session, established a Commission for the promotion of Human Rights as stipulated in **Article 68 of the UN Charter**. The Commission on Human Rights was then created early in 1946.

> *At its* [UN General Assembly] *first session, in 1946, the General Assembly considered a draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council "for reference to the Commission on Human Rights for consideration…in its preparation of an international bill of rights" (resolution 43 (I)). The Commission, at its first session early in 1947, authorized its officers to formulate what it termed "a preliminary draft International Bill of Human Rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight States, selected with due regard for geographical distribution.*[73]

The General Assembly adopted the Universal Declaration of Human Rights as the first of Bill of Rights instruments by the resolution number 217 A (III) of 10 December 1948.

The author adds that; *"The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966."*[74]

The author of UN Fact Sheet wrote that;

> *By its resolution 217 A (III) of 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights as the first of these projected instruments… at its sixth session, in 1951/1952, the General Assembly requested the Commission "to draft two Covenants on Human Rights,…one to contain civil and political rights and the other to contain economic, social and cultural rights" (resolution 543 (VI), para. 1). The*

[73] United Nations, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, (June 1996), Geneva, pg. 1
[74] Ibid., pg. 2

> *Assembly specified that the two covenants should contain as many similar provisions as possible. It also decided to include an article providing that "all peoples shall have the right of self-determination" (resolution 545 (VI))*[75].

The procedures of drafting the two international covenants involved some governments to give out their opinions before the General Assembly adopted a draft prepared by the Commission of Human Rights. According to the author of the United Nations, Fact Sheet;

> *The Commission completed preparation of the two drafts at its ninth and tenth sessions, in 1953 and 1954. The General Assembly reviewed those texts at its ninth session, in 1954, and decided to give the drafts the widest possible publicity in order that Governments might study them thoroughly and that public opinion might express itself freely. It recommended that its Third Committee start an article-by-article discussion of the texts at its tenth session, in 1955. Although the article-by-article discussion began as scheduled, it was not until 1966 that the preparation of the two covenants was completed*[76].

The author adds that;

> *The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966. The first Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the same resolution, provided international machinery for dealing with communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant*[77].

The critics on skepticism on the draft of the Universal Declaration of Human Rights (1948) are principally emanating from the non-participation of almost all developing countries in the process of creating the Bill of Rights. The major reason is that colonialism was still practiced in such countries. Particularly, the Islamic States did not take part in drafting process of the International Bill of Human Rights. Particularly, in 1983 Iran's Ambassador in United Nations, Sa'id Raja'i Khorasani, because of the Islamic values of his country, he presented a serious rejection of the universality of international human rights norms. He stated that;

> *…conventions, declarations and resolutions or decisions of international organizations, which were contrary to Islam, had no validity in the Islamic Republic of Iran…The Universal Declaration of Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions*[78].

2.3. THE CONCEPTUALISATION OF HUMAN RIGHTS IN AFRICA

➢ Human Rights Approaches in Africa

Historically, the establishment of the Organization of African Unity (OAU) in 1963 did not essentially describe the concept of Human Rights as its agenda. This does not mean that OAU

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[49] United Nations, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, (June 1996), Geneva, pg. 2
[76] Loc. cit.
[77] Loc. cit.
[78] U.N. Doc. A/C.3/39/SR.65, T 95 (1984) as cited in Mayer A. E., U*niversal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, Michigan Journal of International Law, Volume 15 Issue 2, Wharton School of the University of Pennsylvania, 1994, pg. 315-316

totally disregarded Human Rights because the promotion of international cooperation with regard to the UN Charter was one of its purposes. However, around twenty years passed without adopting or establishing any African instrument of Human Rights.[79] The main reason for this delay was that OAU had the principle objectives of defending the sovereignty, non-interference in the internal affairs, the principle of domestic jurisdiction and territorial integrity of its Member States so as to rid Africa of colonialism and racism.[80]

- **Human Rights in Modern Political Theory**

Political theory may refer to perceptions described as prevalent in political incidences that are exposed by several literary works. The ambiguity of using a term "theory" arises from the fact that "political theory" does not concern itself with producing theories described by empirical content and that it could not generate hypotheses that could be tested for approval. Still, the kind of linguistic analysis that once threatened to banish political philosophy from the field no longer monopolizes the subject and the empirically-biased political scientists have not been conspicuously successful in the production of general theories.[81]

Major contributions to contemporary political theory come from several academic disciplines especially law, economics and philosophy. This tendency makes the subject to retain the heterogeneous (multi-disciplinary) nature. Below are legal aspects of the contemporary political theory:

a) Judicial Review (Normative Approach)

Judicial review may be defined as the legal theory that modifies a behavior of the government and its agencies towards compliance with legality in decision making. In reviewing government decisions, the courts may apply the common law principles of administrative law to assess compliance with statutory duties related to procedural and substantive law.[82]

The landmark case established this doctrine is *Marbury v. Madison case.* In this case, when President John Adams did not win a second term in the 1801 election, he used the final days of his presidency to appoint a large number of political leaders. When the new president (Thomas Jefferson) took office, he told his Secretary of State (James Madison), to not deliver the official paperwork to the government officials who had been appointed by Adams. The government officials, including William Marbury, were denied their new jobs. William Marbury petitioned the U.S. Supreme Court for a writ of mandamus to force Madison to deliver the commission.

The issues were drawn in light of section 13 of the Judiciary Act of 1789 (a law written by Congress) which gave the Supreme Court the authority to issue writs of mandamus. The provision of section 13 of the Judiciary Act of 1789 granting power to force actions of

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[79] The African Charter on Human and Peoples' Rights; The System in Practice, 1986-2000, (Edited by Malcolm Evans and Rachel Murray), Cambridge University Press, 2002, UK, pg. 1

[80] Ibid., pg. 2

[81] Barry N.P., *An Introduction to Modern Political Theory*, 3rd Ed., (1995), Macmillan Press LTD, London, pg. viii

[82] Halliday S., *Judicial Review and Compliance with Administrative Law*, (2004), Oxford University, Hart Publishing, Oregon, UK, pg. 8

government officials went beyond anything mentioned in Article III of the Constitution. The first issue was whether William Marbury had a right to his job. Secondly, whether Section 13 of the Judiciary Act was in violation of the Constitution.

It was held that, William Marbury had a right to his job, but also that issuing the writ of mandamus to force that to happen did not fall under their jurisdiction as stated in the Constitution. The Supreme Court opinion explained that it is within their power and authority to review acts of Congress, such as the Judiciary Act of 1789, to determine whether or not the law is unconstitutional. By declaring Section 13 of the Judiciary Act of 1789 unconstitutional, the U.S. Supreme Court established the doctrine of Judicial Review.[83]

Basing on this doctrine, this decision adds to *Marbury v. Madison* that judicial review can only be exercised by the federal court rather than any organ including the Supreme Court. It is justified by the Constitution.

Political theory is one among of the core important areas in political science studies. Normally, it has three approaches namely historical, normative and empirical approaches. Normative approach poses questions based on the norms or standards in the study of social sciences with an aim of appraising values. This approach is different from the empirical approach that is concerned about what happened and why. The normative approach emphasizes on what should have happened.

According to Dr. Rajendra Dayal and Dr. Satish Kumar Jha;

> *Historical approach of political theory implies on how theory has responded to historical events and specific situations. In other words, in this perspective, political theory becomes situation dependent in which each historical situation sets a problem, which in turn is taken care of through solutions devised by the theory… Normative theory… is based on the belief that the world and its events can be interpreted in terms of logic, purpose and ends with the help of the theorist's intuition, reasoning, insights and experiences. Empirical approach… political theorists set out to attain scientific knowledge about political phenomena based on the principle which could be empirically verified and proved.*[84]

Furthermore, in the case of *Cooper v. Aaron* the facts were that several government officials in southern states, including the governor and legislature of Alabama, refused to follow the Supreme Court's decision of *Brown v. Board of Education case*.[85] They argued that the states could nullify federal court decisions if they felt that the federal courts were violating the Constitution. However, the Court unanimously rejected this argument and held that only the federal courts can decide when the Constitution is violated.[86]

a) Due Process (Institutional Approach)

The Due Process of Law implies to a constitutional doctrine that requires the decision maker to

[83] 5 U.S. 137 (1803)
[84] Dayal R. and Kumar Jha S., *What is Political Theory: Two Approaches - Normative and Empirical,* Indira Gandhi National Open University, India
[85] 347 US 483 (1954)
[86] *Cooper v. Aaron, 358 US 1(1958)*

be a jury.[87] According to Lammers and Barbour in 2006 institutions could be defined as "constellations of established practices guided by enduring, formalized, rational beliefs that transcend particular organizations and situations".[88] This definition implies that an institution is any persistent system of activities and expectations, or any stable pattern of group behavior. A typical feature of an institution is its offices, agencies and the personnel associated with it are arranged in hierarchy that means each office, agency or personal attached to it is assigned specific powers and functions. It also implies that the people or the community that are likely to be affected by the working of an institution expect that its offices, agencies or personnel should function in accordance with the respective powers and functions assigned to them.

The due process clause derives from two sources of English law. One source is the famous twenty-ninth chapter of Magna Carta[89], which provides that;

> *No Freeman shall be taken, or any otherwise imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or destroyed; nor we will not [sic] pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land[90].*

Customary law was the major source of law in such early period of Magna Carter. Most of the laws were derived from the ancient Roman, Norman, Danish, Franconian (especially Anglo-Saxon peoples) and the Common Law fashioned by the courts was based on customary law.[91]

The second source of Due Process Clause is an English statute of 1354 which states that;

> *"That no Man of what Estate or Condition that he be, shall he put out of Land or Tenement, nor taken nor imprisoned, nor disinherited, nor put to death, without being brought in Answer by due Process of the Law."*[92]

The process intended in the provision above appears to have been a precise, technical reference to the type of writ. This writ should summon a party to appear in the court of law to answer personally the charges against him.

Sir Edward Coke identified the "law of the land" with "due process of law" in his famous work called *Institutes.* His definition of the Due Process of Law influenced the framers of the early state constitutions, early constitutional commentators and the Supreme Court. Particularly, Kent in his work *Commentaries on American Law 13(12th Ed. 1873)*; and Story in his work *Commentaries on the Constitution of the United States 692 (5th Ed. 1891),* were influenced by a definition that, "The words, 'due process of law,' were undoubtedly intended to convey the same

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[87] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg. 339

[88] John C. Lammers et al., Institutional Theory Approaches Chapter, (2017), University of Illinois, Urbana-Champaign, pg. 195

[89] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg. 340

[90] The original Latin reads: "Nullus liber homo capiatur vel imprisonetur aut disseisiatur de Iibero jenemento fuo vellibertatibus velliberis consuetudinibus juis aut utlagetur aut exulet aut aliquo modo destruatur nee super eum ibimus nee super eum mittemus nisi per legale judicum parium suorum vel per legem terrae." 9 Hen. 3, ch. 29 (1225).

[91] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg. 340

[92] Loc. cit.

meaning as the words, 'by the law of the land,' in Magna Carta. Lord Coke, in his commentary on those words...says they mean Due Process of Law."[93]

There are several types of the Due Process of law which are:

i) Substantive Economic Due Process

Substantive Due Process of Law is the type of the Due Process of Law that asks a question as to whether the government's deprivation of person's life, liberty or property is justified by a sufficient purpose. It looks to whether there is sufficient substantive justification, a good enough reason for such a deprivation.[94]

The history of substantive Due Process of Law may be traced back to the first third of the 20th Century. It based on protecting economic liberty from government interference. In the *Lochner v. New York case*[95] the Supreme Court struck down a New York law that limited the maximum number of hours that bakers could work. It held that freedom of contract was a fundamental right under the liberty of the Due Process Clause and use strict scrutiny to evaluate this law.

During the first third of the 20th Century until 1937, over 200 laws were struck down for economic regulations. Since 1937, the Court has repudiated economic substantive Due Process. In the *West Coast Hotel Co. v. Parrish*[96] the Supreme Court emphatically rejected *Lochner's case* principles. The Chief Justice Hughes explained that,

> *The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation liberty without the due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.*

Still, in *Gabbert v. Conn*[97] the Ninth Circuit found a substantive due process right for lawyers to practice their profession in privacy freely without any unreasonable intrusion.

The substantive Due Process was also applied in other aspects than economy. It was applied to protect civil liberties. In *Meyer v. Nerbraska*[98], the plaintiff claimed that under the liberty of the due process clause, parents have a fundamental right to control the upbringing of their children. The Court noted that liberty denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The Supreme Court

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[93] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg., pg. 341

[94] Chemerinsky E., Touro Law Review, Vol. 15, (1999), University of Southern California Law School, pg. 1501

[95] 198 U.S. 45 (1905), overruled in part, *Furguson v. Skrupa*, 372 U.S 726 (1963)

[96] 300 U.S. 379 (1937)

[97] 131 F.3d 793 (9th Cir. 1997), cert. granted in part, 119 S. Ct. 39 (U.S. Oct. 5, 1998) (No. 97-1802).

[98] 262 U.S. 390 (1923)

declared a Nebraska law that prohibited the teaching of the German language unconstitutional.

Substantive due process of law related to right to privacy was developed from the case of *Griswold v. Connecticut*[99] in which Justice Douglas' majority opinion reigns. Griswold declared unconstitutional the law that prohibited the sale, distribution and the use of contraceptives. The Justice had an opinion that,

> *Overtones of some arguments suggest that Lochner v. State of New York…should be our guide. But we decline that invitation as we did in [other cases]…We do not sit as a super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions. This law however, operates directly on an intimate relation of husband and wife and their physician's role in one aspect of that relation.*

Justice Douglas noted that the Court was faced with a wide range of questions that implicate the Due Process Clause of the Fourteenth Amendment since certain arguments before the Court suggest the application of *Lochner v. State of New York*. He found privacy in the penumbras of the Bill of Rights.

In *Roe v. Wade*[100] the Supreme Court expressly declared that the right to privacy is safeguarded through the Due Process Clause of the Fourteenth and Ninth Amendments. Justice Blackmun explained that the right to privacy whether it is founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action or in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

This type of Due Process, Substantive Due Process of Law, can really be applied at any time when the government takes away life, liberty or property.[101]

ii) The New Procedural Due Process

The Procedural Due Process of Law is a constitutional law doctrine that was adopted by the American Court before the adoption of Fourteenth Amendment. In 1868 the doctrine of Due Process of Law had come to connote a certain core procedural fairness when government moved against a citizen's life, liberty or property. The due process guaranteed notice, an opportunity to be heard and a determination by a neutral decision maker according to some fair and settled course of judicial proceeding.[102]

During the period before adoption of the fourteenth U.S.A Constitutional amendment, the Supreme Court had decided only two cases relating to procedure under the 5th amendment due process clause. Such cases were *Murray's Lessee v. Hoboken Land and Improvement Company*[103] and *Bank of Columbia v. Okely*[104].

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[99] 381 U.S. 479 (1965)
[100] 410 U.S. 113 (1973), reh'g denied, 410 U.S. 959 (1973)
[101] Chemerinsky E., Touro Law Review, Vol. 15, (1999), University of Southern California Law School, pg. 1508
[102] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg. 339
[103] 59 U.S. (18 How.) 272 (1856)
[104] 17 U.S. (4 Wheat.) 235 (1819)

Only *Murray's Lessee* contained an extensive discussion of the meaning of due process. The applicant brought suit against a customs collector. The respondent, according to the Treasury Department, owed the government about 1.3 U.S. million dollars in custom collections. The Solicitor of the Treasury, acting pursuant to statute, issued a distress warrant and then seized the collector's property. The issue before the Court was whether the seizure deprived the collector of his liberty and property without due process of law. The Court held unanimously that the government's actions did not violate the Fifth Amendment, even though the distress warrant gave the collector only notice of the purpose of the deprivation and the collector received no opportunity for a hearing.[105]

b) State Action

The state action concept is linked with a Utilitarianism Theory. It is the theory related to a form of consequentialism where as punishment is forward looking. This theory is justified by the ability of achieving the future social benefits resulting in crime reduction. The moral worth of an action is determined by its outcome in a community. State action should reflect a kind of justice to its population. in cases arising under the Constitution, the state action doctrine makes it necessary to determine whether the act complained of was committed by the government or by a private individual.[106] Other varieties of justice include:

- **Retributive Justice**

In this justice, the issue is whether a state action regulates proportionate response to crime proven by lawful evidence so that punishment can justly be imposed and considered as morally correct and fully deserved. The law of retaliation *(lex talionis)* is a military theory of retributive justice which states that reciprocity should be equal to the wrong suffered. **Richard Ronay** holds that in tit-for-tat situation whereas a person does not ask who is right but the objective is to bring the violence to a conclusion (to stop the fighting as soon as possible) as well as to create precedents that prevent recurrence. According to Herman Kahn, *"there almost has to be some sort of 'equitable,' proportionate retaliation before peace can be restored."*[107] This has also Biblically been stated in the book of Exodus 21:23-25 that; *"life for life, wound for wound, stripe for stripe."*

- **Restorative Justice**

It is a kind of justice in state action that is concerned with an act of making the victim whole and reintegrating the offender into society. This justice approach frequently brings an offender and a victim together in a manner that the offender can better understand the effect of his or her offense had on the victim. The author states that after acknowledging;

that crime causes injury to people and communities, it insists that justice repair those

[105] Eberle, E. J., *"Procedural Due Process: The Original Understanding."* (1987). *Constitutional Commentary*, 293, University of Minnesota Law School, pg. 342

[106] Wilson R. Huhn, the State Action Doctrine and the Principle of Democratic Choice, Hofstra Law Review [Vol. 34:1379], New Haven, USA, pg. 1389

[107] Kahn H., Nuclear Proliferation and Rules of Retaliation, California Institute of Technology, California, pg. 85

injuries and that the parties be permitted to participate in that process. Restorative justice programs, therefore, enable the victim, the offender and affected members of the community to be directly involved in responding to the crime.[108]

- **Distributive Justice**

In this category of justice, the state action should be directed at the proper allocation of things such as wealth, power, reward, reputation and respect among of different people within its community. This principle is defined by Robert Nozick that; *[The] complete principle of distributive justice would say simply that a distribution is just if everyone is entitled to the holdings they possess under the distribution.*[109]

The Court often assesses the constitutionality of government action by evaluating the governmental interests advanced by the action and the burden that the action imposes on the constitutional right at issue.[110] The understanding of justice differs in every culture because cultures are usually dependent upon a shared history, mythology and or religion. Even though there can be found some common justice principles in all or most of the cultures, they are insufficient to create a unitary justice apprehension.

It should be remembered that without justice, there will be a lot of problems and there will be no peace in society. The true peace cannot be achieved until there is justice for all. Pope Paul VI said that; "If you want peace, work for justice".[111] Also, the conviction of working for justice means working for peace. Gandhi M. had a view that; "Peace will not come out of a clash of arms but out of justice lived and done by unarmed nations in the face of odds".[112]

c) Equal Protection (Behavioral Approach)

Behaviouralism is an approach in political science which seeks to provide an objective, quantified approach to explaining and predicting political behavior. Its emergence in politics coincides with the rise of the behavioral social sciences that were given shape after the natural sciences. The central idea in behaviorism can be stated simply: *A science of behavior is possible.* However, behavioralists differ in perspectives. Many of them add that the science of behavior should be psychology. This causes contention because many psychologists reject the idea that psychology is a science at all and others who regard it as a science consider its subject matter something other than behavior. The most of behaviorists have come to call the science of behavior *behavior analysis*.[113] This implies that behavioralism is mainly concerned to examine the behavior, actions and acts of individuals rather than the characteristics of institutions such as legislatures, executives and judiciaries.

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[108] Centre for Justice & Reconciliation at Prison Fellowship International, May 2005, Washington, DC

[109] Nozick R., *Distributive Justice*, Philosophy & Public Affairs, Vol. 3, No. 1 (Autumn, 1973), pg. 47

[110] Maggs G. E. & Smith P. J., *Constitutional Law: A Contemporary Approach,* (2nd Ed. 2011), GW Law Faculty Publications & Other Works, Washington, pg. 36

[111] Margherita Marchione. *Shepherd of souls: a pictorial life of Pope Pius XII*, Paulist Press, USA, 2002, pg.109

[112] Anand Sharma. *Gandhian way: peace, non-violence, and empowerment*, New Delhi, Academic Foundation, 2007 pg. 117

[113] Baum W.M., *Understanding Behaviorism: Behavior, Culture, and Evolution*, 3rd Ed., (2017**),** John Wiley & Sons, Inc., West Sussex, United Kingdom, pg. 3

The Judiciary (Court) has never interpreted the Equal Protection Clause of the Fourteenth Amendment absolutely to prohibit the government from treating different classes of citizens differently. Some classifications such as a law providing that only persons over sixteen years of age are eligible to obtain driver's licenses do not seem problematic. These classifications are subjected only to "rational basis review" under which they are upheld as long as the classification is reasonably related to some legitimate governmental interest. However, other classifications such as laws that deny government benefits on the basis of race are deeply suspect and accordingly are subjected to "strict scrutiny" under which they can be upheld only if they are narrowly tailored to achieve a compelling governmental interest. Still, other classifications such as those distinguishing on the basis of gender are subjected to "intermediate scrutiny" which falls between rational basis review and strict scrutiny.[114]

The behavioral approach came to be exceedingly favored in the study of political science after the World War II. This approach is originated with the publication in 1908 of the works of two political scientists, Graham Wallas (*Human Nature in Politics*) and Arthur Bentley (*The Process of Government*).

d) Freedom of Speech (Marxist Approach)

The elucidation of Marxist approach to political theory requires not only to take into consideration the major works of Karl Marx, Friedrich Engels and Lenin but also refer to a huge body of Marxist literature produced by Marxist intellectuals such as Rosa Luxemburg, Trotsky and Antonio Gramsci. Problematic topics in Marxism include "Marxist approach to political theory". A difficulty issue is when it is seem that there is non-existence of explicitly political essentials in the works of classical Marxism. Regardless that some scholars hold Karl Marx as a philosopher and equally a good economist as well as an ordinary political scientist, he held that politics could be explained in events such as wars, revolutions and it could also be concerned about invention of forms of polity. Politically, this approach could also be called the "politics of oppressed" in the sense that it speaks about the political processes for those who have been excluded from the state sphere or from the bourgeois political thought.[115]

Marx believed that an individual in society was, in fact, without society. The worth of an individual seems to be of no consequence which makes Marx comment that "society does not consist of individuals only but expresses the sum of interrelationship and relations within which these individuals stand." Marxists believe that all societies in history have been characterized by the presence of classes. The nature and stature of the classes at different stages of economic development kept changing with the changes in mode of production. Therefore, as per Marxism there were classes from slave owners, free individuals and slaves, feudal lords and serfs, the bourgeois (capitalists) and the proletariat (workers) who have always been struggling

[114] [88] Maggs G. E. & Smith P. J., *Constitutional Law: A Contemporary Approach*, (2nd Ed. 2011), GW Law Faculty Publications & Other Works, Washington, pg. 37
[115] Ibid. pg. 21-22

against each other. The Marxists believe that political process can only be properly comprehended if we thoroughly consider the nature of the ever-present societal conflicts and struggle for domination. Such an approach envisages politics in terms of a process of class struggles. It was because of this reason Marx K. and Engels F. said in their work *"Manifesto of the Communist Party [1848],"* that, "The history of hitherto existing society is the history of class struggles." The Marxist approach to politics holds that political process is considered to be incapable of resolving the prevalent class conflict because the politics is itself used by the dominant class to suppress the deprived class as quoted that; *"the first step in the revolution by the working class is to raise the proletariat to the position of ruling class, to win the battle of democracy."*[116]

- **The Doctrine of the Rule of Law**

The expression "Rule of Law" has been derived from the French phrase 'le Principe de légalité', that is a Government based on the principles of law.

> *La Commission internationale de Juristes a le plaisir de présenter á ses correspondants le texte complet du rapport sur le Congrés internationale de Juristes qui s'est tenu á New Delhi (Inde) du 5 au 10 janvier 1959. Ce Congrés était l'aboutissement de patients travaux tendant á définir et á situer dans le cadre de la pratique constitutionnelle et juridique moderne ce que représente la notion de Primauté du Droit ou de Légalité… La Commission internationale de Juristes considéré le Principe de la Légalité comme une notion vivante essentielle á plusieurs branches du Droit, et d'un intérêt direct dans la vie quotidienne. Ce principe est á la base du droit constitutionnel, du droit administratif, du droit pénal et de l'organisation judiciaire: c'est pourquoi les travaux du Congrès ont porté essentiellement sur les applications du Principe de la Légalité dans ces quatre domaines… La création de la Commission est la conséquence de l'inquiétude qu'ont ressentie les milieux juridiques internationaux quand, après la deuxième guerre mondiale, certains pays ont refusé á leurs ressortissants la protection des droits fondamentaux de l'homme.*[117]

The Commission adds that,

> *Telles sont les idées dont s'est inspirée la Commission lors de son premier congrès international tenu á Athènes en juin 1955. L'objet de ce congrès était de définir "les conditions minima requises pour l'application du Principe de la Légalité et la protection de l'individu contre l'arbitraire de l'Etat".*[118]

The Rule of Law theory has its own origin that may be traced back to the Ancient Romans especially during the formation of the first republic. It has been championed by several medieval thinkers in Europe such as Thomas Hobbes, John Locke and Jean Jacques Rousseau through the social contract theory. According to Manzoor Elahi Laskar, Thomas Hobbes theory of Social Contract appeared for the first time in Leviathan published in the year 1651 during the Civil War in Britain. Thomas Hobbes argues that,

> *Man has a natural desire for security and order. In order to secure self-protection and self-preservation, and to avoid misery and pain, man entered into a contract… As a result*

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[116] Barrow C. W., *Marxist Political Theory, Diversity of Tactics, and the Doctrine of the Long Civil War,* (2019), University of Texas Rio Grande Valley, Edinburg, TX, USA, pg. 1

[117] Commission Internationale de Juristes Le Principe de la Légalité dans une Société Libre Rapport sur les Travaux du Congrés International de Juristes Tenu á New Delhi (janvier 1959) Genéve, Suisse, pg. 3

[118] Ibid., pg. 4

> *of this contract, the mightiest authority is to protect and preserve their lives and property. This led to the emergence of the institution of the "ruler" or "monarch", who shall be the absolute head… Hobbes was the supporter of absolutism. In the opinion of Hobbes, "law is dependent upon the sanction of the sovereign and the Government without sword are but words and of no strength to secure a man at all" …he upheld the principle of "Might is always Right."*[119]

Manzoor Elahi Laskar concerning John Locke wrote that,

> *Locke's view about the state of nature is not as miserable as that of Hobbes. It was reasonably good and enjoyable, but the property was not secure. He considered State of Nature as a "Golden Age". It was a state of "peace, goodwill, mutual assistance, and preservation"… The State of Nature was pre-political, but it was not premoral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the Law of Nature. So, the State of Nature was a "state of liberty", where persons are free to pursue their own interests and plans, free from interference and, because of the Law of Nature and the restrictions that it imposes upon persons, it is relatively peaceful… private property is created when a person mixes his labour with the raw materials of nature. Given the implications of the Law of Nature, there are limits as to how much property one can own: one is not allowed to take so more from nature than oneself can use, thereby leaving others without enough for themselves, because nature is given to all of mankind for its common subsistence… John Locke considered property in the State of Nature as insecure because of three conditions; … Absence of established law; Absence of impartial Judge; and Absence of natural power to execute natural laws.*[120]

The position of Jean Jacques Rousseau on social contract in relation to the Rule of Law is that;

> *[he] gave a new interpretation to the theory of Social Contract in his work "The Social Contract" and "Emile"…social contract is not a historical fact but a hypothetical construction of reason. Prior to the Social Contract, the life in the State of Nature was happy and there was equality among men. As time passed, however, humanity faced certain changes… People slowly began to live together in small families, and then in small communities. Divisions of labour were introduced,… discoveries and inventions made life easier, giving rise to leisure time. Such leisure time inevitably led people to make comparisons between themselves and others, resulting in public values, leading to shame and envy, pride and contempt. Most importantly … was the invention of private property,… characterized by greed, competition, vanity, inequality, and vice. For Rousseau the invention of property constitutes humanity's "fall from grace" out of the State of Nature. ...they surrendered their rights not to a single individual but to the community as a whole which Rousseau termed as "general will". ...His natural law theory is confined to the freedom and liberty of the individual. For him, State, law, sovereignty, general will, etc. are interchangeable terms. … He based his theory of social contract on the principle of "Man is born free, but everywhere he is in chains".*[121]

Rule of Law has been defined in several ways by different scholars. According to Trebilcock and Daniels, Rule of Law may be defined by focusing three values. David Kosař states that,

> *Trebilcock and Daniels refer to their "thinner" conception of the rule of law as to the "procedural definition of the rule of law". According to them, the "procedural definition of the rule of law" consists of three clusters of values: (1) process values (transparency, predictability, enforceability and stability); (2) institutional values (independence and*

[119] Laskar M. E., Summary of Social Contract Theory by Hobbes, Locke and Rousseau, (2017), Symbiosis International University, Pune, pg.2
[120] Ibid. pg. 3-4
[121] Ibid., pg. 5-6

accountability); and (3) legitimacy values.[122]

Their position supports that the doctrine of Rule of Law is liked to interpretative and applicable methodologies, both a set of ideals and an institutional framework; it is concerned first with both the conceptual soundness and institutional protection of rules, processes of judicial and other enforcement with the axiological purpose of providing such functions as social and economic coordination.

According to Edward Coke, Rule of Law means; firstly, an absence of arbitrary power on the part of the Government; secondly, no man is punishable or can be made to suffer in body or good except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. The King should be under god and the law rather than a man. Helen Gamble exposes a remarkable conversation between Coke and the King James I that;

> *"On Sunday morning, November 10, 1607, there was a remarkable interview in Whitehall between Sir Edward Coke, Chief Justice of the Common Pleas and James I. …The question between them was whether the King, in his own person, might take what causes he pleased from the determination of the judges and determine them himself. This is what Coke says happened: "Then the King said that he thought the law was founded upon reason and that he and others had reason as well as the Judges; to which it was answered by me, that true it was that God had endowed His Majesty with excellent science and great endowments of nature, but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of the law, which law is an act which requires long study and experience before a man can attain to the cognisance of it and that the law was the golden metwand and measure to try the causes of the subjects, and which protected His Majesty in safety and peace: with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said: to which I said, that Bracton saith, 'quod Rex non debet esse sub momine sed Deo et lege'. … The King ought not to be under a man, non debet esse sub homine, but under God and the law, sed sub Deo et lege."*[123]

There are several principal aspects through which the meaning of the term Rule of law may be extracted such as: law and order; fixed rules; elimination of discretion; due process of law or fairness; natural law or observance of the principles of natural justice; preference for judges and ordinary courts of law to executive authorities and administrative tribunals; and Judicial review of administrative actions.

According to Chitu Jain, during the 19th century, a jurist Professor Albert Venn Dicey defined "the Rule of Law" as the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government." He holds that Rule of Law is the bedrock of the British Legal System; "this doctrine is accepted in the constitutions of U.S.A. and India"[124] as well as a fundamental constitutional principle.

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[122] Kosař D., *Michael J. Trebilcock and Ronald J. Daniels, Rule of Law Reform and Development: Charting the Fragile Path of Progress*, (2008), Cheltenham, Edward Elgar, pg. 250

[123] Gamble H., *The Role of the Rule of Law*, Australian National University, Australia, pg. 27

[124] Jain C., *Rule of Law by Dicey Presentation*, Campus Law Center, University of Delhi, Delhi, India, pg. 4

Prof. A. V. Dicey believed that the "rule" follows logically from the idea that truth (a law) is based upon fundamental principles which can be discovered but which cannot be created through an act of will.[125] He added that, Rule of Law doctrine contains three principles or meanings which are:

1. Supremacy of Law (Absence of Arbitrary Power)

The first meaning of the Rule of Law is that "no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land."[126] All individuals whether a common man or government authority are bound to obey the existing law. For the breach of law, the alleged offence is required to be proved before the ordinary courts in accordance with ordinary procedure. In explaining this, Ellen Gamble quotes that,

> *"It means ... the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may be punished for a breach of law, but he can be punished for nothing else."*[127]

2. Equality before the Law

The second meaning of the Rule of Law is no man is above law. It means the equality of law or equal subjection of all classes of people to the ordinary law of the land which is administered by the ordinary law courts. Every person including the Government Officials are under a duty to obey the same law and there can be no other special courts for dealing specifically with their matters. Hellen Gamble quotes that, *"...the 'rule of law' in this case excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary courts."*[128]

3. Predominance of Legal Spirit

The third meaning of the Rule of Law is that the general principles of the constitution are the result of juridical decisions determining file rights of private persons in particular cases brought before the Court. The Constitution is observed as the result of the ordinary law of the land. The constitution is not the source but the consequence of the rights of the individuals. The applicability of this principle does not exist in India because in India they consider the Constitution to be the basic ground work of laws from which all other laws are derived. This value is proved by a quotation of Gamble H. that,

> *"With us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts;... the principles of private law have... by the action of the courts and Parliament so extended as to determine the position of the Crown and its servants; thus the constitution is the result of the ordinary law of the*

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[125] Jain C., *Rule of Law by Dicey Presentation*, Campus Law Center, University of Delhi, Delhi, India, pg. 6
[126] Ibid. pg. 5
[127] Gamble H., *The Role of the Rule of Law*, Australian National University, Australia, pg. 27
[128] Ibid.

land."[129]

Positively, the idea of Dicey has helped to guide the government to work within the legal framework that ensures parliamentary supremacy as well as check and balance principle. At the same time, A. V. Dicey, due to his obsession to Common Law system, completely misunderstood the real nature of the French *Droit Administratif* because the French Administrative Law was not meant to protect officials but to control them. He did not comprehend the need for codification of laws that could lead to more discretion than a fixed Rule of Law. The French Administrative Law has the most despotic characteristic that relays on a tendency of using ordinary law Courts to protect any servant of the State who is guilty of an act, however illegal, while acting in *bona fides* obedience to the orders of his superiors and in the mere discharge of his official duties.[130]

Also, the current French Administrative Law through *the French Penal Code, Art. 114, protected, as it still protects, an official from the penal consequences of any interference with the personal liberty of fellow citizens when the act complained of is done under the orders of his official superior.*[131]

In *Bachan Singh v. State of Punjab*[132], it was held that the Rule of Law has three basic and fundamental assumptions. Firstly, there must be independent Judiciary to protect the citizens against excesses of Executive and Legislative power; secondly, even in the hands of the democratically elected Legislature, there should not be unfettered Legislative power; and thirdly, law making must be essentially in the hands of a democratically elected Legislature.

- **Dicey's Rule of Law and Modem Constitutional Law**

Dicey's rule was affirmed by the Kentucky's case. In a case of *Kentucky v. Whorton*, State of Kentucky was a Petitioner (an Appellant) and Harold Whorton was the Respondent (Appellee). Patrick B. Kimberlin III was the Assistant Attorney General of Kentucky, argued the cause for petitioner, with him on the briefs was Robert F. Stephens, Attorney General. While Terrence R. Fitzgerald argued the cause for respondent, with him on the brief was Paul G. Tobin.

In *Taylor* v. *Kentucky*[133] the Court reversed a criminal conviction resulting from a trial in which the judge had refused to give a requested jury instruction on the presumption of innocence. Relying on its understanding of that decision, the Kentucky Supreme Court in the present case held that such an instruction is constitutionally required in all criminal trials, and that the failure of a trial judge to give it cannot be harmless error.

The issue was whether the Kentucky Supreme Court correctly interpreted this holding in *Taylor case.*

The respondent was charged in three separate indictments with the commission of several armed

[129] Gamble H., *The Role of the Rule of Law*, Australian National University, Australia, pg. 27
[130] Dicey A. V, *Introduction to the Study of the Law of the Constitution*, Liberty Classics Ed., (1915), UK, pg. 125
[131] Ibid., pg. 126
[132] AIR (1980) SC 898
[133] 436 U.S. 478 (1978)

robberies. At trial, numerous eyewitnesses identified the respondent as the perpetrator. Weapons, stolen money, and other incriminating evidence found in the respondent's automobile were introduced in evidence. The respondent did not take the stand in his own defense. The only evidence on his behalf was given by his wife and sister who offered *alibi* testimony concerning his whereabouts during the time of the commission of one of the robberies.

The respondent's counsel requested that the jury be instructed on the presumption of innocence. This instruction was refused by the trial judge. An instruction was given, to the effect that the jury could return a verdict of guilty only if they found beyond a reasonable doubt that the respondent had committed the acts charged in the indictment with the requisite criminal intent.

The jury found the respondent guilty of 10 counts of first-degree robbery, 2 counts of first-degree wanton endangerment and 2 counts of first-degree attempted robbery. The respondent was sentenced to consecutive terms of imprisonment totaling 230 years.

On appeal, the respondent argued that he had been denied due process of law in violation of the Fourteenth Amendment by reason of the trial judge's refusal to give an instruction on the presumption of innocence. A divided Kentucky Supreme Court agreed, interpreting this Court's decision in *Taylor case* "to mean that when an instruction on the presumption of innocence is asked for and denied there is a reversible error."

Two justices filed separate dissenting opinions. In their view, the *Taylor* case should be understood as dealing with the factual situation there presented and not as establishing a constitutional rule that failure to instruct the jury on the presumption of innocence requires automatic reversal of a conviction. Since these justices concluded that the respondent received a fair trial, they would have affirmed the convictions.

The Court observed, for example, that the trial judge's instructions were Spartan, that the prosecutor improperly referred to the indictment and otherwise made remarks of dubious propriety and that the evidence against the defendant was weak. Hence, the Court held that the failure of the trial court to instruct the jury on the presumption of innocence denied the defendant due process of law. Indeed, the Court's holding was expressly limited to the facts: "We hold that on the facts of this case the trial court's refusal to give petitioner's requested instruction on the presumption of innocence resulted in a violation of his right to a fair trial as guaranteed by the Due Process Clause of the Fourteenth Amendment." The Court, however, did not have any intention to create a rule that an instruction on the presumption of innocence is constitutionally required in every case.

The Kentucky Supreme Court erred in interpreting *Taylor case* to hold that the Due Process Clause of the Fourteenth Amendment absolutely requires that an instruction on the presumption of innocence must be given in every criminal case. The court's inquiry should have been directed to a determination of whether the failure to give such an instruction in the present

case deprived the respondent of due process of law in light of the totality of the circumstances.[134]

- **The Contemporary Doctrine of Rule of Law**

Regardless that the modern form and content of the Rule of Law Doctrine owes much to the ideas of Professor Albert V. Dicey, the Rule of Law Doctrine as suggested by him cannot in its totality be accepted. The concept was developed by the International Commission of Jurists known as the Delhi Declaration of 1959 which was then confirmed at Logos in 1961. The Commission concluded that;

> *The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic background, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.*[135]

2.4. THE GENESIS OF A NOTION OF PEACE

It may be stated that peace is the greatest and highest goal or hope that everyone wishes to achieve personally and expects to be created in society and in the world at large. Always, people have been trying by all means to gain peace. The history of human beings is also the history of searching for peace. Peace has been talked, thought, taught and studied in many ways and many aspects.

A concept of peace as quoted in *"Buddhism and Peace"* written by Ven. B. Khemanando; has a literal meaning derived from a Latin word 'pax' which means a pact, a control or an agreement to end war or any dispute and conflict between two people, two nations or two antagonistic groups of people.[136]

In the history of human society, wars of various kinds were fought. The war situations made people to need and ask for peace. A kind of peace that people needed and asked for was the state of the absence of wars or the state of having no fights among of the people. Some scholars have not been satisfied of such comprehension of peace.

Albert Einstein had a view that peace is not only an absence of war but it means or includes the presence of justice, law, order or government in the society. In the writings of Aarne Vesilind P. in his work *Peace engineering: when personal values and engineering careers converge* he quotes the word of Albert Einstein as he said that, *"Peace is not merely the absence of war but the presence of justice, of law, of order-in short, of government."*[137]

Also, Martin Luther King, Jr., was a famous Human Rights activist and he was not satisfied with the definition of peace focusing only on the absence of the unhappy situations. He had a point of view that peace must include justice in society too. According to Coretta Scott Kin the author of

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[134] 441 U.S. 786, 99 S. Ct. 2088, 60 L. Ed. 2d 640, 1979 U.S. LEXIS 105

[135] Marsh N. S., *International Commission of Jurists the Rule of Law in a Free Society a Report on the International Congress of Jurists*, New Delhi, India January 5-10, 1959, pg. 324

[136] Bloomsbury, *Dictionary of Word Origins*, pg. 387

[137] Vesilind P. A., *Peace Engineering: when personal values and engineering careers converge*, (2005), Lakeshore Press, USA, pg. 43.

The Words of Martin Luther King, Jr. quotes the words of Luther that, *"True peace is not merely the absence of tension: It is the presence of justice".*[138]

Again, the 14th Dalai Lama, said *"Peace, in the sense of the absence of war is of little value…peace can only last where human rights are respected, where people are fed, and where individuals and nations are free."*[139] This quotation was described by the editor Irwin Abrams in a book named *The Words of Peace: Selections from the speeches of the winners of the Noble Peace Prize*. As cited in his quoted point of view it can be deduced that peace means respect for Human Rights, well-being of people, freedom of individuals and nations.

Furthermore, to Baruch Spinoza (1632-1677) who is one of the famous philosophers in second half of 17th century, peace was not an absence of war but it was a virtue, a state of mind, a disposition for benevolence, confidence and justice.[140] He gave importance to a virtue and a state of mind.

Jawaharlal Nehru (1889-1964) emphasized the concept of peace in the sense of a state of mind. His view is that, "Peace is not a relationship of nations. It is a condition of mind brought about by a serenity of soul. Peace is not merely the absence of war. It is also a state of mind. Lasting peace can come only to peaceful people."[141]

Johan Gultung, a Norwegian peace scholar, wrote a work called *"Violence, Peace, and Peace Research", Essays on Peace: Paradigms for Global Order*. The book was edited by Michael Salla, Walter Tonetto and Enrique and Martinez in 1995. They extracted his observation that the terms "peace" and "violence" are very closely linked. Peace is the absence of violence and it should be used as the social goal.[142] He further stated that like a coin, peace has two sides which are negative peace and positive peace. Negative peace is the absence of personal violence; positive peace is an absence of structural violence or social justice.[143]

2.4.1. The Study of Peace

The current efforts of ensuring peace may be traced back at the end of World War II in 1945 when many attempts have been made to assure lasting peace among all nations. There was an attempt of establishing a renewed international organization to work for the peaceful settlement of disagreements between nations. During 1945 year, 50 countries created the United Nations (UN) as the major international organization dedicated to world peace that led to the dissolve of the League of Nations in 1946.

The author adds that;

> *The UN Security Council investigates quarrels between nations and suggests ways of*

[138] Kin C. S., *The Words of Martin Luther King, Jr.,* (2008), Newmarket Press, pg. 83
[139] Abrams I., The Words of Peace: Selections From the Speeches of the Winners of the Noble Peace Prize, Ed., (1995), New Market Press, New York, pg. 16
[140] Brussell E. E., *Dictionary of Quotable Definitions*, Ed., (1970), Prentice-Hall, INC., New Jersey, pg. 426
[141] Fishel R., *Peace in Our Hearts, Peace in the World: Meditations of Hope and Healing*, (2008), Sterling Publishing Co. Inc., New York, pg. 318
[142] Gultung J., *Violence, Peace, and Peace Research, Essays on Peace: Paradigms for Global Order*, Ed. Salla M., Tonetto W. & Enrique and Martinez, (1995), Central Queensland University press, pg. 1
[143] Ibid., pg. 15

settling them. If any nation endangers the peace, the council may use economic sanctions (penalties) against it…If such measures fail, the council may ask UN members to furnish troops to enforce its decision. The UN has achieved some success in keeping the peace. But it has failed to prevent local wars in several regions, including Africa, Southeast Asia, and the Middle East.[144]

The peace studies movement arose from the ashes of World War II as an academic field of study. By the year 1948, at Manchester College in North Manchester, in a place named Indiana, the first academic program in peace studies began under sponsorship of the Brethren church. Simultaneously, Indian scholars and university professors began to promote Mahatma Gandhian studies as a way of teaching the youth's generation to value nonviolence.[145]

In 1945 the USA government established the U.S. Institute of Peace so as to give official recognition to peace studies. Later, in 1959, a Norwegian scholar (Johan Galtung) founded the Peace Research Institute in Oslo (PRIO). The major purpose of this PRIO is to conduct research on the conditions for peaceful relationship between states, groups and people. It is organizationally independent and methodologically diverse. This institution is effective in combining multiple disciplinary traditions to explore issues of peace and conflict.[146]

a) Peace Theories

According to Professor Johan Galtung, who is regarded as the Father of modern peace studies, peace theories are Democratic Peace Theory and Johan Galtung's Peace Theory.

- **The Democratic Peace Theory**

It is a theory that holds the idea that representative liberal governments can diminish the occurrence of war is one of the most appealing, influential and at the same time controversial ideas of our time. Under the influence of this theory, in 1795, Immanuel Kant wrote in his essay *Perpetual Peace* that democracies are less warlike. The United States Presidents like Woodrow Wilson embraced this idea and advocated the creation of democracies to create a less belligerent world. Harry S. Truman once said, *"Totalitarian regimes imposed on free peoples…undermine the foundation of international peace and hence security of the United States."*[147]

Particular empirical study examined 416 country-to-country wars from 1816-1980 and found that only 12 wars were fought between democracies. A scholar (Bruce Russett) wrote that "Established democracies fought no wars against one another during the entire twentieth century." According to Jack Levy, Democratic Peace Theory is "as close as anything we have to an empirical law in international relations."[148]

At the national level, the US President Clinton in his 1994 State of the Union Address

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[144] Krasno J. E., "Founding the United Nations: Evolutionary Process" in *The United Nations: confronting the challenges of a global society*, (Ed. Jean E. Krasno), USA: Lynne Rienner Publishers, Ins., (2004), pg. 19-43

[145] Harris I.M., "Peace Education: Colleges and Universities" in *Encyclopedia of Violence, Peace, Conflict, Vol. 2*, Lester Kurtz editor-in-chief, California: Academic Press, (1999), pg. 680

[146] PRIO Strategy 2010-2013

[147] Rupert M., "*Ideologies of Globalization: Contending Visions of a New World Order"*. Routledge; London, (2000), pg. 27

[148] Levy J. S., *Domestic Politics and War*, (1988), Rotberg R. I. and Rabb T. K., (Eds.), The Origin and Prevention of Major Wars. Cambridge University Press, Cambridge, UK, pg. 88

proclaimed, "Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advancement of democracy elsewhere. Democracies don't attack each other." Also, President George W. Bush stated, "And the reason why I'm so strong on democracy is democracies don't go to war with each other. And the reason why is the people of most societies don't like war, and they understand what war means…I've got great faith in democracies to promote peace. And that's why I'm such a strong believer that the way forward in the Middle East, the broader Middle East, is to promote democracy."[149]

In the other hand side, the Democratic Peace Theory has been criticized. Particularly, Alexander Hamilton rejected this idea in Federalist No. 6, as he wrote that;

> *"Sparta, Athens, Rome, and Carthage were all republics; two of them, Athens and Carthage, of the commercial kind. Yet were they as often engaged in wars, offensive and defensive, as the neighboring monarchies of the same times. Sparta was little better than a well regulated camp; and Rome was never sated of carnage and conquest."*[150]

At the same time, the Democratic Peace Theory can only be true between two democratic countries that have reached high standards of economic development. The research finds that poor democracies are more likely to fight each other.[151]

Establishing a democratic or republican state must spend many years rather than just making ballot boxes for elections. In the USA their democracy became defined after around 200 years because aspects like rule of law, civic culture, legitimacy of a democratic system, a stable and committed middle class requires much time for them to be built. In the book *Electing to Fight: Why Emerging Democracies Go to War*, Edward Mansfield and Jack Snyder point out that transitional states or "semi-democratic regimes" may be extremely dangerous and actually more likely to start wars. The introduction of democratic institutions must not be smooth, permanent or accepted by either the political elites in a country or by the majority. Also, in most cases of newly created democracies (the third-wave democracies) the political institutions are weak, frail and easily reversible.[152]

- **Johan Galtung's Peace Theory**

This theory is essentially based on one underlying principle that peace is the absence of violence. *What we intend is only that the terms 'peace' and 'violence' be linked to each other such that 'peace' can be regarded as 'absence of violence'.*[153] The dualistic nature of peace and violence tends to simplify the continuous nature of social conditions to cold opposites. It lacks sensitivity to the more dialectical character of social change. In the same sense, Galtung defines violence "… *as the cause of the difference between the potential and the actual, between*

[149] Bush G. W., *President and Prime Minister Blair Discussed Iraq, Middle East, The East Room*; November 12, 2004

[150] Hamilton A., (1787), *The Federalist No. 6*

[151] Mousseau M., *Comparing New Theory with Prior Beliefs: Market Civilization and the Democratic Peace*, (2005), Conflict Management and Peace Science 22(1), pg. 63-77

[152] Sorensen G., Democracy and Democratization: Processes and Prospects in a Changing World, (1993), Westview Press, Boulder, pg. 62

[153] Galtung J., *Violence, Peace, and Peace Research; Journal of Peace Research*, Vol. 6, No. 3 (1969), Sage Publications Ltd., Oslo, pg. 167-168

what could have been and what is. Violence is that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance.[154]

Johan Galtung perceives peace as touching the concept of law and order such that an anticipated social order achievable through the instrumentality of force and threat of it. This concept corresponds to the notion of violence whereas peace erects regulations and outlines punishments to produce and maintain a state of tranquility. In this conceptualization, there is an idea of peace as absence of any mutually agreed hostility between groups or states for demonstration, revolts and protests. This peace is commonly known as negative peace.[155]

In another hand side, a condition in which an order is conjured by respect for human socio-cultural diversity is called positive peace. This social condition multi-culture is respected, multi-religion is embraced, multi-ethnic is loved, ideological diversity is welcomed, minorities are protected, guided liberty, freedom, equity and equality as well as to be granted their justice.[156]

b) Types of Peace in a General Perspective

In a general approach, peace is classified into two types: Internal Peace and External Peace.

i) **Internal Peace**

It is called by other words an "inner peace" that is a peace of mind or soul. It is a state of calm, serenity and tranquility of mind that arises due to having no sufferings or mental disturbances such as worry, anxiety, greed, desire, hatred, ill-will, delusion and or other defilements. This kind of peace is found within oneself and it is derived from practicing or training of mind of an individual. Sometimes, a man is capable of creating and maintaining his inner peace in the noisy surrounding or in the un-peaceful society. Internal peace is stressed in the field of religion, especially religions in the East. In the view of religions, this type of peace can be reached by means of prayer, meditation, wisdom and other ways. Internal peace is essential; it is generally regarded as true peace and as a real foundation of peace in society or peace in the world.

According to Paul R. Fleischman, the cultivation of inner peace is as rational and orderly as any other aspect of the human condition, and pertains equally to all of us despite our differing starting gates, nervous systems, and life experiences. He wrote that;

> *How can we cultivate inner peace, find and dispense our harmony and love, within the confines of our own confused, wounded, incomplete and limited lives? We are afloat among resource depletion, terrorism, war, religious psychosis, population expansion, totalitarianism, and nuclear arms. To be true cultivators of peace, we have to stare into the maw of the problems that intrude over the borders into our mind. Then we have to grow joy and resilience in the soil of inner peace so that, as citizens of the world, we contribute the age-old balm of peace, but in new potions and with new pungency. In recent years, intrusion and threat have poured in upon us with heightened fervor. We have also heard enticing whispers, and seen auras gilding the ancient mountains that rim our sense of possibility.*[157]

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[154] Ibid., pg. 168
[155] Olanrewaju, I.P. The Conceptual Analysis of Peace and Conflict, ((2013)
[156] Loc. Cit.
[157] Fleischman P. R., Cultivating Inner Peace; Exploring the Psychology, Wisdom, and Poetry of Gandhi, Thoreau, the Buddha, and Others, (2004), Pariyatti Press, USA, pg. 2

The internal peace influences external peace. A world peace and other levels of external peace, in order to make them permanent, it should be grounded on the real internal peace of man's heart. The famous statement of UNESCO that, "Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed"[158] reminds us to comprehend the real cause of war and peace. It refers to the importance of internal peace as a true foundation of peace in society. In this point, Dalai Lama too said the same thing that, *"We can never obtain peace in the outer world until we make peace with ourselves."*[159]

ii) **External Peace**

It is a kind of peace that occurs in society, nations and the world at large. It is a normal state of the given society, countries and the world. It is a state of peaceful and happy co-existence of people as well as the nature. External peace can clearly be described in its negative and positive sense. In a negative sense: the absence of negativities such as war, hostility, agitation, social disorder, disturbances, social injustice, social inequality, violence, violation of human rights, riot, terrorism and ecological imbalance. In a positive sense: a state of social harmony, social justice, social equality, friendship or friendly relation, concord, public order and security, respect for human rights and ecological balance.[160]

Internal peace and external peace are interrelated. Both are interdependent and relief each other. Internal peace represents individual's peace while external peace represents peace in society.

b) Types of Peace according to the World Council of Curriculum and Instruction

According to the WCCI, types of peace can be sub-classified into nine namely:

i) Intrapersonal peace: the state of peace within man himself that means there is no conflict inside one's mind.

ii) Interpersonal peace: the state of peace between a man and men; there are no conflicts between a man and men or one another.

iii) Intragroup peace: the state of peace within groups; the state of having no conflicts in groups.

iv) Intergroup peace: the state of peace between group and group; the state of having no conflicts among groups.

v) Intra-racial peace: the state of peace within race; the state of having no conflicts in each race.

vi) Interracial peace: the state of peace between race and races; the state of having no conflicts among races.

vii) Intra-national peace: the state of peace within nations or countries; the state of having no conflicts in each nation or country.

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[158] Harris I. M. and Morrison M. L., Preamble of UNESCO Charter, 1946 quoted from "*Peace education*", Mcfarland and Company, Inc., North Calorina, USA, 2003. pg. 9

[159] Biran A., *What Are You Doing to Your Body?: 13 Simple Changes Can Make the Rest of Your Life,* (USA, 2009), pg. 74

[160] Loc. Cit

viii) International peace: the state of peace between a nation and the nations; the state of having no conflicts among nations.

ix) World peace: peace of the world. It means that the countries throughout the world are said to be in the state of normalcy, absence of wars and conflicts, presence of justice and balance of control.[161]

2.4.2. Conditions for Perpetual Positive Peace

Immanuel Kant (1724-1804) was the paradigmatic and culminating scholar and philosopher of the European Enlightenment. He held that, only the free choice of human beings to do good rather than doing evil can ever make the ideals of morality real as an essence of lasting peace. According to Kant, the fundamental principle of morality, in the various formulations of the "Categorical Imperative" in the *Groundwork for the Metaphysics of Morals,* is essentially the principle that in each exercise of our freedom of choice we should choose that course of action which is most compatible with the continued exercise of our own freedom of choice and with that of all others who might in any way be affected by our actions. Basing on his work called *Toward Perpetual Peace,* Immanuel Kant argues that, steady and lasting peace can come only when all the nations of the earth are such republics, governed by citizens who see the security of their property obtaining only under the universal rule of law rather than by proprietary rulers who can always see a neighboring state as a potential addition to their own personal property.[162]

He described the concept of Perpetual Peace with many reflections from the approach of perpetual peace among states rather than perpetual peace within a state. He expressed perpetual peace as the product of state's internally convictions from its self-interest towards the forming of a republican government.[163] On state affairs, Kant suggests in his first article that, "The civil constitution of every state is to be republican." The only constitution which derives from the idea of the original compact, and on which all juridical legislation of a people must be based, is the republican because it embodies the civil law governing inter-relations amongst men in a nation-state. The states have different a classification of forms of internal sovereignty. The possession of sovereign power in a state determines the level of truth of lasting peace. Particularly, in an autocratic state in which one person (the monarch) has sovereign power, the possibility of perpetual peace is low; in the aristocratic regime in which an associated group (the nobility) has sovereign power, the public interest is at risk and permanent peace is likely to be damaged; and in democratic government the people have sovereign power, lasting peace is encouraged.[164]

Another classification of government is in terms of how do states use their power whereas the government may either be republican or despotic. Republicanism is the political principle of the

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[161] Prachoomsuk Achava-Amrung, Peace Research, International Association of Educators for World Peace, Bangkok, 1983, pg. 4-5

[162] Kant I., *Toward Perpetual Peace,* pg. 1-2

[163] Kleingeld P., *Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation,* pg. 316

[164] Kant I., *Toward Perpetual Peace; A Philosophical Sketch,* Ed. Bennett J., (2017), pg. 6-7

separation of the Executive from the Legislative power while despotism is the political principle by which the Executive and the Legislative powers are vested in the state to make the laws and administering them. In a despotic system the public will for the population is administered by the ruler or group of rulers as his or their own private will.[165]

The republic governments in contrast to despotic states are naturally inclined to peaceful situation. This fact is founded on the perception that rulers of despotic states easily declare war and they simply make their subjects shoulder the burdens. Basing on Kant's observation in what had happened to the ancient regime in France, despotic states are more disposed to war nevertheless they are likely to surrender from within when these burdens get out of control. Kant believes that citizens will realize that offensive wars go against their self- interest and hence that a republic will not start such a war.[166]

Immanuel Kant's claim that the republic governments are naturally peaceful is often quoted in contemporary Theories of International Relations. Particularly, Michael Doyle showed that it is confirmed empirically when narrowed to the thesis that democratic governments do not wage war against each other which implies that democratic governments do not wage war in general. On the basis of this assumption, it might be believed that a global democratization would be sufficient enough to perpetually do away with war as it was had been written by Rawls in his work *The Law of Peoples.*[167]

Kant believes that, in addition to self-interest of both the state and individual citizen, there are several factors that move humanity in the direction of a durable peaceful republicanism. The indicators of perpetual peace prove existence of a truly positive peace lasting in a state. The truly perpetual peace is a "moral task" and peace is desired "not just as a physical good but also as a condition that arises from the recognition of duty" and then peace can be truly perpetual. He adds that truly perpetual peace should be backed up by the appropriate normative convictions among of the citizens rather than just by the fact that it is in everyone's interest because a peace that is based merely in self-interest is not really secure.[168]

The public sphere of justice or politics, concerns only our outward compliance with requirements of morality, our external actions rather than our motivations or ends, and its "Universal Principle of Right" is only that "Any *action* is right if it can coexist with everyone's freedom in accordance with a universal law."[169]

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[165] Kant I., *Toward Perpetual Peace; A Philosophical Sketch*, Ed. Bennett J., (2017), pg. 8
[166] Kleingeld P., *Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation*, pg. 316-317
[167] Ibid., pg. 317
[168] Ibid. pg. 316-317
[169] Kant I., *Toward Perpetual Peace,* pg. 1

CHAPTER THREE

HUMAN RIGHTS LAW MACHINERY IN BURUNDI IN RELATION TO PERPETUAL POSITIVE PEACE ASPECTS

3.1. REFUGEES' REPATRIATION AND EFFECTIVE REINTEGRATION

Refugees are products of violent situations in a country. Burundian refugees have been living in several countries fearful to avail themselves for protection of their lives in Burundi territory. The Joint Refugee Return and Reintegration Plan (JRRRP) of 2021 stemmed from a strong commitment by Burundian refugees authorities: UNHCR, UNDP and partners, to support sustainable solutions for returning refugees, in a manner that enables them to rebuild their lives with dignity and in peace. This Plan provides for the implementation of activities that empower returning refugees, enhance the flexibility of both returnees and local populations in areas of return as well as to promote social cohesion and peaceful coexistence. It contributes to the stability not only in Burundi but also in the Great Lakes region as a whole. Since 2017 more than 120,000 Burundians have returned to their country and despite the COVID-19 pandemic almost 41,000 refugees returned to Burundi in 2020 from Tanzania, Rwanda, the Democratic Republic of Congo (DRC), Uganda and Kenya.[170]

Following the grounds of leaving a country to become a refugee includes avoidance of unsecured life situations; some returned refugees argue that since their return the process of reintegration had not been fulfilled. One returnee who re-availed himself in Burundi since 2013 explained that regardless of knowing that he has a right to access iron sheet roofs at the time of building his house, he has not been provided with such materials or reliable instruction for expectations.[171] Other returnees have serious land problems because some of their lands have been confiscated by other individuals who did not go into exile while other lands have been taken by the government for development projects without providing compensation to the original owners.[172]

Still, an issue of reintegration of Burundian repatriated refugees' children into education programs is still a challenge especially for refugees who studied in the refuge countries in a different education systems from such of Burundi. According to the provisions of Article 22,[173] the right to education like right to health and settlement does not cease after return in The Mother-Land. The University of Burundi has enrolled a student who does not know French language to pursue his legal studies in English language. This exclusively describes the efforts of complying with the spirit of respecting Human Rights and promoting peace in Burundi. The inner peace of such enrolled student is likely to positively impact the society. This occurrence

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[170] Sibomana E., "*UNHCR and UNDP, 2021 Burundi Refugee Return and Reintegration Plan, January - December 2021"*, pg. 2

[171] In a dialogue with returned refugees of 2013 in Rumonge province

[172] Loc.cit

[173] The Convention Relating to the Status of Refugees Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons Convened under General Assembly Resolution 429 (V) of 14 December 1950

has been a landmark step by the University of Burundi to facilitate educational reintegration of refugees, regardless of their French language incompetence. It has proved a model to other institutions in Burundi.[174]

The factors led to mass Human Rights violation throughout Burundian history have a correlation with a researcher's hypothesis. From the hypothesis that, the International Human Rights Laws are known by some Burundians but distribution of both human and natural resources, sharing of power or authority and presence of neo-patrimonialism influence existence of unsolved conflicts; the population has observed that the major root of Burundi ethnic and political violence and wars are economic problems (poverty), greed to power and shortage of recognizing leadership legitimacy. The population argues that if they meet economic needs there might be no forecast of fighting among of the citizens as what had been experienced in the past.[175]

Additionally, others observe the source of conflict as unequal wealth distribution, bad governance, inequitable power sharing and emergence of a great socio-economic difference among of the citizens. The governance should be adjusted in a manner of promoting accountability and transparence among other qualities of good governance. The utilization of human and natural resources should be effected keenly to ensure an increase in national productivity rate. The government authorities should encourage gifted people to use their non-professional skills that would help intensification of development projects. In another hand side, the defined poor people in Burundi are absolutely poor whereas the confident rich people in the same territory are really rich people with the exciting life styles. This situation discourages some Burundians to feel a belongingness of their country and estimate that only the rich people are the true citizens. This discouragement (inferiority complex) leads to non- participation to matters related to their own affairs.[176]

The most important thing people should ask is whether Burundians who are currently living within the territory have fear of their security. The research has depicted two categories of people concerning an existence of fear among of the current Burundi population.

The first category of informants observed that Burundians have no fear of living in the territory because people are free to move from one place to another at any time even a whole night has been spent while people are travelling within a territory. Burundians instead of fearing the occurrence of war and insecurity they regret of what happened in the past. The population regards that the crises happened throughout Burundi history was stupidity that should never be repeated in any form. As far as the human sense of fear might arise, it is only when the society is provoked by political tension but the kind of fear emerged lacks permanence character.[177]

The second category included not only a Focused Group Interviewees from Bujumbura Christian University (BCU) but also other individual people through Key Informant Interviews (KIIs)

[174] Personal observation during the stay in Bujumbura, from 2020 to 2022
[175] In a dialogue with a citizen named Christy on 22nd March 2022 in Bujumbura
[176] Hon. George NIKIZA, the Head of 'Office Nationale du Tourisme', on 17th March 2022 in Bujumbura
[177] Hon. George NIKIZA, the Head of 'Office Nationale du Tourisme', on 17th March 2022 in Bujumbura

technique. It argued that the majority of Burundians are filled with fear of re-occurrence of war that might be either of ethnic or political nature. This fear is founded, among of other factors, on the existence of segregation, oppressive and disuniting common idioms and phrases that grow tension between the citizens. There are several ways in which Burundians retain to express their separate ethnic and political identities in a manner of awakening understanding of their differences. This illustrates a sense of fear and mistrust to each other. The common idioms used by Burundians to express their identities include: a sound /borrh/ that means 'someone of a low value", a word 'igipinga' to illustrate "someone who is belong to our controversy" and 'kumenja' to mean "to do something regarded as a wrongful act or decision simply because it has been conducted without respecting personal identity". Another idiom is 'umukeba' which is derived from tradition of polygamous society in which two wives share one husband; hence, both wives struggle by any means to be loved in a higher extent than another. In political and or ethnic context it might be used to mean that "the distinct identities struggle by any means to win the only one goal of dominating another". Other idioms are 'imisaya' which expresses the head structure of people belong in a particular ethnic group distinctively from another group, 'akayoka' which expresses the less body stamina of people belong in a particular ethnic group, and a phrase 'umwungu wa gwa ruzi' to mean that "a person should be aware of a person who does not have a nature of particular ethnic group".[178]

Below is the information source specific for the question evaluating the level of fear and mistrust among of Burundians basing on the past violation of Human Rights and peace.

Source: Field Data in Bujumbura and Rumonge provinces, (November 2021 to March 2022)

Category of Respondents	**Frequency**	**Percentage %**
University students	15	65.2
Government officials	2	8.7
Private officials	2	8.7
Common citizens	2	8.7
Repatriate refugees	2	8.7
Total	**23**	**100**

3.1. Table Shows Categorical Distribution of the Respondents (N=23)

A response on the question number 3 in the questionnaire asked that;

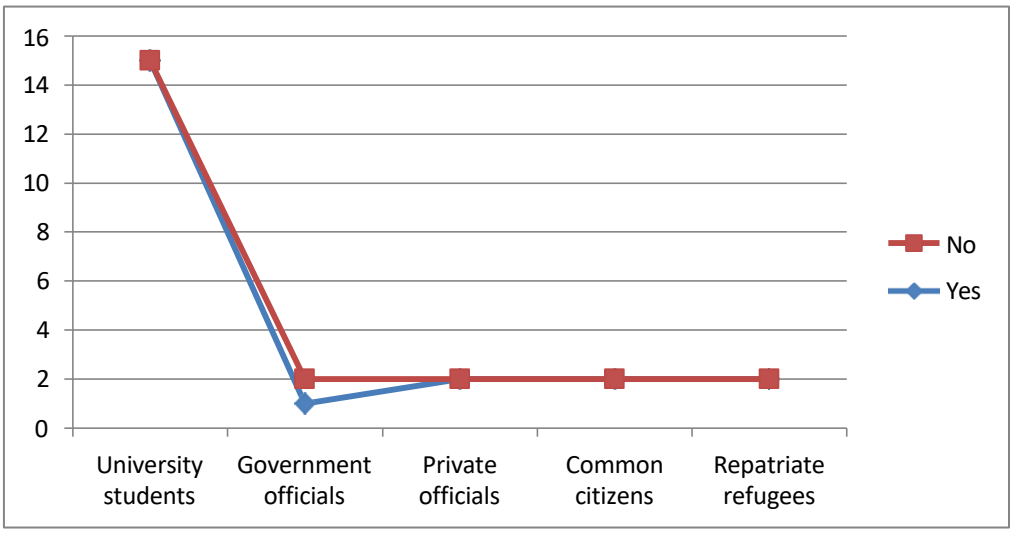
Do Burundians have a level of mistrust basing on previous ethno-political wars?

[178] In dialogues with several people whose names are hidden

A table shows Burundians' ethno-political mistrust and fear

Category of Respondents	Yes	No	I do not know
University students	15	0	0
Government officials	1	1	0
Private officials	2	0	0
Common citizens	2	0	0
Repatriate refugees	2	0	0
Total	**22**	**1**	**0**

3.2. Table Shows Categorical Distribution of Responses to the Question



3.1. A Graph Shows Extent of Fear and Mistrust among of Burundians following Violation of Human Rights Law and Peace throughout History

The respondents argued that there is fear among the citizens is 22 out of 23 which forms 95.7% of the respondent sample. This signifies that the majority of Burundians still have mistrust amongst themselves regardless of daily government strategic efforts of unifying the State regardless of their diversities. This implies that the country should either adopt new or improve the current measures to eradicate this tendency of fear remaining between the citizens. The citizen is the most human labor force for national development and stabilization of lasting peace. The only one (1) respondent out of the total sample of 23, forming 4.3%, has observed that there is no fear between the citizens belonging into different groups. This fact reminds that people have different capacities of copying with social psychological change; few require a short time while the many require a long time to forget the past painful events. This empirical statistics unfolds that there is still a ray of hope to win against the existing fear and mistrust in Burundi to achieve the perpetual positive peace ideal.

In light of other hypothetical variables contributing to the continuation of conflicts in Burundi history, the researcher has found that:

i. It is applicable that there are still untreated psychological wounds of the past painful experiences among of some Burundians within and out of territory.

ii. It is true that there are still some citizens who have a low level of participating in promoting and protecting national security. Consequently, the security officer among of respondents has required all citizens to be free from fear in cooperating with the authorities because the State shall ensure their protection.

iii. The research has found that there is no legal *lacuna* that might need the promulgation of new legislation for particular specific subject matter. It is determined that statutes like The Law of the Child is not passed by the Legislature but the Child's rights including their (Human Rights) are observed through national ratification of the Convention on the Rights of the Child of 1989. The Convention was drafted to care millions of children who continue to suffer violations of their rights when they are denied adequate health care, nutrition, education and protection from violence. Some children worldwide continue to be cut short when they are forced to leave school, do hazardous work, get married, fight in wars or are locked up in adult prisons.

iv. Concerning how do national laws have ambiguous recognition and protective measures of Human Rights; the researcher was unable to come into such knowledge following shortage of time and language barrier as long as Burundian statutes are in French language.

v. Basing on an issue of poor civic education among citizens which retains fear; it has been found that the citizens still have fear of their security particularly in denouncing wrong actions or omissions and violation of Human Rights. In order to escape form been injured or been condemned, they prefer to use idioms and ironic expressions commonly known in Kirundi language as *ugufobeka.* The use of closed expressions in fighting against violation of Human Rights can simply be regarded as toothless dog in fighting. Other citizens tend to stay quiet to violation of Human Rights because of such fear resulted probably from ignorance of civic education. The attitude of hiding truth under an umbrella of unopened expressions paralyses the peace process in Burundi. The CVR Burundi promotes truth and openness in effecting its roles as well as by inviting witnesses for tendering testimonies in scheduled venue and mass media publish to the community.

3.2. FROM THE PRISM OF ETHNIC TO DEVELOPMENT THOUGHTS

A journey from ethnic thoughts to development centered thoughts does not necessarily have rapid outcomes. The government has facilitated and conducted several trainings on transforming the minds of citizens to concentrate in development scope of thoughts rather than ethnic bias.

Still, it is of the great importance to prolong the education projects on psychological mindset of the citizens. The government has succeeded to prohibit and eradicate any association or project that is based on particular ethnic group. The impacts of ethnic wars in Burundi had led to a prevalent saying that, 'Uko zivugijwe niko zitambwa'. It illustrates that, during the crisis of 1960's an eligible person to vote was 18 years old, in the crisis of 1966 the same eligible person to vote had attained 24 years old, in the 1972 crisis the same eligible person has attained 30 years old and during the crisis of 1993 the same person who was eligible since 1960 has 51 years old. This eligible person has lived in all periods with all circumstances and a pain is likely to unsuitably inform other generations in a manner of remembering and maintaining a prism.[179]

Nonetheless, the government has encouraged the promotion of establishing development projects for the general public welfare. An emerging challenge is when, particularly, some citizens have negative connotations on the so called 'ibikorwa rusangi'. These activities help the community to achieve public development through such project. However, especially in 2012, some citizens misconstrued such projects introduced by the government by regarding them as the works for prosperity of a ruling political party (CNDD-FDD). The government invests in changing the social and physical needs of the citizens to achieve a psychological change of the population. The intellectuals have a special and great role to promote and effect the transformation of Burundians from bearing negativities in their minds to focus in development.[180]

3.3. SOCIO-PSYCHOLOGICAL MEASURES FOR PEACE

The Burundi Office of Ombudsman has a mission for the management of conflicts between the administration and citizens. It also has a special mission for compromise and reconciliation on general issues concerning the relations between political and social forces. Provisionally, under **Article 6 (d) and (e)[181]**, the Ombudsman executes, at the request of the President of the Republic, special missions of settlement and reconciliation on issues of general rules concerning relations with political and social forces, as well as specific missions relating to issues of reconciliation and peace at the regional level or internationally. The institution deploys all necessary techniques so that the action of all organizations involved in social life: political parties, civil society, unions and religious denominations, lead to the foundation of the durable peace.[182]

The tendency of living in the same geographical area may contribute to stagnation of mental capacity especially in psychological mindset. The perspectives developed in one region might be different from such of another location on the same subject matter. Burundians having a practice of conducting internal tourism into several provinces are likely to activate their psychological

[179] In dialogues with respondents whose names are hidden

[180] In a dialogue with Padre BIGIRIMANA Elie, on 21st March 2022, an official in the Ombudsman Institution of Burundi; Department of Justice Faults, Violation of Human Rights and Social Action

[181] The Law N°1/*04* of January 24th, 2013 reviewing the Law N°1/03 of January 25th, 2010 on the Organization and Operation of the Ombudsman

[182] SINZUMUSI Eugene, on 21st March 2022, an official in the Ombudsman Institution of Burundi

stability than those remaining in the same locality. Tourism intensifies social relations amongst the visitors whether international or national tourists and nationals. The government has set this opportunity to every person provided that it is conducted according to the law. Tourism sector is a key of peace through culture, experience sharing and the practical hospitality in the territory. It is the multidisciplinary sector related to agriculture, trade, environmental preservation, education, sports and others like security. The tourism sector improvement encourages eradication of poverty in the country because the State shall develop through receiving much foreign currency, promotion of national and international relations, opening of international trade opportunities and lead to the great State productivity rate.[183]

3.4. TRANSITIONAL JUSTICE MECHANISMS

The notion of Transitional Justice is mostly linked to transitional period between two different legacies. It can be defined as "efforts during post conflict and post-authoritarian transitions to address the legacies of massive atrocities and human rights abuses."[184] In other words, the United Nations defines transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (UN Security Council, 2004).[185] Often, it links either an authoritarian regime or conflict period and peaceful situation or democratic rule.

The Truth and Reconciliation Commission 'Commission Vérité et Réconciliation, (CVR)' is a leading institution for Burundi transitional justice process. The history of Burundi is inseparable from ethnic conflicts since colonial era. Since independence in 1st July 1962, Burundi has experienced several cycles of violence. Notably, there had been human rights abuse in 1972, 1988, 1993 and 2015. The author says that;

> *The signing of the Arusha Peace and Reconciliation Agreement of 2000 was an opportunity to peace. The agreement highlights measures for reconciliation and against impunity and other provisions for transitional justice. It suggested establishment of the Truth and Reconciliation Commission of Inquiry (IJCI) to be followed by an international criminal tribunal. Neither of these instruments came into practice…Transitional justice…aims to promote social and political integration and reconciliation, to enhance the rule of law, to fight impunity and to increase trust in government institutions. This normative model is mainly based on humanitarian law, international criminal law and human rights law...some argue that Burundi lacks the political will that is necessary to implement such a normative model of transitional justice…transitional justice in Burundi might also be contested because political actors' understandings of basic concepts of transitional justice, such as justice,, reconciliation and truth, do not conform to international transitional justice norms or the liberal peace-building model.*[186]

Contemporary Burundi seeks to retain its harmonious socio-cultural, political and economic life.

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[183] Hon. George NIKIZA, the Head of 'Office Nationale du Tourisme', on 17th March 2022 in Bujumbura

[184] International Center for Transitional Justice, Pablo de Greiff and Duthie R., (Editors), *Transitional Justice and Development; Making Connections*, Social Science Research Council, New York, 2009, pg. 111

[185] Haider H., *Transitional Justice,* (2016), GSDRC, University of Birmingham, UK, pg. 3

[186] Rubli S., *(Re)making the Social World: The Politics of Transitional Justice in Burundi*, (2013), Sage Publications Ltd, pg. 4

For Burundi it is a transition epoch from both autocratic rule and wars towards democratic regime for peaceful situation in the territory.

Transitional justice must incorporate people who are found in such society.

> *Inclusive participation in all aspects of transitional justice processes (design, implementation, evaluation) can be important not only in fostering local ownership and perceptions of legitimacy…but also as an opportunity to empower local populations and challenge a range of exclusions and power relations…Victims need to be seen at the core of transitional justice measures… Participation should also seek to transform victimhood and victims into agents of change, encouraging their access to and involvement in transitional justice processes. Such participation can be a key element of empowerment, in which the marginalised access and shape key institutions… This can generate a more meaningful, respectful and legitimate process for all involved-victims, transitional justice actors and society.*[187]

3.4.1. A Post Conflict or Post Authoritarian Context

Often, at the end of either a conflict or an authoritarian regime, the public sector falls in crisis that damages institutional sector. This is due to the fact that, institutions continue to operate within organizational structures which were introduced by the authoritarian rule or that framework which perpetuated conflicts. In this context, public employees who stay in the government positions since the time of conflict or authoritarian rule often oppose changes to the *status quo.* At the same time, particular institutions become dysfunctional while other institutions face fund scarcity. This situation intensifies mistrust of the public sector by the population. Restoration of public sector is crucial for promotion of peace consolidation and the rule of law. Any post conflict or post authoritarian community is characterized by a problematic environment for reform. The aforesaid reforms require pragmatism, determination and endurance.[188]

3.4.2. The Aborigines Community in Burundi

The Twas in Burundi are commonly called ‘abasangwabutaka’ to mean the aborigines. They are people who were found in the territory by other ethnic groups; the Hutus and the Tutsis. Twas had been isolated by other ethnic groups throughout national history particularly from participating in State affairs and enjoyment of their fundamental freedoms and rights. They found themselves landless, uneducated, lack of housing, lack of reputation and face discrimination. They were not involved in decision making on matters that affect their lives. A narrowed ray of hope emerged after an appointment of Libératé NICAYENZI, to be the Member of Parliament in 1998. Later, she became the founder of *Unissons-nous pour la Promotion des Batwa* (UNIPROBA) in 1999 with a vision of analyzing Twas’ problems and to contribute for change of *Twa’s* life. This association officially commenced in 2003.[189]

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[187] Ibid., pg. 10

[188] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Vetting: an Operational Framework*, (2006), New York and Geneva, pg. 9

[189] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura

Provinces	Number of Twas	Frequency (%)
Bubanza	6676	8.6
Bujumbura Town	849	1.1
Rural Bujumbura	5100	6.5
Bururi	3956	5.1
Cankuzo	786	1.0
Cibitoke	7979	10.2
Gitega	6079	7.8
Karuzi	6732	8.6
Kayanza	6473	8.3
Kirundo	7947	10.2
Makamba	2071	2.7
Muramvya	6203	7.9
Muyinga	4700	6.0
Mwaro	3126	4.0
Ngozi	8088	10.4
Rutana	750	1.0
Ruyigi	556	0.7
TOTAL	**78071**	**100.0**

3.3. The Table Showing Burundi Batwa Statistics in 2006 and 2008[190]

3.4.3. Burundi Aborigines in the Transitional Justice for Perpetual Peace

The government has a contribution to the involvement of *abasangwabutaka* community of Burundi in Transitional Justice mechanism towards perpetual positive peace as described below in light of strengths and weakness:

a) Government Strengths

The government's strengths on participation of the Aborigines in transitional justice are as analyzed below:

i) Memberships in the CVR; the government has succeeded to involve one official from Twas' community in the CVR since the beginning of the Commission.

ii) The government has succeeded to include 3 posts of Twas in the Senate as Constitutional right.

iii) It has succeeded to include 3 Constitutional *Batwa* posts in the National Assembly.

iv) The government has succeeded to place one (1) *Twa* in the East African Community (EAC)'s office.

v) The govenent has managed to involve 2 *Batwa* in the '*Commission Nationale Terres et*

[190] UNIPROBA and International Work Group for Indigenous Affairs (IWGIA), '*Rapport Sur la Situation Fonciere des Batwa du Burundi*,' (2008), MEX, Burundi, pg. 16

Autres Biens' (CNTB) office related to land conflicts basing on the returnees. One is working in Cibitoke province and another in Bujumbura province.[191]

b) Government Weaknesses

The weaknesses of the government on participation of the Aborigines in the process of transitional justice are described as follows:

i) Right to Know the Truth (the Establishment of the Truth Commissions)

Prevalently, most post conflict or authoritarian rule countries create the truth commission to operate during the immediate post crisis era. These commissions are temporary non judicial bodies responsible for statement-taking, conducting investigations, doing research and public hearings as well as to complete the work by producing the final public report. These commissions may have different components, structures, minimal standards, procedures and powers depending on the nature of a concerned country. The international treaty bodies, regional courts, international and domestic tribunals have affirmed that every person has the right to know the truth about the fate of any past abuse. The commission promotes awareness of forms, causes and extent of past violations as well as the consequences.[192]

To avoid exaggerated expectations from the commission, it should be known that a truth commission does not necessarily lead to advancement of reconciliation in a community. A full understanding of the truth can be an essential factor of reconciliation for some people while other people need complementary efforts more than truth as to attain reconciliation or forgiveness. The government situations suitable for establishment of the commission are: presence of a political will to allow, encourage and support a serious analysis into past mistreatment; the end of a violent conflict, war or repressive practices regardless that a de facto security may be weak in a manner that victims and witness afraid to speak the truth publicly; and there must be an interest on the part of victims and witness to have such an investigative process.[193]

Recommendations from the conference for Burundi's Truth and Reconciliation Commissions on creation of the truth and reconciliation commission suggest that the members of the commission should be selected by taking into account regional diversity, ethnic and gender balance as well as must reflect the integrity, competencies and reputation of the commissioners.[194]

The composition of 'Commission Vérité et Réconciliation' (CVR) respected all diversity of Burundi population including the opportunity to the aborigines. The author wrote that;

> *'Durant les groupes focaux, les participants ont précisé que les membres de la CVR devraient provenir de toutes les ethnies, genres, régions, milieux professionnels, mais également être choisis pour leurs qualités personnelles morales et professionnelles.'*[195]

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[191] In a dialogue with François BIGIRIMANA, in September 2021, an official in the UNIPROBA, Bujumbura

[192] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Truth Commissions*, (2006), New York and Geneva, pg. 1

[193] Ibid., pg. 2-3

[194] *Transitional Justice Mechanisms; Lessons Learned from Truth and Reconciliation Commissions*, Report on the International Conference of the same tittle held in Bujumbura, Burundi in August 2011, American Services Committee pg. 5

[195] MOLDEREZ L., *Quelle Commission Vérité et Réconciliation pour le Burundi? Analyse d'une loi tant attendee;*

In another hand side, the only 1 member in CVR from the Twas ethnic community does not satisfy the representative role compared to the ratio of other ethnic communities in the same Commission. This shows that there is a particular level of ethnic imbalance in the Commission that is likely to diminish the equality and transparency of its activities. While appreciating for a current representation, still there is a need of an increase in number of aborigines' representatives in the process of transitional justice.

The *Batwa's* association observes that, basing on forgiveness, Twas are very peaceful people and they are worthy of been given thanks because there is no any killing initiative or violence that had been organized by them. In the Burundi history, there is no crime whether war crime or genocide that was induced by Twas. This fact is verified by the prevalent expressions that for the Hutus say, *"Abatutsi baratumaze"* and at the same time the Tutsis argue that, *"Abahutu baratumaze"*. Neither person nor ethnic group that could say any accusation against the Twas. The *Abasangwabutaka* need improvement of been involved in the process of transitional justice so as they could expose forgiveness after been heard of what they know and feel about the past abuse.[196]

On recommendations for the organization of the truth and reconciliation commission, the conference suggested that the commission must be decentralized in order to reach grassroots communities and promulgate strategies of promoting participation as well as protection of witness and victims. The conference argued that the associations of the victims must fully be sensitized and mobilized to participate.[197]

The research shows that, the Burundi aborigines are not fully considered as the victims. This argument is based on the fact that their association, *Unissons-nous pour la Promotion des Batwa* (UNIPROBA) had never received any special or official promotion of presenting its members especially elders to tender witness on the past abuse. The association has only been visited by mass media for dialogues between a media and a leader of aborigines' community. In some occasions, the Twas' association leader has been invited to attend some meetings on the process of transitional justice. These opportunities are not effective *per se* due to the significance of approaching community members individually in their residential areas.[198]

It seems that the government has not well succeeded to conform to the recommendation of the said conference on promoting their full participation. The aborigines association (UNIPROBA) has been influencing their Community's representative in the CVR to request fellow colleagues so as to intensify a promotion of Twas' opportunities in participation of transitional justice especially when the Commission visits upcountry areas. A non-response of Twas in a normal

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Mémoire Academique, (2014), Université d'Aix-Marseille III, Paul-Cézanne, pg. 17

[196] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura

[197] *Transitional Justice Mechanisms; Lessons Learned from Truth and Reconciliation Commissions*, Report on the International Conference of the same tittle held in Bujumbura, Burundi in August 2011, American Services Committee pg. 6

[198] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura

participation in the transitional justice process might be caused by something else that requires the government to determine a complementary encouragement for their participation. This could make them easier to tender evidence, witness and facilitation of investigation for the entire process.[199]

a. The Right to Justice

The right to access justice is linked to active dispensation of justice by judicial bodies or quasi-judicial bodies. The quasi-judicial bodies offer no-judicial mechanism of transitional justice while judicial bodies offer judicial mechanism of transitional justice. In transitional justice process, the victims of a past abuse have a desire of suing the suspects of the human rights violation and punishment to perpetrators. The process of prosecution is done in light of investigations conducted under surveillance of the truth commission. Sometimes a produced report may not display specific perpetrators. The significance of such report is to provide greater patterns of violations and to show institutional involvement or responsibility. A consequence is to prosecute the top leaders of such institution.[200]

The government sees *Batwa* as non-parties to the past conflict, 1972. Hence, they are not involved in the prosecution process because are presumed to have no interest.

b. The Reparation

Generally, reparation is not a direct expectation of people who tender testimonies and evidences on the past mistreatment. It is demanded only in case of the serious and heavy painful experience as a burden of direct economic impact suffered by those who lost loved ones or care for the severely injured. The truth commissions are not essentially established to implement an extensive reparations program. The commission may provide urgent interim reparations to those who need it first.[201]

The Commissioners from several Truth and Reconciliation Commissions who met in a conference shared technical knowledge and information on establishing the Truth and Reconciliation Commission of South Africa. They observed that in order to make any Truth and Reconciliation Commission successful, there must be the threefold component: government political will to implement recommendations of the Commission; national consensus by informing and involving citizens in creating its mandate; and security assurance to both victims and witnesses from danger.[202]

Particularly, effectiveness of reparation to victims of crisis depends on the extent of been informed and involved in the Transitional Justice process. Subsequently, it could be a technical question whether should Burundian aborigines request to be informed and involved in the

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[199] Ibid.

[200] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Truth Commissions*, (2006), New York and Geneva, pg. 27

[201] Ibid., pg. 28

[202] *Transitional Justice Mechanisms; Lessons Learned from Truth and Reconciliation Commissions*, Report on the International Conference of the same tittle held in Bujumbura, Burundi in August 2011, American Services Committee pg. 8

process or they should be invited by the authorities.

The United Nations approach requires that all members of a vulnerable group of either victim must be considered as very susceptible to human rights abuse especially in post conflict community. These vulnerable groups include children, ethnic or religious minorities, refugees and internally displaced persons, elderly, persons with a non- traditional sexual orientation as well as persons with mental disabilities. Often, these groups tend to be discriminated which requires a distinct response of the authorities under human rights principles. This circumstance imposes a specific international human rights obligation against the government for vulnerable people.[203]

As far as the Burundi aborigines association (UNIPROBA) had never received any special invitation (to include Twas' elderly and other community members) to express their vulnerability on the past abuse, the government reparation program shall be seem as of non-significance to them. In this situation, transitional justice could be unreachable dream because it is like "The *Batwa* are watching, the bus is going." The association suggests moral and psychological healing to have first priority because financial (material) reparation can never cure the inner wounds of the victim's heart.[204]

c. The Right to Guarantee Non-Resumption of the same Crisis

The parties to conflict should attain to a point of assuring to each other that they commit themselves to avoid re-occurrence of belligerence of the same nature. The commitment is embodied into the following elements:

i. Institutional Reforms

They imply to the process of changing the institutions that allowed or carried out abuses in the past. These changes may be in terms of judicial, legislative, legal or political reforms.[205]

During any transitional period from either authoritarian regime or conflict to democracy and peace, the process of reforming public institutions is a core task. The institutions that served for the interests of few people and abusive against human rights should be transformed into institutions that protect human rights, prevent abuses and be non-bias in the public service.

Any dysfunctional and inequitable institution which created fear and mistrust to the public have to be amicably turned fair and efficient institutions. This helps criminal investigation by police officers, the reformed prosecutor's office may issue indictments and court may impartially render judgment on the atrocities committed in a past abuse.[206]

When the national trust is successfully reestablished the population would set an agreement of non-repetition of a similar abuse of the same nature.

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[203] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Monitoring Legal Systems*, (2006), New York and Geneva, pg. 25-26

[204] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura

[205] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Truth Commissions*, (2006), New York and Geneva, pg. 29

[206] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Vetting: an Operational Framework*, (2006), New York and Geneva, pg. 3

The author of an academic paper observes that;

> *'En justice transitionnelle, il est généralement recommandé d'obtenir un processus le plus national possible. En effet, il est nécessaire que le pays s'approprie pleinement le travail accompli afin d'obtenir une réconciliation durable et des garanties de non- répétition. Il n'est jamais exclu que des étrangers siègent en tant que commissaires au sein d'une CVR, c'était d'ailleurs le cas dans la CVR mise sur pied en Sierra Leone.'*[207]

The aborigines of Burundi have a history of been discriminated, oppressed, marginalized and regarded of a low worthy throughout the history. At the family level as an institution, in previous years it was regarded as a crime for a Twa to marry in another ethnic community of Burundi. There were recognized punishments to be effected against only that Twa while marriage was conducted freely between the spouses. Currently, the negative mentality of non- worthiness of Twas has begun to be reduced to some extent by the population. This has been manifested by inter-ethnic community marriage between a Twa and other groups.[208]

In other institutional levels, the problem still exists because the national Constitution of 2018 does not stipulate *Abasangwabutaka* as the ethnic community in Burundi population. The recognition of Twas as such would form part within categorization of power sharing percentages in the government authorities. The argument is that if the population has 100%; the Hutus have 60% and the Tutsis have 40%, it expressly means that there is 0% recognition of the *Batwa* as part of the national population. The Batwa's association suggests that, regardless of appreciating the Constitutional 3 Senate seats of membership and 3 seats in the National Assembly members from Twas community, there should be a Constitutional recognition of Twas in population.[209]

Furthermore, the *Unissons-nous pour la Promotion des Batwa* (UNIPROBA) holds that there are several evidences showing non recognition of Twas as part of national population. One of these facts is that they are not involved in particular institutions such as *Societé d'Assurance du Burundi* (SOCABU) that is one of the most important institutions for community development.

A denial of Twas' position in this institution amounts to non-transparency, equality and equity in the transitional justice process. This institution, regardless of national policy of institutional reforms it does not grant even one opportunity for Twas community who should also contribute to the perpetual peace in Burundi.[210]

ii. Census and Identification

This process involves the numbering of the national population and identification of perpetrators. In practice, the association of the aborigines established in Bujumbura town (UNIPROBA), argues that the process of identification of perpetrators should involve all nationals. It is of an opinion that, all ethnic communities in the territory must be presumed that took part in the past abuse of human rights. This presumption should be held without prejudicing the fact that human

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[207] MOLDEREZ L., *Quelle Commission Vérité et Réconciliation pour le Burundi? Analyse d'une loi tant attendee; Mémoire Academique,* (2014), Université d'Aix-Marseille III, Paul-Cézanne, pg. 22

[208] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura

[209] Loc. cit

[210] Loc. cit

rights violation may take several forms. The identification process discovers crimes committed or human rights infringement either by duress, intimidation or intentionally. An assumption that Twas did nothing whether positive or negative in the past mistreatment has a wrong connotation. If it is only the Hutus and Tutsis are required to give out their testimonies and evidences, the entire Transitional Justice process had *ab initio* failed.[211]

iii. The Vetting

Vetting refers to the process of assessing integrity to determine suitability for public employment. Usually, it entails a formal process for the identification and removal of individuals responsible for abuses. Especially from police, prison services, the army and the judiciary. In this context, the term integrity implies to a tendency of an employee to adhere to the international standards of Human Rights, professional conduct and personal financial propriety (humility).[212]

This is an important aspect of personnel reform in transition period from crisis to peace because it deals with public employees who are personally responsible for gross violation of human rights or international law that breached trust of the citizens they were meant to serve. Generally, vetting is a process of excluding persons with serious integrity deficits from public service in order to re-establish public trust and re-legitimize civic institutions. A group vetting violates the due process for its narrowness includes people whose conducts were not abuses.[213] The vetting process has only been done to adjust composition of officials belong to Hutus and Tutsis.[214]

Generally, transitional justice is an inherently political process because it is mainly in the field of politics that we decide how a society should be organized and how norms and perceptions will be translated into legally binding institutions. It is a political process of negotiated values and power relations that endeavor to constitute the future based on lessons from the past experience.[215] Still, the conceptualization of transitional justice must bear a connotation of been an interdisciplinary field. This arena composes all aspects of life such as economic, social, technological and political spheres. The field of transitional justice has historically focused on violations of political and civil rights. Where conflict and group divisions are embedded in deeper socioeconomic inequalities and legacies of exploitation, processes and mechanisms may be limited in their impact if they fail to link to broader economic and social transformation.[216]

3.4.5. Access to Justice through Ombudsman Institution

The Ombudsman was firstly put into writings in Oman around 634 to 644 but it was officially recognized worldwide in Scandinavia, Sweden in 1809. The concept of Ombudsman spread in the Western and Eastern world. Later, after colonial legacy in Africa, the colonial masters

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[211] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura
[212] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Vetting: an Operational Framework*, (2006), New York and Geneva, pg. 4
[213] Loc. cit
[214] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura
[215] Rubli S., *(Re)making the Social World: The Politics of Transitional Justice in Burundi*, (2013), Sage Publications Ltd, pg. 9
[216] Haider H., *Transitional Justice: Topic Guide*, (2016), University Birmingham, UK: GSDRC, pg. 17

established the office of Ombudsman into their former colonies. The first African country to have this office was Tanzania in 1966 and for the side of countries colonized by France the first country to have the office of Ombudsman was West Africa in 1990. The context for the establishment of Ombudsman in Burundi can be traced back during the Arusha Agreement of 28th August 2000. The Agreement suggested the establishment of five institutions including the Ombudsman and the Independent National Commission of Human Rights (INCHR), 'Commission Nationale Indépendante des Droits de l'Homme, (CNIDH)'. It was then included in the national Constitution of Burundi of 2005 and later in Title IX of the current Burundi's Constitution of 7th June 2018. The purpose was to include the Ombudsman office as to regulate the relationship between the government or authorities and individual persons.[217]

Particularly, the Ombudsman institution observes the action of the State. The role of this office is to determine whether the State action is corresponding to the public interest or is likely to cause harm to the population. Without prejudicing **Article 15** of the law regulating Ombudsman institution, the Ombudsman is capable of intervening any action of the government or any other authority if he has a reason to believe that such action is likely to cause suffering or any negative impact to the population. Example, this office had intervened freely without been invited by the citizens to petition against the action of the government in Muramvya and Kumasa.[218] Under **Article 15[219]** the Ombudsman may not intervene in proceedings brought before a court or question the merits of a judicial decision. However, he may, in the event of a non-enforcement of a final judgment order the organization to comply within a time limit set by the commission.

In either judicial or quasi-judicial body, decisions related to any subject matter whether commercial, administrative, ethical, employment, contractual, land, tax, Human Rights, criminal and others like civil cases; should be executed for the merits of a case creditor. In case that the judgment is not executed in whole, in part or wrongly, the subsequent holder of the case has a right to apply freely to the Ombudsman office requesting not for the merits of a case but the implementation of the judgment reached by the authority. The access to justice is promoted to all citizens regardless of their socio-economic, political or gender status. After investigation, the Ombudsman requires the authority to implement the final judgment accordingly in a limited time set by the Ombudsman. According to **Article 16[220]**, the absence of a satisfactory response within the time limit set by the Ombudsman, the Ombudsman may publish his recommendations and draw up a special report to the President of the Republic, the President of the National Assembly and the President of Senate and publish the report in Burundi Official Magazine.

The institution is not a decision maker and it does not interfere the matter if still in proceeding

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[217] In a dialogue with Padre BIGIRIMANA Elie on 21st March 2022, an official in the Burundi Ombudsman Institution; Department of Justice Faults, Violation of Human Rights and Social Action.

[218] Loc. cit

[219] The Law N°1/*04* of January 24th, 2013 reviewing the Law N°1/03 of January 25th, 2010 on the Organization and Operation of the Ombudsman

[220] The Law N°1/*04* of January 24th, 2013 reviewing the Law N°1/03 of January 25th, 2010 on the Organization and Operation of the Ombudsman

stage. In other approach, these are challenges facing the institution for example when a citizen realizes that his case is delaying without reasonable grounds, which renders him to lack his right in time, cannot find any help from the office of Ombudsman. Still, it has managed the good relationship with the Judiciary in discharging it responsibilities which are in mediation nature.[221]

3.4.6. Civic Education

In all levels of education from primary school, secondary school, institutions and universities, it is the most significant thing for the citizens to be educated concerning their country-state in relation to all aspects of life. In other words Civic education is referred to as citizenship education. A term citizenship has been defined as full and equal membership of a political community. According to Egide MANIRAKIZA, a Professor at the University of Burundi, '*…la citoyenneté désigne le lien d'appartenance et de participation, non pas à n'importe quel ordre juridique, mais bien à la collectivité politique autonome que constitue un État déterminé.*'[222] To mean that it is the belongingness and participation to the autonomous political community that constitutes a determined state.

The concept of citizenship goes beyond a virtual membership and participation in a legal order in any community. Civic education as a course is taught in some higher education institutions within a territory. Particularly, it is taught in the University of Burundi and the Bujumbura Christian University which is the University established by the Anglican Church Province of Burundi. The contents of this course have been organized by the special committee as to attain the goal of Burundi Education Ministry. The course is named, Citizenship Education and Patriotism Formation or 'Citoyenne Education et Formation Patriotisme' in French language.[223]

3.5. DEMOCRATIC PRINCIPLES

3.5.1. Rule of Law

In Burundi, the government strives to implement this doctrine regardless of the socio-political and economic complications. During November 3, 2008, police arrested Alexis Sinduhije, the founder of the opposition Movement for Solidarity and Democracy (MSD). Formerly, this movement was called the "Movement for Security and Democracy". He was arrested together with 37 others during an attack on the party's headquarters, accusing them of "threatening state security." The police search of the premises was not according to the doctrine of rule of law because the search warrant was for a different place altogether and referred to a judicial file that did not exist by such time. Sinduhije was an international journalist before establishing the MSD and announcing his intention to run for the presidential candidature.

From December 2007 his efforts to register the MSD as a political party had been refused on various counts including that the proposed party name could not include the word "security",

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[221] In the dialogue with Ferdinand NIHOKUBWAYO, on 21st March 2022, an official in the Burundi Ombudsman Institution; Department of Communication and Relations with other Institutions.

[222] MANIRAKIZA E., *Dimensions Collectives des Droits de L'homme; Mastere Complementaire en Droits de L'homme et Resolution Pacifique des Conflits,* Universite du Burundi, mai 2021, Bujumbura, pg. 28

[223] Observation when pursuing Theological studies at Bujumbura Christian University, from 2018 to 2020.

because security was the exclusive domain of the state.[224]

The 37 people detained with Sinduhije were all released by November 10 2008 without charge. For several days Sinduhije was denied visits by his lawyers, family members, human rights observers and foreign diplomats closely who were following the case. The inability of finding evidence that Sinduhije had threatened state security, on November 11 prosecutors charged him with "insulting the President", a crime in Burundian law. In a November 28 hearing, the Prosecutor explained that the charge was based on a document in Sinduhije's possession which stated: *"the responsibility for the corruption scandals and the assassinations ordered by the party CNDD-FDD lie with the man who passes his time in prayer meetings."* The Prosecutor said that the phrase was intentionally referred to and insulted the President Peter NKURUNZIZA, a born-again Christian. Then, on February 19, 2009, Sinduhije's trial was opened and he was acquitted on March 12. In the late days of April the Minister of the Interior continued to refuse to register MSD as a political party.[225]

3.5.2. Political Tolerance

During the late December 2007, rumors circulated that the FNL would attack Bujumbura on January 1, 2008, after the expiration of a deadline set by international facilitators for returning to peace talks. One FNL member was arrested in Bujumbura on January 1 and publicly accused by the police spokesperson of planning military attacks. However, such attacks have never existed. Political rhetoric over this period became heated with the circulation of anonymous written tracts threatening members of both CNDD-FDD and the FNL. A cycle of individual targeted killings began in Bujumbura and in surrounding areas involving both CNDD-FDD and FNL supporters.[226]

One day later, in January 2, 2008, a Palipehutu-FNL "political mobilizer" named Emmanuel, known as "Papillon," was killed in Kanyosha just outside Bujumbura. The Burundian human rights organization (Ligue Iteka) identified the perpetrators as *démobilisés*. The Ligue Iteka reported that the same perpetrators shot and gravely injured another FNL member in a nearby area the following day and on January 6 they unsuccessfully sought a third FNL member.[227]

The following week, a series of attacks took place against CNDD-FDD members in Bujumbura's northern neighborhoods and rural borders, areas in which the FNL enjoys strong support. The days between January 15 and 18, 2008, a National Intelligence Service (Service Nationale du Renseignement) SNR agent and two local CNDD-FDD officials were shot in the Bujumbura neighborhoods of Kinama and Kamenge. The FNL party denied responsibility. Four people affiliated with the FNL were killed over the following four days. The relied people as witnesses attributed responsibility to *démobilisés* affiliated with the police and

[224] Human Rights Watch, "*Pursuit of Power; Political Violence and Repression in Burundi*", (2009), United States of America, pg. 61
[225] Ibid., pg. 62
[226] Ibid., pg. 25
[227] Loc. cit

intelligence service. The FNL then appeared to seek for revenge. Over the next two weeks, three local CNDD-FDD officials in Bubanza and Rural Bujumbura provinces were killed.[228]

Currently, the principles of Human Rights have been observed to a comforting extent. Particularly, the most recent political elections have proved political stability among of existing politicians different from previous elections before. This signifies that the government is aware of political tensions once emerged and keen in promulgating mechanisms for solving misunderstandings. It is obvious that the experience of Burundi population after political election of 2020 was peaceful than the previous elections. Political tolerance as the most ingredient of democracy has also been proved by the Independent National Commission of Human Rights, 'Commission Nationale Indépendante des Droits de l'Homme (CNIDH)' that;

> *Au courant des mois de janvier et février 2020, les différents partis politiques agrées au Burundi ont tenu des congrès pour préparer la campagne, désigner leurs candidats et listes aux différents scrutins présidentiel, législatif et local. Le Congrès du parti au pouvoir le CNDD-FDD s'est tenu à Gitega du 26 janvier 2020, et a désigné comme candidat à la présidence le General Major Evariste NDAYISHIMIYE, jusque-là Secrétaire Général du parti, au niveau National. L'autre parti, le Congrès National pour la Liberté (CNL), un parti d'opposition a désigné l'honorable Agathon RWASA, jusque-là premier Vice-Président de l'Assemblée Nationale, comme candidat à la magistrature suprême.*[229]

The commission adds that ;

> *La campagne pour les élections présidentielles et législatives du 20 mai 2020 a débuté le 27 avril 2020 pour se clôturer le 18 mai 2020. Dans la perspective des élections apaisées et respectueuses des droits de l'homme, la CNIDH s'est donné le devoir de remplir pleinement son mandat de protection et de promotion des Droits de l'Homme en période électorale. C'est dans cette optique que la CNIDH a déployé ses Commissaires et cadres dans toutes les provinces et communes du pays du 1er au 21 Mai 2020.*[230]

3.5.3. Free and Fair Election

The EISA in the process of facilitating free and fair election in Burundi it supported two Burundian civil society organisations, namely the *Commission Episcopale Justice et Paix* and *Fontaine Isoko* (FI) to recruit, train and organize 240 long-term observers and 3,654 short- term observers to monitor the 2020 presidential, legislative and local elections. Their findings documented areas for improvement in the conduct and organization of electoral process in Burundi. The conclusions and recommendations of the observers were shared with the Independent National Election Commission, (INEC), 'Commission Electorale Nationale Indépendante, (CENI)'. Their findings have laid a solid base for continued engagement with stakeholders in regard to the review of the legal and institutional framework for future elections in Burundi.[231]

Election observers at local and international levels have to rethink their approach in regard to the

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[228] Human Rights Watch, "*Pursuit of Power; Political Violence and Repression in Burundi*", (2009), United States of America, pg. 26

[229] Commission Nationale Indépendante des Droits de l'Homme, (CNIDH), *Rapport Annuel Edition 2020*, Bujumbura, Burundi, pg. 75

[230] Ibid., pg. 76

[231] Electoral Institute for Sustainable Democracy in Africa, Annual Report 2020, Johannesburg, S. Africa, pg.14

assessment to ensure that they remain relevant and strengthen the field of election observation. EISA is engaging on a thoughtful reflection to situate better the role and responsibility of electoral observation and how the latter can strengthen democratic consolidation. It has a vision of attaining "an African continent where democratic governance, human rights and citizen participation are upheld in a peaceful environment".[232]

3.5.4. Citizen Participation and Equality

Burundians have opportunities of participating to matters affecting their affairs in all spheres of life. The education of citizen's participation is still required to the community due to the fact that some community members assume to have no impact to the authorities in the country except if they are rich, belong to a particular political party or have attained a high education level. The government still works endeavor to ensure public awareness of citizen's role in structuring and influencing the authorities.

The Twas' association appreciates for the level of inclusion of some Twas in the government official posts as a step towards transitional justice. Since the pre-colonial era, it was not until in 1998, when in Burundi government a Twa had a government office. This was the appointment of Libératé NICAYENZI as the Member of Parliament and she was the first Twa CVR member. There is also a one Minister from Twas community; the Minister of National Solidarity, Social Affairs, Human Rights and Gender (Ms. Imelde SABUSHIMIKE).[233]

The government participated in the professional training of citizens on elections observatory role. Thirteen participants drawn from the two partner organizations attended a trained course on election observation according to the electoral cycle approach. This enabled citizens to have an impact on the electoral reforms phase. A focus has been put on the management of interactions with other election stakeholders including the 'CENI', political parties and media regulatory body as the project started with the establishment of a media monitoring unit.[234]

Particularly, the EISA provided support to civil society citizen observation, funded by the European Union, to monitor Burundi's presidential and national assembly elections on 20th May 2020 as well as the 24th august 2020 local elections (elections collinaires). The organisation's support included technical capacity building, the professionalization of citizen election observation and the deployment of citizen observers. Also, the government cooperated with EISA by approving the signing of a six-month Memorandum of Understanding with two local organisations that outlined the terms of the partnership.[235]

3.5.5. Transparency and Accountability

The democratic government is said to be accountable if the people are capable of been aware of what is happening in the State activities. Any transparent government is holding conferences of the government officials and the decision made are published in mass media. The

[232] Electoral Institute for Sustainable Democracy in Africa, Annual Report 2020, Johannesburg, S. Africa, pg. 3
[233] In a dialogue with Emmanuel M., a Legal Representative of UNIPROBA, in September 2021, Bujumbura
[234] Electoral Institute for Sustainable Democracy in Africa, Annual Report 2020, Johannesburg, S. Africa, pg. 14
[235] Loc. cit

transparent government holds public meetings and allows any citizens to attend. The mass media are free to information related to both decisions reached, decision maker and the grounds for such decision are made public. In Burundi, the television and radios provide information related to government activities, projects and decisions that affect the population. Also, any democratic government that conducts elections, the elected and appointed officials are accountable to the people in a manner that they are responsible for their actions. Officials must make decisions with their duties according to the public will and interests.

The President of the Republic of Burundi (His Excellence Evariste NDAYISHIMIYE) in his speech during the Women's International Day, 8th March 2022 at *vyizigiro* stadium located in Rumonge province unfolded the efforts for promoting transparence and accountability. Among of other rational speech contents requiring citizens' patriotism he stated that, it is obvious that women have a great role in State development; they should have their office in the ministerial administrative structure to ensure effective participation in government responsibilities.[236]

3.6. ROLE OF RELIGIOUS LEADERS ON PEACE AND HARMONY

The Republic of Burundi has no religion but its inhabitants have religions.[237] There are several religious denominations such as the Roman Catholic Church, the Catholic Church of England (Anglican Church), the Orthodox Church, the Protestant Churches and the Islams. Each group play a role to respect human rights and seeking for stable peace in the country.

Below are some examples of roles played by some Burundi religious groups on human rights and peace throughout Burundi history:

3.6.1. Role of the Roman Catholic Church

The Roman Catholic Church in Burundi established a special Commission called the National Commission of Justice and Peace, 'Commission Nationale de Justice et Paix, (CNJP)'. It is responsible of observing, recording, debating and analysing the respect of human rights and peace in the territory. The Commission prepares reports, recommendations and projects of justice realisation and peace promotion. Also, the Church participated in the authorship of a Human Rights East African Review[238] through a prominent author Father NTABONA A.[239]

However, since 1959 during the creation of political parties in Burundi (by the colonizers: PDR and PP; by missionary Satellites: PDC; and by nationalists: UPRONA); the Roman Catholic Church through her clergy spoke out in favor of immediate independence. During 1965 when Pierre NGENDANDUMWE was assassinated, radicalization of ethnicity and military dictatorship, the Church established the so called 'Inama Sahwanya' which are Basic Ecclesial Communities for the purposes of promoting social relationships and harmony

[236] Participation in the event of International Women's Day on 8th March 2022 in Rumonge, Burundi

[237] Article 1 of the Burundi's Constitution of 2018 provides that, Burundi is an independent, sovereign, secular, democratic, unitary Republic which respects its ethnic and religious diversity.

[238] NTABONA A., *Religion's Levers for Peacebuilding and Community Development in Africa,* (2003), East African Review, pg.257-268

[239] In a dialogue with Fr. NTABONA A., a retired Priest of the R.C Church, on 21st March 2022, Bujumbura

among of the community members. Later, in 1972 the massacres and blind repression by the army led to the wave of refugees to neighboring countries and Europe. The Church found itself mixed with the 2 ethnic groups who were discussing political supremacy and many were killed. Still, some Priests including the Vicar General of Bururi at the time, protected the population from such murderous madness by organizing students in working fields. The Bishops issued a Pastoral Letter on November 23, 1972 stating that, "Justice is possible, so is peace". Some charities for widows and orphans were established to ensure they afford life needs to restore their lost inner peace.[240]

Recently, the Church has continued to approach the government authorities playing part as social organisation which has a freedom of exercising the right of expression and recommendation for particular State affairs that affect the population. Particularly, in 2015, the Catholic Church of Burundi conducted a special Bishops' Conference to address the 2015 elections. They gave contribution by offering advice and praying for the country so that Burundi would not deviate from the path of peace and reconciliation that Burundians have adopted in pursuing democracy. They held that, a path of stubbornness and violent confrontation never leads to victory but to its illusion. The path of dialogue between the protagonists who do not share the same vision but who agree to put forward the best interests of the nation and all citizens, even if it is difficult because it requires everyone to surpass themselves, it is the way that leads to a victory for all and no losers.[241]

3.6.2. Role of the Anglican Church

The Anglican Church of Burundi (Catholic Church of England) has played a significant role in promotion of Human Rights, Justice and Peace. The former Archbishop, Rt. Rev. Martin Blasé NYABOHO attended several peace and reconciliation conferences in and outside the country. Particularly, in 2017 the Anglican Archbishop Martin Blasé NYABOHO and the Bishop of Bujumbura (Bishop Eraste BIGIRIMANA) alongside 18 other faith leaders in Burundi signed a communication requiring the international community to "re-establish good diplomatic relationships" with Burundi.[242]

The Diocese of Rumonge through Mothers' Union department established a Sexual and Gender Biased Violence (SGBV) Sector to deal with the fight and prevent SGBV As well as to care SGBV victims. The SGBV sector operated through Church and Community Mobilization Process (CCMP) Approach is sponsored by Tear Fund Burundi. It works in Muyama and Mudende zones in Buyengero commune. The projects in pursuing the vision, the families

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[240] In a dialogue with Fr. KARORERO C., the Executive Secretary of the Episcopal Commission of Justice and Peace (ECJP), on 22nd March 2022, Bujumbura Including a provided text named *"1st Permanent Training Session at the Cardinal Martino Pan-African Institute the Situation and Reactions of the Catholic Church Towards Social Problems"*.

[241] Roman Catholic Church, *"Catholic Bishops Conference from Burundi General Secretariat Communication No. 3 of the Conference of Catholic Bishops of Burundi Concerning the 2015 Elections; let us Persevere in Prayer for Peace in Favor of our Country",* Bujumbura, Burundi, 26th May, 2015.

[242] Episcopal News Service, *"Burundi's Faith Leaders Renew Commitment to Peace and Reconciliation"*, posted in 20th October 2017

affected by violation of human rights have been taught in a manner of healing broken hearts and to rebuild their confidence of integrating themselves in community development activities. The teaching aims to transform victims' response towards the violators of their rights and to expose skills of avoiding environment for recurrence of similar violations. The project has trained personnel and divided them into three groups according to how they reach entire community.[243] Still, SGBV sector is extended to an entire Diocesan geographical area. Firstly, the government representatives trainees; they teach and conduct peaceful conflict resolution in and between families. Also, the religious representatives; are trained to train others on the prohibition of human rights violation especially based on gender in light of the Word of God. Lastly, the community agents; they are men and women trained to facilitate dialogues basing on married people who are in conflicts. They reconcile the conflicting parties and caring for the victims of violation such as the raped and provide them economic instruments for improvement of life standard because poverty might be an influence of violation environment. Particularly, girls working in households are advocated to be paid their denied salaries.[244]

In another hand side, the Diocese of Rumonge established the project called 'Tubane Amahoro' which means "Let us Live Peacefully". Through this program, whenever the Diocese comes into knowledge on any confrontation of peace within its jurisdiction, the Church intends to contribute for peace. After establishment of this program, the Diocese of Rumonge managed partnership with Tear Fund organization to function. It implements peaceful projects in all Rumonge communes: Rumonge, Burambi, Buyengero, Bugarama and Muhuta. Also, 'Tubane Amahoro' project works in commune Mukike and Mutambu which are in Bujumbura province and commune Mugamba located in Bururi province but in the Diocese of Rumonge.[245]

Among of other activities, in 4th February 2021 the 'Tubane Amahoro' project conducted a youths' dialogue from several political parties together with youths' Church leaders from different denominations. These participants were from Rumonge and Buyengero communes. The dialogue based on the outstanding that people should not forget the history of Burundi for the purpose of reiterating ethnic or political conflicts, instead to work for development.[246]

3.7. NATIONAL SECURITY AND INTELLIGENCE

The core focus of daily functioning of the government is existence of security within the territory. All ministries could not implement their projects and mobilise community role for State development in an absentia of security. The government had vested security actors into hands of the three categories: the police force, the executive pillar (administration) and the population. There is a law regulating each actor in performing their roles. This categorization was

[243] Eglise Anglicane du Burundi, *"Raporo Y'ibikorwa Vyaranguwe mu Mwaka wa 2021"*, (2022), Diocese de Rumonge, Rumonge, Burundi, pg. 29
[244] Ibid., pg. 29-30
[245] Ibid., pg. 39-40
[246] Ibid, pg. 41

prevalently known as 'inyabutatu' to mean "threefold" categorization of security sectors.[247]

During 2015, for the purpose of stabilization and promotion of security sector from individual citizen to national level, the government shifted from 'inyabutatu' to 'inyabune' categorization of security actors. This means the "fourfold" categorization of security sector. It includes the Judiciary as the fourth security actor. The formulation of these categories depends on the administrative security meetings conducted several time by government leaders. The security of citizens is ensured by the police force in every time. However, the citizen is obliged to cooperate with other security actors in the current 'inyabune' to attain a desirable security in the community. The civilians are responsible of tendering information in case of any act or omission that is deterring security or is likely to cause danger in a society. There is no reason for civilians to afraid from taking part in security matters by denouncing insecurity actions according to the law not only because insecurity has negative consequences to the entire population but also there are evaluation security meetings conducted to ensure effectiveness of police officers and local government officials.[248]

The police force as fulfilled in light of the Organic Law,[249] cooperates with the Judiciary and the Executive to provide free numbers for urgent calls in case a citizen has come into knowledge of insecurity. These numbers work at any time to care for the citizens' information concerning with road accidents, eruption of fire, theft, natural disasters phenomena and corruption among other things. All patriot citizens who faithfully inform the police force the insecurity activities either publicly or by free numbers are protected by law from any harm. Also, the police force is well determined to protect those tendering evidence in the prosecution against insecurity actions.[250]

The police force in stabilizing security it established an organ for national intelligence that functions according to the law.[251] The citizens are required to avoid taking their own decisions of punishing people acting contrary security of the State. Instead they have to report the suspects in the police station which is located in that location.

The rights of suspects of crimes presented to the police force are respected according to the law. After been reported, a suspect is reported to the tribunal within 24 hours. The relatives of a suspect are allowed to visit or provide a suspect with some food. Legal advisors are allowed to meet the suspect at any time during the 24 hours or during the prosecution time. In the prison, for the respect of human rights, the police force ensures physical security of prisoners: protection from external intervention, from escaping the jail and ensure absence of harmful materials in or around the jail. The children are jailed separately from the adults as to distinguish and respect the

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[247] In a dialogue with three people whose names are preserved, on 17th March 2022, in Bujumbura, Burundi

[248] In a dialogue with a National Police Officer, Sp. Jean Claude M., on 24th March 2022, Bujumbura, Burundi

[249] The Burundi Organic Law of Police Force cited as:
Loi Organique nº1/27 du 09 décembre 2021 Portant Modification de la Loi nº1/23 du 20 février 2017 Portant Mission ; Organisation, Composition et Fonctionnement de la Police Nationale du Burundi

[250] In a dialogue with a National Police Officer, Sp. Jean Claude M., on 24th March 2022, Bujumbura, Burundi

[251] Loi nº1/17 du 11 juillet 2019 Portant Mission, Organization et Fonctionnement du Service National d' Renseignement

conventional right of the child[252] regardless of been a prisoner. Women are prisoned separately as to respect the conventional right of women.[253] The police force in requiring evidence from a suspect observes the convention against torture[254] by prohibiting any act that would constitute torture. Example, there is no use of electric shot or to deprive a suspect from accessing some food for the purpose of receiving information from him or her.

Police force challenges in security maintenance process include shortage of transport means fitting rough roads, misuse of communication facilities like mobile phones provided to some village leaders that would be used to inform the authorities concerning security, inability of some people to distinguish politics and security (insufficient cooperation between police force and the opposition parties which presume that the police force works for the ruling party rather than the population) and intentional assaults against police force.[255]

3.8. HUMAN RIGHTS AND DEVELOPMENT

The concept of peace is a crosscutting discipline linked to numerous notions. The Church contributes in Human Rights and peace realization through preaching and teaching the Word of God. In the Gospels there are several provisions that require people to care for each other by love, respect and honour. Example, the Gospel according to Luke 4:18-19, all people are invited to reach others in their difficult situations including the victims of Human Rights and peace violations. It is relevant to maintain that improvement of community development forms part in peace building and peacekeeping process. Difficult life conditions might amplify thoughts of anger, jealous and brutality within a person because of lacking particular service for life needs. The Church through the department of Community Development constructs social infrastructures including hospitals, dispensaries, medical clinics, primary and secondary schools as well as physical infrastructures such as roads and bridges. Fulfilling these activities, the Diocese of Rumonge contributes in promoting Human Rights and perpetual positive peace in Burundi.[256]

[252] The Convention on the Rights of the Child of 1989
[253] The Convention on the Elimination of All Forms of Discrimination against Women (1979)
[254] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984
[255] In a dialogue with a National Police Officer, Sp. Jean Claude M., on 24th March 2022, Bujumbura, Burundi
[256] In a dialogue with The Rt. Rev. Pédaçuli BIRAKENGANA, Bishop of the Diocese of Rumonge, on 29th March 2022

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSION

Human Rights and peace studies are prevalent in Burundi provided through mass media, in sports and games contexts, speeches of public leaders and in several private organisations. All creative efforts of Burundians are essentially bound to the achievement of an ideal of stabilizing peace and development. Burundians realise that peace is the product of the respect of Human Rights and achievement of sustainable development. The citizens believe that education in all spheres of life is a key of the goal (achieving perpetual positive peace). In education institutions, the citizens are taught the history of the country, culture and its anthropology, the national anthem (national hymn), the song of unity, women's song that is sung especially in the international women's day (in 3rd March each year), citizen's rights and responsibility as well as professional trainings.

Burundians' civic education is not clear. Particularly, they are taught the significance of colors of the national flag which are red, green and white as well as the three stars. In conducting Focus Group Discussions (FGDs) a realized puzzle is that the students (including some university students) do not share a common understanding on the meaning of the colors of the national flag. Some understand that red stands for loving a country while others argue that it means a blood shed for independence; a green color, some say it represents growth of the State while others say that it stands for vegetation; a white color, some hold that it means kindness while others state argue it is for peace. Some students tend to say they do not remember the significance of colors of the national flag. The significance of three stars appearing on the national flag is not clearly understood among the citizens. They understand that the three stars represent Unity, Work and Progress while other that they stand for a military rule because they were designed during the reign of Michel Micombero.

Basing on Burundian culture including traditional dance, customs, language, food, dressing and taboos; there are still a great number of citizens who require education on these areas. A number of Burundians who are university students do not know traditional dance of their provinces (example: 'agasimbo' in Makamba, 'ingoma' in Gitega, 'umuyebe' is common is Mwaro and 'amayaya' in Muyinga, and other provinces). The priority of traditional dance and their proper celebration would contribute to stabilization of unity and social interaction among of all Burundians to another level. Such interaction would lead to an increase in mutual trust among of the population. These dances should be trained through students' clubs in education institutions without affecting other educational curriculums.

The educated citizens such as university students are extraordinarily expected people to expose Burundian culture and reputation (including the respect of Human Rights and steadying perpetual peace) in the world map. The failure to do that, an inferiority complex on Burundian culture among of others is unpreventable. The inevitable outcome is fear of standing as a Burundian and for the country in front of others because it would have already been perceived as the State of low quality

among of others. A reduced sense of standing for the State intensifies a non-participation in citizen roles which are fundamental for both development and perpetual peace.

4.2. RECOMMENDATIONS

The findings of this memoire paper require a reader to keep in memory that all essences for implementation of Human Rights Law for the purpose of attaining perpetual positive peace in Burundi are firstly found within Burundians. There should be a patriotic intention among of citizens to scrutinize by their intelligence on the improvement and or additional mechanisms to win. The researcher shouts to all the patriots of the country to think not for a particular but a general public welfare. The author suggests the following ideas as optional contribution to the topic: Concerning security, if a civilian has enough evidence for the crime but afraid to be known by the society to have tendered such evidence, the police force through the prosecutors should develop a mechanism for a civilian to tender such evidence in the court with neither physical nor name appearance of that witnessing civilian but evidence.

The responsible institution responsible to take and enforce measures for security should only be a police force. Any other group of people or individual person should not only be prohibited from enforcing security measures but also the government should disclose its intention of ensuring it.

The population as well as the opposition political parties should respect the existing law including the law guiding demonstrations' right. The failure or ignoring the law leads to condemnation against the security force officers that they work for the interests of a ruling political party rather than for the general public interests.

Every citizen should consider oneself to be responsible of ensuring public security according to the law. The law requires any person to denounce insecurity event or activity by informing the concerned authorities. These authorities are available in every locality example the heads of collins, chiefs of zones and police stations. This role of citizen would be effective if they vote for a faithful person to be their leader during political elections.

Basing on the ethnic differences, without prejudicing the Arusha Agreement on the balance of political power between the former major opponents the Hutus and Tutsis; there should be an additional consideration for the Twas. Particularly, in case Burundi shall amend the Constitution, they should expressly be membered and become a constitutionally recognized population. The rationale for this argument is not only for them to enjoy government positions but also they would be filled with an inner peace essential for influencing them to participate in State issues.

It is relevant to assume that the Twas were also affected the past Human Rights and peace violations. They should be recognized even in the Transitional Justice. The report of United Nations on the Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, it is stated that the first demands of victims in transitional justice process is to obtain recognition of the fact that they have been harmed. This recognition should be on the basis of rights of people and not simply as a matter of

empathy or any other form of consideration.[257]

The government should intensify the promotion of trust and assessing institutional personnel.[258] The government has an opportunity of promoting trust between individuals and between individuals and State institutions. The UN Resolution 18/7 puts it clear that, the expectation is that the implementation of the measures will "restore confidence in the institutions of the State". This trust shall develop a mutual sense of commitment among of both individuals and institutions to respect their shared norms and values of oneness. Trusting an institution amounts to knowing that the constitutive rules, values and norms of that institution are shared by its members or participants and are regarded by them as having binding power.[259]

The government should discretionary strengthen the so called participatory development approaches and the Human Rights-Based Approach (HRBA) in peace and development journey. These approaches as a principle, promote development as a process that needs to explicitly and proactively include all citizens. There must be no Burundian regarded as a giver or a recipient of opportunity to participate in the government affairs.[260] However, it is hopeful for the appointment of a Twa woman to be a Minister who represents their ethnic community in ministerial official position. Particularly, as it was clear during the International Women's Day at Rumonge in the 8th March 2022 when a one Twa-man danced repeatedly by acrobatics-dancing-style to express their excitement for having a Twa government Minister in the current parental Government 'leta mvyeyi'.

The government should include critical thinking trainings in education institutions. It might be fixed in a course of Civic Education especially for university students. This education is also important for Human Rights education especially on tolerance in community affairs. The Declaration of Principles on Tolerance adopted by UNESCO in 1995 affirms that education for tolerance could aim at countering factors that lead to fear and exclusion of others. This education could help Burundians to develop capacities for independent judgment, critical thinking and ethical reasoning.

The government should ensure every person enjoys right to justice in addition to the existing tribunals, courts and the Ombudsman. There is a need of analyzing national legal system in the Human Rights approach of monitoring national legal system. This approach inquires the domestic law *(de jury)* to comply with regional or international standards and domestic practice *(de facto)* analysis for determination of whether a failure to apply the domestic law violates

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[257] United Nations General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff,* 9th August 2012, pg. 10

[258] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Vetting: an Operational Framework*, (2006), New York and Geneva, pg. 11

[259] United Nations General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff,* 9th August 2012, pg. 11

[260] International Center for Transitional Justice, Pablo de Greiff and Duthie R., (Editors), *Transitional Justice and Development; Making Connections*, Social Science Research Council, New York, 2009, pg. 96-97

International Human Rights standards.[261] Example, if it happens for a repatriated refugee has found his land was taken by the government for development project he should be compensated or be informed of the decision; otherwise the repatriated might fear to claim and tends to loss an inner peace that would eventually be exposed in a society.

In another hand side, regardless the fact that Burundi is a Member State of the Convention on the Rights of the Child of 1989, the establishment of a specific statute for child right might intensify efficiency in dealing with rights of a child by relating to Burundi context. Additionally, the psychologists, government and non-government officials, journalists,

Priests, Sheikhs, lawyers, health workers, teachers and all other professionals have to put first the interest of Human Rights and peace in their daily functioning. They should treat their population in human dignity, teaching love and forgiveness, responding willingly to questions related to stabilization of peace and Human Rights Law implementation, to welcome without any disturbance or requiring consultation fees from a legally recognized Human Rights and peace researcher.

Furthermore, the government should identify and analyze the catalysts of fear and mistrust among of the Burundians. Example, if the use of some idioms and gestures prevalent in the community may be deemed as catalysts of ethnic oppression, segregation or humiliation, or any behavior that could obviously be termed as of such nature, the government should prohibit them by the law with effective enforcement.

Lastly, as far as the human dignity derives its nature from the faithful and capable Creator, Burundians are invited by their Creator to return back to Him so as He would provide them with the Spirit of love and forgiveness. The religious leaders should be faithful in teaching, rebuking and instructing their believers on how they should behave in a manner of eradicating fear and mistrust among the population. The trustworthy and secular patriotic cooperation (to have a common moral language) between the government, private sector and civil societies in the territory is the key towards implementation of Human Rights Law towards the possible ideal of perpetual positive peace in Burundi.

[261] Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States; Monitoring Legal Systems*, (2006), New York and Geneva, pg. 7

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PARTICIPATION

Observation when pursuing Theological studies at Bujumbura Christian University, from 2018 to 2020.

Participation in the event of International Women's Day on 8th March 2022 in Rumonge, Burundi.

Personal observation during the stay in Bujumbura, from 2020 to 2022.

APPENDICES APPENDIX A: ATTESTATION OF THE RESEARCH

UNIVERSITE DU BURUNDI
Faculté des Sciences politiques et juridiques
Mastère Complémentaire en Droits de l'Homme et Résolution Pacifique des conflits

ATTESTATION DE RECHERCHE

Je soussigné, Professeur Jean-Marie BARAMBONA, Responsable du Mastère Complémentaire en droits de l'homme et résolution pacifique des conflits, atteste par la présente que Madame/Monsieur MASABARAKIZA Justin
a suivi régulièrement avec succès les épreuves théoriques dudit Mastère, session 2020-2021.

Il est entrain de collecter les données pour son travail de fin d'études intitulé :
A CRITICAL ANALYSIS ON THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW BY BURUNDI TOWARDS PERPERTUAL POSITIVE PEACE

La présente attestation lui est délivrée pour usage administratif et faire valoir ce que de droit.

Fait à Bujumbura, le 14/3/2022

Le Responsable du Mastère

UNIVERSITE DU BURUNDI FACULTE DE DROIT

Prof. Jean-Marie BARAMBONA

Mastère Complémentaire en Droits de l'Homme et Résolution Pacifique des Conflits/Faculté de Droit /UNIVERSITE DU BURUNDI
B.P. 5359 Bujumbura/ Tél. 22236421

APPENDIX B: QUESTIONNAIRE FOR BURUNDIANS

How are you?

I am **MASABARAKIZA Justin**, a student at **University of Burundi** in the Faculty of Political Sciences and Laws, 'faculté des sciences politiques et juridiques'. I am preparing the memoire for fulfilment of the Complementary Masters in Human Rights and Peaceful Conflict Resolution. The subject of my memoire paper is "**A CRITICAL ANALYSIS ON BURUNDI EFFORTS TOWARDS PERPETUAL POSITIVE PEACE**".

FIRST PART: INTRODUCTION

Fill in the blanks and mark a tick (√) for corresponding answer:

Age	**Marital status**	**Gender**
Date/Year:	Married ( )	Male ( )
Years Old:	Unmarried ( )	Female ( )

SECOND PART: QUESTIONS

Mark a tick (√) for acceptance in the provided space then explain reasons for your argument:

1. What is a difference between peace and conflict?

……...……

……...

……...…

2. What are fundamental causes of Burundi conflicts throughout the history up to now?

……...……

……...……

……...……

……..……

3. Do Burundians have a level of mistrust basing on previous ethno-political wars?

a) Yes ( ) b) No ( ) If "Yes", how do they manifest such sense?

……..……

……..……

……..…

…….

4. Does every citizen have a perpetual duty to found peace and security of the State?

a) Yes ( ) b) No ( )

5. How should government organise and improve security to all citizens in this role?

……...……

……...……

……...……

……...

6. Is there any relationship between implementation of Human Rights Law, positive peace and the increase in economic growth of the State? a) Yes ( ) b) No ( )

If "Yes", explain briefly: ……..

……...…….……

……...……..…

……...……

APPENDIX C: OBSERVATION GUIDE

The following were observed:

1. Observation in the State community during a daily life in Burundi.
2. Observation of Burundians' life styles with their neighbors.
3. Observation in the State during particular public service offices.