

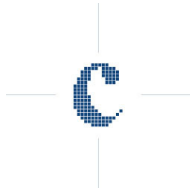
LOCAL JUSTICE AND SECURITY DEVELOPMENT IN BURUNDI:

WORKPLACE ASSOCIATIONS AS A PATHWAY AHEAD

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CONTENTS

Executive Summary	1
I. Introduction.....	3
II. Burundi, the State, and Justice and Security Development	7
III. Local and Non-State Providers of Justice and Security	11
IV. Programmatic Recommendations and Risk.....	21

EXECUTIVE SUMMARY

Based upon interviews conducted in February 2011, this report is the second phase of a larger, three-step research project into the role of local justice and security providers and non-state actors and how donor can support their activities in post-conflict and fragile states. In Burundi, it is recommended that donors initiate justice and security projects to strengthen and support workplace associations, particularly the Cyclist Association and Trade Union, with its 16,000 members nationwide, and the Palm Oil Guards Association in the province of Bururi. Providing support to workplace associations opens up a new possibility for donor support in justice and security development, one that has up to this point been, largely, untouched and unexplored.

In Burundi, the research suggests that there are few viable, legally authorized local justice and security providers. On the other hand, workplace associations exist and provide justice and safety to their constituent members; to the customers who avail themselves of their labor, as well as their goods; and the owners of the capital on or with which the workers labor. Donor support for these associations, therefore, could markedly improve the delivery of actual justice and security services to clearly defined populations, most of who are among the most marginalized and vulnerable. Donor support may also further augment the social efficacy of the workplace associations' membership, a key indicator in reducing insecurity and violence. Furthermore, as workplace associations are civil society organizations, donor support to them qualifies as standard and good justice and security development practice. One of the additional beauties of donor support to workplace associations is that these organizations can, in time, become financially independent and, therefore donor support to them may be sustainable, unlike donor assistance to most civil society NGOs. Finally, the stronger workplace associations become, the more they, as civil society organizations, can function as an effective justice and security accountability mechanism on the Government of Burundi, its ministries and agencies.

Unlike many other countries in Africa, Burundi has few, if any, local providers whose source of authority rests upon tribal chiefs, village elders, or “customary courts” and is written into the Constitution and/or national legislation. The Bashingantahe are a popular and legitimate source of cultural authority, who mediate conflicts and help maintain and restore social stability and cohesion, handling primarily land, small debts, and family disputes. Even though state courts and local

administrators avail themselves of and consult with Bashingantahe to facilitate the resolution of land and family disputes, the Ubushingantahe system has been transformed by recent legislation into a non-state structure, devoid of legal jurisdiction. Nevertheless, the approximately 134,000 Bashingantahe remain a vital source of mediation and conflict prevention for many Burundians. Over the past few years, the Bashingantahe have gradually begun to invest women and, therefore, they may be a pivotal link in a thematic gender violence/justice and security program. Otherwise, though assistance to them may be politically astute, it is difficult to justify donor support to them in terms of sustainability and value for money.

I. INTRODUCTION

This report, based upon research carried out in Burundi in February 2011,¹ is the second phase of a larger, three-step research project into the role of local justice and security providers and non-state actors in fragile states.² Among the principal objectives of the overall research project has been to expand the agenda of justice and security development and offer examples of how to incorporate local providers and non-state actors into donor supported programming in order to improve the efficacy and effectiveness of donor assistance.³

- 1 The background and field research for this report was conducted with a local Burundian consultant and Ms. Sylvie More, a CRU research fellow. The author however is solely responsible for the content of the report.
- 2 The research project was originally based upon the premise that local justice and security providers are, primarily, ‘non-state actors.’ Subsequent research, however, suggests that this presupposition is, in many instances, incorrect, for which this author assumes responsibility. The legal reality is that these allegedly ‘non-state’ justice and security providers are, very often, fundamental parts of the state as are the police service, tax collection agency, and public school system, albeit very different from the ministries and agencies of the centralized state, regardless of whether it is a national or federal entity. In countries as diverse as Colombia, Sierra Leone, Solomon Islands, and Yemen; South Sudan, Nepal and Bolivia; Timor Leste, Malawi, and Guatemala many of these local justice and security providers are legally authorized justice and security service providers written into the constitution and/or legislation. The main issue is one of legal pluralism in that these local providers do not practice the “western” jurisprudence of the Napoleonic code or British common law (*writ large*). Instead they adhere to a different form of jurisprudence, typically referred to as “customary,” even though their jurisprudence more closely resembles common law, narrowly defined. Consequently, the challenge for justice and security development rests in the multiplicity of systems and institutions that provide the public goods and services of justice and security and the numerous linkages between and among differing systems and their forms of jurisprudence. ‘Non-state actors,’ on the other hand, are those providers who have no legal authority to deliver public goods and services, but may still provide justice and security services.
- 3 The larger research project is being carried out by the Conflict Research Unit of the Clingendael Institute in the Netherlands. The project consists of (1) a desk-study into the conceptual and policy issues surrounding supporting local providers of justice and security as part of SSR – published in July 2009; (2) three case studies examining the practical and programmatic challenges and opportunities for supporting local justice and security providers and non-state actors, the first of which on Colombia has already been published; Burundi (which is this report) and eastern DRC; and (3) a synthesis report which will look into more general lessons that can be learned as regards programmatic challenges and opportunities (to be carried out

The Burundian research examines how local justice and security networks deliver services to citizens when a significant percentage of the population in the community do not have confidence in the country's centralized state agencies (national police service; judiciary and the courts) and/or where the services provided by those agencies are scarce and/or have limited effectiveness within distinct geographic areas. As the research proceeded, however, specific neighborhoods and community areas played an increasingly less significant role than did particular categories of persons, as defined by their workplace and employment status. This finding opens up a new possibility for donor support in justice and security development, one that has up to this point been, largely, untouched and unexplored.

For this report, interviews were conducted in three parts of the country -- Bujumbura, Ngozi, and in the province of Bururi, in and around Rumonge. More than 110 persons were interviewed, which forms the material upon which the report's analysis is based. Interviewees included taxi-cyclists, palm oil plantation guards, fishermen; customers of bicyclists and palm oil plantation owners; Bashingantahe; judges; and local officials. Approximately 10% of the interviewees were women, which albeit low, is understandable in that none of the workplace associations had women members and extensive time was devoted to interviewing members of the workplace associations. Women Bashingantahe were interviewed whenever possible and a woman's NGO in Bujumbura consulted.

Less than three weeks were spent in-country conducting interviews, which is an inadequate period to develop a thorough understanding of the complexities and intricacies when it comes to justice and security service delivery. The research period is also too short a period to form the basis from which a justice and security program can be fully fleshed out and designed.⁴ Nevertheless, this report recommends a series of practical entry points and programmatic alternatives, from which a concrete and operational justice and security program(s) can be designed, for those Burundians who are among the most marginalized and vulnerable. These pragmatic entry points and programmatic alternatives are recommended in full knowledge of the tensions they might generate. In Burundi these tensions may be irreducible and, perhaps, the best donors can do is make a conscious and well-analyzed choice of which justice and security support initiatives they are willing to undertake, recognizing the risks and tradeoffs, conscious of the need to dedicate significant political resources and in-country program management if their justice and security support is to be effective.

This report is divided into three sections. The first, briefly, outlines the context in which justice and security development in Burundi takes place. The next introduces two workplace associations: (i) the Taxi-cyclist Association and Trade Union (Taxi-cyclist Association), a workplace association with 16,000 members across the country, which provides justice and security to its membership and those individuals who patronize the transportation services its members offer; and (ii) the Palm Oil Guards,

in Autumn 2011). The project is carried out under a subsidy agreement between the Dutch Ministry of Foreign Affairs and the Clingendael Conflict Research Unit.

- 4 It should be noted that this phase of the project was not intended to design a justice and security program in Burundi, see ToR, *Non-state/local security and justice networks and Security Sector Reform, Terms of Reference for Phase 2* (Clingendael Institute, September 2009). It should be noted that, given the specific focus of the research and the limited period of time in Burundi, it was impossible to examine the spectrum of Burundian NGOs to determine which ones might be suitable for working with donors in support of the delivery of justice and security to the local areas, individuals, and groups that are currently underserved. It is presumed that such NGOs exist, but who they and how donors can work with them will require additional research.

who provide security to palm oil plantations and plots. This second section also explores the role of the Bashingantahe, respected members of the community who mediate a wide range of disputes. The third and last section outlines programmatic opportunities with which donors could support these associations.

It should be noted that this report does not discuss the Burundian National Defense Force or broach issues related to DDR and, therefore, nothing in this report should be taken to reflect upon the various military development initiatives that are ongoing.

II. BURUNDI, THE STATE, AND JUSTICE AND SECURITY DEVELOPMENT

Burundi is an overwhelmingly rural and agricultural country with severe population, land tenure and land scarcity pressures. According to the World Food Program, food insecurity is rampant, with approximately 50% of the population chronically malnourished.⁵ Political and physical security have also been problematic since independence, as Burundi has experienced repeated cycles of civil unrest and violence, characterized by tensions and rivalries between its two main ethnic groups, the majority Hutu and the minority Tutsi. The election in 1993 and subsequent assassination of the Hutu President Ndadaye unleashed a civil war between the Tutsi-dominated military and Hutu militias, in which one of the principal demands of the of the militias was the reform of the country's security services. A peace accord, known as the Arusha Agreement, was signed in 2000,⁶ but the civil war continued, as one of the main rebel groups, the Hutu CNDD-FDD,⁷ had not taken part in the peace process. In late 2003, a ceasefire was signed between the provisional government and the CNDD-FDD. Initial steps in implementing the Arusha Agreement were undertaken with the establishment, in 2004, of a reconstituted army, the Burundian National Defense Force, and police service, Burundian National Police (BNP). A process of integrating ex-combatants into these services was launched as well.

In 2005, national elections were conducted, which resulted in the CNDD-FDD's assumption of power, but, due to splits within the CNDD-FDD and a boycott by the main opposition parties the parliament was, effectively, paralyzed until 2008. The civil war also continued until 2009 due to the armed opposition by the Palipehutu-FNL. In May and June 2010 a new elections were held, local (commune) and presidential respectively. Opposition candidates, however, boycotted the presidential elections, after having complained of fraud in the earlier communal ones.⁸ Consequently, the political situation

5 WFP 2010, Global Update Food Security Monitoring. October 2009 - February 2010. Issue No. 2, <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp217880.pdf>.

6 Significant portions of the Arusha Agreement have not been implemented. For example, despite commitments to reform the Land Code, little to no progress has been made and most of the land remains unregistered. Only in August 2011 did the Government of Burundi (GoB) announce the establishment of the Truth and Reconciliation Commission, which had been stipulated to in the Arusha Agreement, but never implemented.

7 The CNDD-FDD is the Conseil National pour la Défense de la Démocratie- Forces pour la Défense de la Démocratie.

8 Politically, according to ICG, the ruling party has been adept in strong-arm tactics, "using its renewed electoral legitimacy, CNDD-FDD marginalized the opposition and at the same time resorted to authoritarian practices and subterfuge to destabilise and weaken those parties which boycotted the national elections," *Burundi: From Electoral Boycott to Political Impasse*. International Crisis Group, Africa Report N°169. February 2011, p. 1. Furthermore, "the majority of the communal councils normally assigned to the

in Burundi remains delicate⁹ with the CNDD-FDD continuing in power, large numbers of IDPs and refugees returning to their homes,¹⁰ and persistent low levels of civil strife and violence.¹¹

There is scholarly consensus that security has generally improved, although gender-based violence is frequently identified as a major challenge.¹² However, “after the [2010] communal elections people reported that the political situation was a critical determinant of (in)security levels. Ex-combatants were said to be under control of politicians and could easily resort to the use of intimidation and violence to further political goals.”¹³ The study, which conducted extensive fieldwork, went on to claim that “too often, security provision by the state is contrary to the security interests of the people. An ex-combatant complained for instance that the police ‘should be protecting civilians. But for the police in Burundi it is the contrary: they protect political leaders... There are many more examples where state security forces bring insecurity, rather than security.’”¹⁴ The Government of Burundi (GoB)¹⁵ is also “often incapable to provide for the security needs of communities. The police is under-equipped and ill-trained and corruption in the judicial system is rampant. At times the police has appeared to be under the tutelage of political elites or been known to side with criminals.”¹⁶

opposition were under the control of the ruling party. Of the 38 communes where the CNDD-FDD was in a minority, only six of them had elected communal administrators from other parties” (p. 8).

- 9 In July 2011, Human Rights Watch called on the GoB to investigate dozens of alleged political murders that have occurred since 2010, see, <http://www.hrw.org/news/2011/07/25>.
- 10 In 2010, UNHCR estimated that upwards of half a million IDPs and refugees have returned, with still another 100,000 still not having settled in their homes of origins, UNHCR *Country Operations Profile – Burundi*, (2010), <http://www.unhcr.org/pages/49e45c056.html>. It should be noted, however, that, although, “a prominent source of insecurity mentioned in most communities are land conflicts... [r]ather than an inter-ethnic phenomenon, or an issue of returning refugees finding their land occupied by others, many of those disputes involve brothers or other family members. They include disputes about the division of the inheritance, land sales without consultation of other family members, or disputed access to land of orphans and widows,” Rens Willems, et al. “Connecting Community Security and DDR: Experiences from Burundi.” *Working Group Community Security and Community-based DDR in Fragile States*. November 2010, p. 31.
- people have not yet returned to their communities of origin (UNHCR 2010).
- 11 In the third week of July, several grenade and small weapons attacks occurred and a farm owned by the President Nkurunziza was burnt down, www.bbc.co.uk/news/world-africa-14201510. See, *Reuters Africa*, respectively, 8 & 3 August, and 20 July, <http://af.reuters.com/article/topNews/idAFJOE7770GL20110808>; <http://af.reuters.com/article/topNews/idAFJOE77209920110803>; and <http://af.reuters.com/article/burundiNews/idAFLDE76J0YX20110720>.
- 12 *Connecting Community Service*, p. 31.
- 13 *Connecting Community Security*, p. 31.
- 14 *Connecting Community Security*, p. 35.
- 15 While recognizing that no government is a monolithic entity, this report utilizes the phrase, “Government of Burundi,” for the sake of brevity.
- 16 *Connecting Community Security*, p. ii. There are also difficulties in encouraging the GoB to undertake basic accountability measures. The UN, in late 2008, for example, provided a vehicle to every provincial judicial police commissariat. However, the Ministry of Public Security did to allow police commissariat marking to be affixed to each vehicle, thereby thwarting a basic accountability mechanism that would help determine how the vehicles have been utilized, see *Mob Justice in Burundi*. Human Rights Watch, March 2010, p. 24.

The justice situation is comparable, as a recent UNDP evaluation suggests that the GoB’s delivery of justice and security stagnated and deteriorated over the period of 2005-2010.¹⁷

At the day-to-day level, interviewees stated that resources dedicated to the judicial and court system are paltry and have been purposely kept at such levels to hamstring and cripple service delivery.¹⁸ “For most of 2009,” it has also been alleged that the GoB did not supply its judicial police officers with writing paper, thereby preventing them from being able to carry out their functions.¹⁹ At a slightly higher level, while much of the law is written in French, court sessions are held in Kirundi and little has been done to rectify the situation, one that effectively deprives access to justice for a high percentage of the population who do not read French and, therefore, cannot access official legal texts and participate fully in court proceedings. Finally, there is also an acknowledged “lack of an independent justice system... [and] weak oversight institutions.”²⁰ For example, although the Constitution of Burundi authorizes the establishment of a High Court of Justice, the Minister of Justice, in summer 2011, argued that “the socio-political context in Burundi does not allow for the creation of the High Court of Justice.”²¹ Consequently, a suspicion exists that, as one judge candidly concluded in an interview, the GoB simply “does not want the judiciary to function” effectively.²²

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- 17 Evaluation des Effets du Programme [UNDP] Justice 2005-2009, Rapport Final (October – November 2009). One interviewee related the case of her husband who has been imprisoned since 2007 because local authorities did not distribute to the husband or his family the court’s decision that he was innocent of the charges laid against him. Although a copy of the judgment was handed to the family in 2010, as of February 2011 the family has still been unable to gain his release from prison.
- 18 According an unpublished Center for International Cooperation/NYU report (2010), for example, it is reported that the Ministry of Human Rights, Institutional Reform and Relations with Parliament, which has received substantial support from international community, has undertaken some justice and security initiatives. Nevertheless, in an interview with CIC staff, a knowledgeable GoB official conceded that the Ministry was established “only as a superficial move by the Government to keep the international community content and the Ministry has no real voice in policy-making.”
- 19 *Mob Justice in Burundi*. Human Rights Watch, March 2010, p. 25.
- 20 From *Electoral Boycott*, p. i. It appears that that the GoB has established a second Bar Association, one that it controls in order to compete with the more independent association, which is now known as the Bujumbura Bar Association. It is interesting to note that the Government of Yemen took precisely the same action in an effort to undermine the independence of its legal profession and practitioners.
- 21 Marie Claire Ndikumana. Radio Netherlands Worldwide, *Burundi: Government Says No to High Court of Justice*, 7 July 2011, <http://allafrica.com/stories/201107121077.html>, accessed 16 July 2011. According to reports and an unpublished Center for International Cooperation/NYU report (2010), that ONUB’s Rule of Law Section had been unable, for extended periods of time, to meet with the Minister of Justice and the Minister blocked donor efforts to establish a justice sector coordination mechanism.
- 22 That there have been challenges in implementing justice development should not necessarily be considered surprising, for in many ways a judiciary is a repository of regime and its associated elites’ power. In Cambodia and Haiti, for example, while progress has been made in police and prison development, little to no movement has been achieved within the judiciary. At the same time, UNDP has, recently, reported that a project it has supported to modernize court administration has produced results in four pilot areas. As no independent evaluation of the project has been conducted and reliable statistics are scarce, UNDP’s assertion requires verification, but, nevertheless, the possibility may be promising.

III. LOCAL AND NON-STATE PROVIDERS OF JUSTICE AND SECURITY

In Burundi, research suggests that few viable, legally authorized local justice and security providers exist. Furthermore, paralegal associations appear to be largely absent²³ and neighborhood watch groups, based in specific neighborhoods and communities, who are not allied directly to the police, have been established by them, or operate under their control, are few in number.²⁴ The “community” efforts the GoB officially undertakes appear to be mainly one-directional: information flows from neighborhoods to the police and civil authorities.²⁵

Burundi appears to be a highly organized and regimented society, much of it state controlled. Organizations and associations proliferate and the reach of public administration delves deep into individual neighborhoods²⁶ with identifiable officials responsible for units of 10 and amalgamations of 150 households.²⁷ Aside from the administrative and customary structures, workplace associations are another example of organizations that structure Burundian society. Some of these associations represent marginalized and vulnerable groups, such as a cyclist using his bicycle as a taxi or to transport goods (taxi-cyclist) and palm oil plantation guards. Other workers, fishermen in the province of Bururi, in and around Rumonge, for instance, would like to be able to organize themselves

23 A small number of paralegal associations have been established, but they are finding it difficult to flourish given the lack of independence that exists within the judicial system.

24 See *Connecting Community Security*. Informal neighborhood “security committees” established by the police and local colline authorities are reported to exist in “parts of Ruyigi, Ngozi, and Bujumbura Rural, but they may also exist elsewhere,” but these do not have official GoB sanction, *Mob Justice*, p. 49.

25 State authorized neighborhood security committees have been established by the GoB.

26 The administrative structure of Burundi is well summarized by a 2010 Human Right Watch report as follows: “Each province is divided into five to thirteen communes, run by elected communal administrators. A communal administrator is supported by an elected communal council of 25 members and two to five chefs de zone, each responsible for assisting the administrator in the governance of a certain section of the communal territory. The zones are further subdivided into collines (sometimes called secteurs), the smallest legally recognized administrative unit in Burundi. Each colline is run by an elected chef de colline and a colline council of five members. (Bujumbura and several other major cities are divided into quartiers rather than collines; they are run by chefs de quartier.) Smaller administrative units exist, though they are not officially recognized by law. In some areas, each group of 10 households is loosely managed by a nyumbakumi. These individuals, elected by local residents, provide reports to the chefs de colline about security incidents or other incidents of note in their immediate neighborhood,” *Mob Justice*, p. 11.

27 Over and over again, interviewees exhibited a generalized anxiety on speaking against the GoB, the ruling party and its policies. This may not be true for each and every person, but there is no doubting the pervasiveness of the sentiment, for as one interviewee conceded the “fear of the government is deep and getting worse.” Another observed that the GoB’s reach is ubiquitous and, when one speaks badly about the ruling party and/or individual wielders of political power, it is noted and comes back to haunt one.

into an association, but their organization remains incipient. These workplace associations currently provide justice and safety to their constituent members; to the customers who avail themselves of their labor, as well as their goods; and the owners of the capital on or with which the workers labor. Donor support for these associations, therefore, could markedly improve the delivery of actual justice and security services to clearly defined populations, most of who are among the most marginalized and vulnerable.

Unlike other African countries, in Burundi there seem to be few, if any, local providers of justice and/or security services whose source of authority rests upon tribal chiefs, village elders, or “customary courts,” which is written into the Constitution and/or national legislation. The Bashingantahe are a popular and legitimate source of authority, whose presence and ability to mediate disputes helps resolve conflicts, maintaining and restoring social stability and cohesion. Despite the fact that state courts and local administrators avail themselves of and consult with Bashingantahe to facilitate the resolution of land and family disputes, the Ubushingantahe system has been transformed by recent legislation into a non-state structure, devoid of legal jurisdiction.

Taxi-Cyclist Association

Across Burundi, bicycles are a favored vehicle for the transportation of persons and goods, particularly for the poor. In July 2005, an association, SOTAVEBU²⁸, was formed to protect the rights and safety of the taxi-cyclists, registering with the GoB as a NGO and later as a trade union.²⁹ Of particular concern for the cyclists was protection against police brutality. According to interviewees, before the establishment of the Taxi-cyclist Association there “were cat and dog fights between us and the police. We were seriously beaten, but this has stopped. The Cyclist Association now has better access and information to the police hierarchy to resolve problems.”³⁰

As of spring 2011, there are approximately 15,000 cyclists who are members of the Taxi-cyclist Association, of whom 6,000 work in Bujumbura. In Bujumbura, it is estimated that up to 80% of the cyclists are from up-country and have migrated to the capital during and after the cessation of the civil wars. The vast majority of Bujumbura cyclists appear to be unmarried, young men, many of whom, it is alleged, are ex-combatants and a good percentage of whom may have been involved in various types of illegal activities prior to their joining the association.³¹

The Taxi-cyclist Association is a highly structured, organized, and democratic entity, one which generates its own income. There is an Executive Committee and an annual General Assembly meeting of Cyclist Association members. Provincial, commune, parking, and security committees exist. Elections for positions on these committees are held for all of them, except the security committees, whose members are selected by the Cyclist Association’s President. To become a Taxi-cyclist Association member requires an initiation fee of 10-12,000 Burundian (franc) and an additional 2,000 for the issuance of a photo ID card. For the privilege of using Cyclist Association parking areas,

28 Solidarité des Taxis Vélos du Burundi.

29 Early in its existence, 2005-07, the Cyclist Association received support from Belgian trade union syndicate.

30 This is not to say that there all police abuse has ceased, for it remains commonplace, as one cyclist alleged for “sometimes the police [to] ask us to transport their goods and food [and] we do it for free.”

31 This demographic of ‘rootless’ youths is renowned for being combustible and the source of insecurity worldwide.

locations the use of which the Taxi-cyclist Association has negotiated with local authorities, costs a cyclist 50 franc/day.³²

Most Cyclist Association members rent their bicycles, with percentages ranging up to 80%, with daily fees, in Bujumbura, to the bicycle owners of approximately 1,000 franc/day.³³ Owners of bicycles can be civil servants, merchants, and farmers.³⁴ It was also estimated that police and soldiers own between 15-20% of the bicycles that are rented by Cyclist Association members. In return, cyclists in Bujumbura can earn up to 8,000/day, although daily earnings may vary widely and do vary according to location.

The Taxi-cyclist Association is dedicated, first, to ensuring that cyclists can safely engage in their trade, which initially meant protection from the police and police abuse, as well as educating cyclists on their legal rights and duties. As that challenge has been largely settled, cyclist safety entails taking measures to minimize the use of cyclist services by criminals. It has been known to happen for thieves to hire a cyclist during the commission of a crime, without the cyclist necessarily being aware of his complicity. Similarly, cyclists have been accused of transporting weapons for militias involved in the continuing civil unrest. To address such matters, the association established its Security Committees and, in Bujumbura, there are 25 security committee members, with another 75 working outside the capital. Security committee members are in daily contact with the police. Every Saturday during 'travaux communautaires,'³⁵ security committee members also talk with their colline and commune administrators. If a cyclist has a problem, he goes to a security committee member to help sort of the issue, who then takes up the issue. Security committee members are known to scan the goods that are being transported for weapons and also to work with the police in trying to detect the movement of weapons.

Enabling cyclists to conduct their trade safely also means that the Taxi-cyclist Association is involved if and when a cyclist's bicycle is stolen, regardless of whether the bicycle is owned by the cyclist or rented. Theft of bicycles is, as an interviewee admitted, "a big problem." Interviewees stated that when a theft occurs cyclists invariably go to a security committee member and almost never to the police. The security committee member will launch an investigation, visiting the neighborhood where the theft occurred. Because the security committee member is, often, known in the neighborhood, it seems as if information is, frequently, forthcoming. "Sometimes we find the bicycle and take it back," a security committee member said. "If we have trouble seizing the bicycle back we go to the police." Police, it is reported, respond to requests for assistance from the Taxi-cyclist Association, for, as one

32 Up to 50% of the monies collected through parking fees goes to the salaries of the Taxi-cyclist Association's security committee members. For violations of parking rules, Cyclist Association members can pay fines of up to 5,000 francs.

33 In other towns of Burundi, the daily cost of renting a bicycle from its owner may be less. For example, in Ngozi, 500francs/day was reported to be the daily rental fee. Contracts are signed between the owners and renters of the bicycle. On the first of the month, the renter pays the owner.

34 Bicycle owners pay 750 franc per year to register their bicycles with local authorities and another 1,000 every four months as a tax.

35 Every Saturday morning for two and a half hours, the GoB has decreed out that every citizen must undertake community work. During this time period, public traffic on the roadways is prohibited.

interviewee claimed, “when we ask the police to come, they come. They come because they know us.”³⁶

A similar process is undertaken to protect the safety of the persons and goods that cyclists transport, which means the Taxi-cyclist Association extends its delivery of justice and security to an entire class of persons -- the poor -- under defined circumstances. If a cyclist is accused of the theft, the customer is likely to go to the Taxi-cyclist Association rather than the police. One customer told of a bag of goods that had been lost during transport. She went to the association for help and security committee members retrieved the goods, which had been delivered to the wrong address. This service is extremely important because if customers cannot be assured of the safe delivery of their goods the association would crumble. In many cases, customers hand a cyclists an order to go to the market for them and buy and deliver the goods to their stores and/or homes. As one cyclist stated, “I have regular customers who also ask me to buy things for them and transport them to their homes or businesses.”

Above and beyond these justice and security services, the Taxi-cyclist Association educates its members, seeking to improve their behavior towards, and the image they present to, customers and representatives of the State, notably the police. Furthermore, the association also provides social services to its membership. Cyclists receive training on traffic regulations, which accrues to the benefit of the general population as it increases road security for all. Cyclists can also receive healthcare benefits if they fall ill or are injured while cycling. Funeral benefits are given to the families of deceased members, whenever feasible. Members also receive Cyclist Association support if and when they have a job-related issue with a customer or the goods being transported.

Palm Oil Guards

Scattered in the province of Bururi, around Rumonge, exist palm oil farms. Many of them are smallholdings and the theft of palm oil crop (clumps), which are processed into palm oil, was a recurrent problem. The owners of the plots³⁷ did not go to the police to solve the theft of their product. As one owner stated, “we didn’t see the necessity to talk to the police because it was a local problem. And we knew we could take the thief to the police. There were no patrols. It is not the role of the police to patrol in the fields. Here, the police responsibility is to protect us in our homes.”³⁸

Instead, the owners recruited guards to protect their plots. “Because of the thefts,” an owner said, “we set up a group of night guards and called up the jobless, mainly ex-combatants and former thieves.”³⁹ Once “we had organized, we went back to the administrator” for formal approval. As of today, a one-year contract exists between the owners and the guards of the palm oil plots and the result, all have

36 Familiarity also seems to reduce police corruption. [Unlike what generally happens with ordinary citizens,] the police do not ask for a bribe to come.” On the other hand, when police seize a bicycle, it is customary for the police to ask for a bribe for the bicycle to be returned. Interviewees reported that the police do not give receipts for payments received.

37 There are up to 2,000 owners and renters of palm oil plots in the Rumonge area and they have established their own association.

38 In fact, as one interviewee noted protection of property is not a priority for the police and that the “people have to organize themselves to protect themselves.” Another said that the police stay on the roads and that what happens off the roads is the concern of the citizenry.

39 The palm oil workers concur that before they became “night guards we were jobless, thieves, street kids and ex-combatants.”

agreed, has been a decrease in the theft of palm oil clumps. The resulting workplace association (referred to for the purposes of this report as Palm Oil Association) is, in many ways, similar to the Taxi-cyclist Association.

The Palm Oil Association exists in various incarnations throughout the area and each acts “as a collective,” according to interviewees. Each chapter elects its own leadership -- President, Vice President, Treasurer and each has section heads and a disciplinary committee. Because of the backgrounds of most of the palm oil guards, vetting is conducted to investigate the background of potential guards before granting them membership.⁴⁰ For the protection of their fields, the owners pay the chapters with palm oil clumps, one clump per plot/harvest and the chapters sell the clumps, distributing the proceeds among its membership.

Working in two shifts per day, the members of the Palm Oil Association protect the palm oil plots. Their responsibility is to catch thieves, but they have little or no relationship to or with the police. Although “the police may like what we do,” interviewees stated that they do not exchange of information with the police and have received “no training from the police.” Furthermore, guards could not recall when they had, over the past year or more, been requested to give testimony in a police investigation or criminal proceeding. If they require assistance, guards, most often, call the military rather than the police, if for no other reason than the military is stationed physically closer to the plots they guard and have transportation.

When the guards do catch a thief, which, apparently, most often happens at night, they typically call the owners. The guards admitted that “we used to beat the thief, but now, if we do, the police won’t take the case. We bind the hands of the thief... Some of the owners of the field encouraged us to beat the thief. But no more. The owners want their goods back rather than beat the thief. Goods are more important.” According to interviews, it remains likely, however, that thieves still receive a beating, although less than in the past.

Once an owner has been called, the next morning, the night guards “take [the thief] to the owners and the colline/commune administrator,” which, in this instance, appears to be the chef de commune. In the morning meeting, which the night guards do not attend, the chef mediates between the thief and owner in an attempt to restore the owner’s property, the stolen palm oil clumps. Often, if not almost always, a Mushingantahe⁴¹ is involved in the reconciliation process. As one interviewee observed, “the police and administrator let the owners decide what to do.” Another noted that only “if it cannot be resolved, then the person is taken to the police and prison.”

The Palm Oil Association provides money for medical costs if a guard gets injured on duty, as well as money for funerals. Lastly, there appears to be extensive communication between the chapters of the Palm Oil Association and it is apparent that one chapter functions, effectively, as the mentor to the others, as it appears to be the most effective and well managed.

40 There have been instances of guards stealing palm oil clumps and when this occurs or is suspected the Association investigates. If the allegation is proven to be true, the member is expelled.

41 Mushingantahe is the singular of Bashingantahe and thus refers one person.

Ubushingantahe

The Ubushingantahe system is the traditional authority structure by which Burundian society sought to resolve local conflicts and disputes.⁴² The Bashingantahe constitute an elite class, culturally, economically, and politically. It is reported that approximately 80% come from families of Bashingantahe. It has been also claimed that to be invested a Bashingantahe requires a notable degree of wealth or, as one interviewee said, “if one doesn’t have enough means to become a Bashingantahe, one doesn’t.”

Historically, Bashingantahe

*assumed a moral obligation to act as models for the society and to preserve the virtues of justice, honesty and truth in order to secure permanent peace and the security of goods and persons. These members had social obligations to transform conflict, to stand for peace, and to intervene to maintain order and protect the weak. They also had political obligations to give council to the Burundian king as to the best way to govern the country.*⁴³

In addition to keeping records of land title and tenure, Bashingantahe “would reconcile individuals and families; authenticate contracts (inheritance, marriage, sale of cattle, etc.); ensure the security of life and property; provide guidance to politicians in the exercise of their mandates; promote respect for human rights and the common good.”⁴⁴

Over time, through colonial rule, independence, and through the period of civil war, the Ubushingantahe system has been transformed. Successive political regimes weakened the system⁴⁵ and politicized it.⁴⁶ Bashingantahe

*become less and less representative of traditional values of integrity and impartiality, mainly because they have often been chosen by political authorities and instead of being chosen individually after scrutiny by their peers. Because the public has been distanced from the selection process that was the basis of its confidence, the bashingantahe tend to be viewed by some as representing one political tendency.*⁴⁷

42 See Terence Nahimana. Modernizing and Integrating Traditional Justice Systems: The Case of the Burundian Bashingantahe Institution. East African Journal of Peace & Human Rights, Vol. 8. No. 1 (2002),

43 Agnes Nindorera, Ubushingantahe as a Base for Political Transformation in Burundi. Boston Consortium on Gender, Security and Human Rights, Working Paper No. 102, (2003), p. 12.

44 Tracy Dexter and Philippe Ntahombaye. The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations: The Case of Burundi. Henry Dunant Centre for Humanitarian Dialogue, 2005, p. 6.

45 See, Modernizing and Integrating.

46 Luc Reychele. Peace Building: A Field Guide. (Cape Town: Lynne Rienner, 2001), pp. 133-134. See also, Ubushingantahe as a Base: “the postcolonial reforms further denatured the notion of ubushingantahe and the bashingantahe council by appointing the bashingantahe from above. The criteria for appointment were no longer the traditional possession of the virtues of Ubushingantahe but rather membership in the single ruling party, an educational diploma, or simple monetary payment. For both the colonial authorities and the revolutionary leaders, removing the bashingantahe and what they represented was the only way to take control over the Burundian state” (p. 14).

47 The Role of Informal Justice Systems, p. 6.

As of today, however, “the decisions of the bashingantahe have no force of law and the legal requirement for parties to have taken their civil matters to the bashingantahe before being heard by the communal tribunal has recently been eliminated.”⁴⁸ The process of stripping the Bashingantahe of their legal standing and jurisdiction has been a long one. In the Arusha Accords, Article 8 of Protocol II, On Democracy and Good Governance, the agreed upon judicial system included the Bashingantahe, as a legally authorized provider of justice at the local level, although the precise functions and jurisdiction the Bashingantahe were to wield was not specified:

The other courts and tribunals recognized in the Republic of Burundi shall be the Court of Appeal, the High Courts, the Resident Magistrates' Courts and such other courts and tribunals as are provided for by law. The Ubushingantahe Council shall sit at the level of the colline. It shall administer justice in a conciliatory spirit.

Since then, however, the GoB has progressively whittled down the legal prerogatives and jurisdictions of the Bashingantahe. In 2005, the GoB eliminated them entirely from the 2005 judicial law and, in the same year, the Constitution relegated “the Institution of Ubushingantahe” to being merely “an instrument of peace and social cohesion,” with no legal standing.⁴⁹

Nevertheless, the Bashingantahe remain a force with which the GoB must reckon, of whom there were 134,000 in 2010. As a Deputy Chief of a Colline conceded, they are a “recognized institution,” even if they are “not a legal body in law... [There is] no legal authority for us to work with the Bashingantahe, but it is ‘natural’ for us to work with them. The Bashingantahe institution is still strong.”⁵⁰ At the same time, many local Burundian courts continue to work closely with the Bashingantahe, even though the Bashingantahe no longer have any legal standing. In many instances, it was reported, the courts refer claimants appearing before them on land conflict to go to the Bashingantahe to mediate the dispute.⁵¹ Only thereafter, when there is no resolution, it was claimed, will the courts accept the case and, then, with submission of the Bashingantahe’s written minutes and decision. Interviewees estimated that in these cases the courts confirm, approximately, 75 - 80% of the resolutions reached by the Bashingantahe. Lastly, the courts reputedly call the Bashingantahe as “expert witnesses” on land cases and use them, as well, to implement their decisions on land conflicts.

Even though the Bashingantahe have become non-state actors, not legally authorized to provide justice and security, they continue to mediate conflicts and provide reconciliation and restorative justice to many Burundians outside the state court system. The Bashingantahe panels that conduct mediation, however, do not appear to use precedence in any consistent manner.⁵² In the vast majority of cases,

48 Ibid.

49 Article 268, 2005 Constitution.

50 According to the current law, civil administration authorities are free to “resort” to the Bashingantahe at his/her own discretion, Article 35, Communal Law.

51 Among the reasons that courts may refer land cases to the Bashingantahe is that, as reported, it takes up to ten years for the courts to reach a final decision. This lengthy period may also be a reason why the population will, frequently, take their land disputes directly to the Bashingantahe, even though they have no legal standing to hear such disagreements.

52 Bashingantahe panels are composed of, at least, three Bashingantahe -- President, Deputy President, and Secretary. The maximum number of members of a panel is five. The Bashingantahe who is initially contacted by a claimant is not allowed to sit on the panel that conducts the reconciliation process.

minutes and decisions are only recorded when the parties to the dispute do not concur with the decisions of the panel and appeal the case into the state court system.⁵³ Without doubt, learned and experienced Bashingantahe may remember previous cases and use that knowledge to attempt to reconcile the parties to a current dispute. As one Mushingantahe reported, "I cannot forget similar cases." But memory does not necessarily equate to the use of precedence and it is in this sense that the Bashingantahe cannot be seen as working under a common law rubric, which is very different from local justice and security providers in Sierra Leone, South Sudan, Colombia, DRC, and elsewhere.

Part of the reason why the population goes to the Bashingantahe is that they are more accessible and trustworthy than the institutions and agencies of the centralized Burundian state, as well as the legitimacy and respect with which many Bashingantahe are still held. One interviewee flatly stated that "the people do not trust the police; the police ask for money." The Bashingantahe are also utilized by the population because, as has been reported, they "stay and know the history," unlike colline authorities and police or judicial officials. As one interviewee observed, "if the Bashingantahe did not exist, there would be more problems."

The types of issues dealt with by Bashingantahe primarily include land disputes, small debts, and family issues.⁵⁴ There are differing accounts on whether land or domestic violence is the leading type of conflict handled by the Bashingantahe. There is disagreement whether men or women bring the majority of cases, though a plurality suggests that women bring most of the cases. As a group of Bashingantahe observed, "more women than men come. 66-75% of the cases are women." Finally there is also a profound gender divide between men and women in the cases they bring to the Bashingantahe, with men principally referring land conflicts and women, domestic violence. Girls, who are working in homes as domestic workers, bring many of the cases referred to the Bashingantahe. In one area of Bujumbura, for example, up to 40% of the women who come to the Bashingantahe are girls below the age of 16.

Interestingly, since the late 1990s, the Bashingantahe have become increasingly open to investing women within their ranks, with first investments occurring in 2001-02.⁵⁵ Wives of individuals who are to be traditionally invested are now routinely accorded Bashingantahe status. Given that men must be married at the time of their traditional investment, the numbers of women Bashingantahe will be increasing going forward. Simultaneously, there are a very small numbers of women who are invested in their own right. Equally importantly, interviewees claimed that women Bashingantahe are now regularly allowed to sit on the panels that conduct the public dispute resolution hearings and deliberate on the reconciliation decisions.

It is popular support that maintains the Ubushingantahe as a dispute reconciliation system. Interestingly, some Bashingantahe have been able to translate that legitimacy and popular support into political positions, thereby expanding the arena in which the power struggle between them and the GoB occurs. Over the past few years more and more Bashingantahe have been running as non-partisan

53 There appears to be no special training given to the Bashingantahe who are charged with writing the minutes and decisions of the reconciliation panels, which is in marked contrast to local justice providers in Sierra Leone, South Sudan, and elsewhere.

54 This range of cases coincides with those handled by many local justice and security providers around the world, including the Justices of the Peace in Colombia.

55 Since the late 1990s, the Bashingantahe have been working with UNIFEM and UNDP on gender issues.

candidates and winning local elections at the colline level. In some areas of the country, up to 20% of the local administrators are also Bashingantahe.⁵⁶

56 It should be noted that in the 1980s, the percentage of local administrators who were also Bashingantahe may have been as high as 70%.

IV. PROGRAMMATIC RECOMMENDATIONS AND RISK

Workplace Associations

It is evident that the workplace associations for the cyclists and the palm oil guards provide justice and security for their workers, customers (those who transport goods by bicycle), and the owners of capital (bicycle owners; palm oil plot owners and renters). Consequently, donor support to workplace associations could directly increase justice and security delivery to selected beneficiaries in Burundi. In the case of the Taxi-cyclist Association, the number of beneficiaries is potentially large because the cyclists provide transport for the country's poor, each of whom would benefit from greater safety for their person and goods. For the Palm Oil Association, support would have a much narrower beneficiary base, but, as has already occurred, the experience and expertise of the guards appears to be readily transferrable. What has succeeded in reducing the theft of palm oil clumps may prove to be beneficial for other agricultural products.

To the author's knowledge donors have not undertaken donor justice and security development through support to workplace associations. The lack of donor activity of this type, however, should be no cause for hesitation. Workplace associations are civil society organizations and donor support to civil society organizations is standard practice. In fact, the stronger workplace associations become, the more civil society in Burundi could function as an effective check and balance on the GoB in justice and security. Rephrased, donor support to workplace associations can be seen as a key strategy for improving GoB's accountability, which would be an added benefit, above and beyond increasing tangible service delivery.

There are, however, profound differences between workplace associations and civil society NGOs. First, in contrast to civil society NGOs, workplace associations tend to generate, at least a portion of, their own revenues through membership contributions, fees, and/or services they provide. Workplace associations, therefore, have the possibility of becoming financially sustainable, as is the case for the Cyclist and Palm Oil Associations. This is generally not true of civil society NGOs who are almost always dependent upon continued streams of international monies. Second, workplace associations represent the interests of their membership. They do not act in or for the public good, but rather, narrowly, to further the self-interests of their constituency, delivering to them concrete and tangible

services. One of the inherent benefits of representing tangible interests of identifiable demographic groups is that workplace associations have a built-in legitimacy.⁵⁷ This suggests that workplace associations, therefore, are accountable for their activities in ways that are not true for civil society NGOs. This is the case of the Taxi-cyclist and Palm Oil Associations with their internal elections processes and procedures. The contract between the palm oil plot owners and the Palm Oil Association is another means of ensuring accountability.

There are two additional reasons for donors to revise their justice and security support initiatives to include assistance to workplace associations: economic development and social efficacy. First, it is becoming increasingly evident that justice and security programming needs to be better integrated into economic development initiatives, as advocated in the 2011 World Development Report. Even though experience is limited, one way of fusing these two programmatic areas has been through community-driven development. Another is through support to workplace associations, such as the Cyclist and Palm Oil Associations in Burundi, whose existence supports their members' income generation.

Lastly, the rationale for supporting the Taxi-cyclist and Palm Oil Associations, however, transcends the narrow strictures of justice and security development. Particularly with the Taxi-cyclist Association, over and over again, during discussions, interviewees said, "we are proud to have the Association. We have someone [the President] to advocate for us;" "the Association makes us feel proud. Before the Association we weren't respected for what we do. Before we could not be respected because we didn't belong to a group;" "with the Association, we are responsible for the jobs we do;" "I have learned to be the boss of myself;" "I manage my life the way I want to now;" "the Association makes me feel great;" and "I am in control of my life." Each of these statements is an indication that the Taxi-cyclist Union has increased their membership's social efficacy, the belief that one in and with one's group can improve one's life.

Ultimately, this is what development is all about. The more the most marginalized and vulnerable individuals and the groups to which they belong believe they can advance their interests, the more likely it is that development will occur. Furthermore, social efficacy is one of the few variables directly correlated with a decrease in crime, violence, and insecurity. If the Taxi-cyclist and Palm Oil Associations increase their memberships' social efficacy, it is highly probable that it has also decreased its members' -- and the neighborhoods in which they live -- participation in crime, violence, and the perpetuation of insecurity.

57 Because of their financial dependence, the preponderance of civil society organizations, as in Guatemala, tend to resemble private consulting companies more than anything else, revolving around a leading personality and marketing themselves to donors for funding opportunities. Based upon the author's recent interviews in Guatemala, the terms now used in for most civil society organizations are either private consulting companies and/or expressions originating from civil society. A comparable situation exists in Sierra Leone. Most NGOs in Sierra Leone are structured around leading personalities, but they have formed symbiotic relationships, ensuring attendance at one another's workshops, training sessions, and awareness raising exercises, as a means of continuing to extract funding from the donors.

Taxi-cyclist Association

In practice, donor support ought, first, to strengthen the association itself because it is from and through the Taxi-cyclist Association's strength that its contribution to justice and security development derives. The stronger the organization, the greater its membership's social efficacy and the more it is likely to be able to continue to deliver tangible justice and security services to its constituency and the persons and goods who avail themselves of its services. Consequently, donors could assist the Taxi-cyclist Association in achieving one of its principal goals, increased member ownership of bicycles to transform them from renters to private businessmen. Financed through the organization, the planning for and actual transformation would have to be done carefully because of the implication it will have to the existing class of bicycle owners, particularly soldiers and police officers. Step-by-step negotiations may be appropriate between the organization and existing bicycle owners.

The Taxi-cyclist Association also needs support to build its organization, administratively and logistically. Given that it has already proved its mettle and capacity, building the Taxi-cyclist's Association institutionally will enable the organization to provide improved services to its membership and customers, including justice and security. Basic office equipment and better means of communicating with its membership are essential. Assistance can also target the courses the organization wants to provide its membership, including customer service, conflict resolution, traffic rules, HiV/AIDS, etc.

Additionally, donor support should also be provided to improve the relationship between the Taxi-cyclist Association and the police, much of which can revolve around problem-solving techniques and management. The key to this component, however, is, first, to ensure (and for donors to insist) that *all support be joint programming – Taxi-cyclist Association and police together. Joint programming should be a condition of donor support for this component*. Second, training cannot be divorced from implementation, which means that the training takes place within whatever structure is devised by and in which the Taxi-cyclist Association and the police are to work together to address justice and security issues.⁵⁸ The more local these structures are the better. Third, these colline/commune association-police implementation units structures should be allowed to propose projects and be granted small allocations of money to address and remedy local justice and safety issues. Fourth, if successful, these local units can and should, over time in years 3-5, at best, expand to include local storeowners, merchants, women and youth groups, in order to begin to blend them into their neighborhoods and wider communities. Fifth, as they grown to include other members, a separate but parallel initiative can begin to work directly with local commune and leader administration on problem-solving techniques and management.⁵⁹

58 Lessons learned studies have shown such training and awareness-raising initiatives rarely produce results or value for money because they are, typically, divorced from service delivery. In Morocco, for instance, “the experience of... NGOs working with unwed mothers illustrate how knowledge of the laws alone is not sufficient. In order to access their rights, people need concrete help in navigating government services and bureaucracies,” Stephanie Willman Bordat and Saida Kouzzi. *Legal Empowerment of Unwed Mothers: Experiences of Moroccan NGOs*. In Stephen Golub, ed. *Legal Empowerment: Practitioners' Perspectives*. (Rome: International Development Law Organization, 2010), p. 179.

59 This suggestion runs contrary to what is considered “best practice” in justice and security development. However, the nature and structure of the GoB precludes transferring what has worked elsewhere in the

It would be beneficial if financing for the initial components of the recommended support were to be channeled and delivered through a European trade syndicate, as earlier assistance to the Taxi-cyclist Association had been given by a Belgian trade union. Financing and implementation for the second phase initiative to strengthen Taxi-cyclist Association–police working relations could be managed through regular development models and vehicles. The reasoning is straightforward: likely GoB resistance to donor support to the association. The more the Taxi-cyclist Association is linked into the wider world of trade unions, the more politically secure it will be vis-à-vis the GoB. Because of likely GoB opposition, donor support to the Taxi-cyclists Association would also require careful tilling of the soil between the donor(s) and the GoB during all phases of the initiative -- planning, implementation, and evaluation. Without active donor political participation, this initiative, most likely, cannot succeed.

Simply put, the GoB does not appear to view the Taxi-cyclist Association with equanimity and this is the greatest risk to donor support. In January 2011, the GoB imposed restrictions on the movement of bicycles in Bujumbura, which have been very effectively enforced, indicating the strength of the GoB when and where it chooses to act. Across the city, distinct zones were established and cyclists were not allowed to transport persons or goods from one zone to another. Persons and goods had to be dropped off and a different cyclist engaged for movements within each zone. Reputedly, the restrictions were necessary for traffic safety, especially during the holidays, but the limitation on the movement of bicycles was enacted after the holidays.⁶⁰

The imposition of movement restrictions, however, appears, more likely, to be a challenge to the Taxi-cyclist Association's power, for it is an organized national group that remains outside the control of the GoB, the ruling party, and its elite allies.⁶¹ "We believe this is a political issue" and not a safety one, one interviewee argued. Others concurred, "we really don't think it has to do with safety of cyclists and the roads." The supposition is that the decision to impose the restrictions came directly from the Office of the President. "It is impossible to know who the authorities who made the restrictions are. But we've heard it comes from the 'highest levels.'" Another observed that the authorities "tend to believe that we are troublemakers. And this may have caused the restrictions." This perception that the cyclists are troublemakers goes beyond their demographic, for there was talk that the cyclists, as ex-combatants, could be involved in the latest bout of post-election political violence that has broken out in the countryside. More particularly, it was alleged that cyclists had

world. Context matters and "best practice" from Colombia, Brasil, Argentina, South Africa, Kenya, etc. is not automatically applicable to the Burundian environment.

60 Restrictions on the movement of motorcycles were imposed in December 2010. But even then the feeling was that the new regulations had little to do with traffic safety. "The restrictions started with motorcycles and has now included the cyclists. We don't think it was because of accidents, but because of the holiday tensions," one interviewee observed. Another suggested that the new regulations had more to do with corruption than anything else. According to this interviewee, the Mayor of Bujumbura had suggested that all motorcycles be painted one color, which would directly benefit his economic interests in that he has a proprietary interest in the company that would have been authorized to paint the motorcycles and that the cost for repainting each motorcycle had been set by the GoB at 30,000 franc.

61 During the recent elections, the ruling party had established its own cyclist association inside Bujumbura, which was mobilized to accompany campaign rallies throughout the city. Once the election was over, this second association seemed to vanish. During the time in Bujumbura, the team could not find a single Cyclist Association member who had joined this 'second' cyclist union.

transported a major militia leader opposed to the GoB into the Bujumbura so that he could retrieve funds he had secreted away within the city.

The result of this exercise of political power against the Taxi-cyclist Association has been severe. Cyclist incomes have been sharply reduced, now averaging only 2-3,000 franc per day. Daily rents to the owners have also fallen to 800/day. According to numerous interviewees, significant numbers of Taxi-cyclist Association members have left Bujumbura. "A majority of cyclists are no longer working because of the restrictions," one interviewee claimed. "Many went back up-country. They are angry. For those who own their bicycles, they are also afraid the police will seize their bicycles for going across town."

Palm Oil Association

Recommended donor support for the Palm Oil Association differs from that proposed for the Taxi-cyclist Association, given the differing contexts. First and foremost, unlike the Taxi-cyclists Association, the Palm Oil Association needs donor support to be able to become a functional organization. This implies that the organization needs to be registered, as an NGO *and* a trade association. It will be important to garner the support of the palm oil plot owners for this transformation so that they can, together, approach the GoB. With the support of the owners, it is also likely that opposition to donor assistance to the Palm Oil Association will be negligible. It is likely, however, that the Palm Oil Association will require support in making that approach to the owners and seeing it through the administrative hurdles, given their current low level of managerial skills and financial resources.

As the legal status of the Palm Oil Association is secured, it would be prudent for donors to provide boots, waterproof clothing, flashlights/torches, and other basic equipment for the Association's members to be able to conduct their patrols of the plots, particularly at night. Simple communication equipment -- mobile phones with funds to replenish minutes for an intermediation period of time, such as 3-5 years -- could also be part and parcel of this package of assistance. The association will also require rudimentary organizational support, given its current very low capacity level. Bookshelves, file cabinets, and other basic office equipment and skills sets are needed for the Palm Oil Association to take root and establish itself. (The Taxi-cyclist Association in a modified form of south-south cooperation could provide some of the assistance for this root level support.) Once again, it would be beneficial if financing and implementation of these components were to be channeled and delivered through a European trade syndicate, if at all possible, in order to emphasize that the primary structure of the Palm Oil Association is as a workplace organization.

Finally, members of the Palm Oil Association, during discussions, mentioned that, among their priorities, is the acquisition of palm oil presses to maximize their income and financial sustainability. The provision of presses should be considered as an area of support, but it would need to be approached gingerly, much as the process of the Taxi-cyclist Association obtaining bicycles for their membership. It is important for donors to strength workplace associations, but the political dynamics may be delicate. In the case of palm oil presses, there may be resistance from existing tradesmen who press palm oil crop, if the association were to become a competitor.

Once the Palm Oil Association has been strengthened, it may be possible to begin to develop links between the association and the police. More research is required, however, to estimate how effective

such a donor supported initiative would be, given that the Palm Oil Association currently has little contact with the police. When they capture an alleged thief the owner and the colline/commune authorities are alerted and a reconciliation process is initiated. The police do not play a role unless reconciliation and restorative justice efforts have failed. The lack of involvement of the police, however, does not mean that the Palm Oil Association has not been successful in reducing the theft of palm oil clumps. To the contrary, the Association's work has been successful and it may be able to be more effective if the organization were strengthened.

Bashingantahe

The Bashingantahe, as already discussed, are non-state actors, with no legal standing to deliver justice and security. Furthermore, they do not rely on precedence or maintain consistent written records. Consequently, what has become standard practice in the support for local courts that have legal standing -- strengthening the foundations of common law through improving the performance of court clerks, developing casebooks, and fostering consistency in the use of precedence -- would be inappropriate simply because such support programming does not reflect the Burundian context. Additionally, strengthening the appeals process from the Bashingantahe to the state court system is legally inappropriate, given that the Bashingantahe have no legal competence or jurisdiction and, therefore, there is no "legal right" to appeal that donors can support. Recognizing the context in which the Bashingantahe exist is not meant to devalue the contribution they make by mediating conflicts and, thereby, helping to restore and maintain social cohesion and reconciliation throughout Burundi. It merely acknowledges the legal position of the Ubushingantahe system and upholds good development practice in molding justice and security support to the country context.

At the same time, given their workload and their having opened themselves to investing women, the Bashingantahe may be instrumental in addressing questions of domestic violence. How donors can proceed in supporting the Bashingantahe to reduce the rate of domestic violence in Burundi, however, requires much greater and targeted research and analysis than was possible in this project. When undertaking that targeted research, it may be useful to keep in mind a few lessons learned and as a result bear in mind the following suggestions:

- Burundian women's groups should take the lead, which may require the establishment of a Women's Capital Fund to disburse monies to generate and sustain women's groups;
- Concentrate on women's groups that deliver a tangible and concrete service in reducing domestic violence rather than on solely raising awareness through workshops and trainings;
- Include men in the process; this can, likely, be achieved through the Bashingantahe;
- Analyse why no paralegal organizations of import exist in Burundi; and
- Recognize that building the institutional capacity of the police through special Family, Women and Children units is neither effective nor sustainable when the abovementioned activities are not supported concurrently.

During discussions with Bashingantahe, donor assistance was requested in a number of different areas, including training in family, civil, and criminal law, as well as in how to write the minutes of panel decisions, when the parties to the dispute do not agree with the mediation; provision of office supplies and vehicles for transporting Bashingantahe so that they can more easily investigate land and family disputes; holding provincial and national meetings; restoration of meeting halls and community centers; and dissemination of information to all Bashingantahe. Donor support can contribute in all of these areas and the costs are, likely, to be minimal. It may be appropriate, therefore, to support these

activities, given that the Bashingantahe are still considered, as one interviewee said, “the populace’s eyewitness” vis-à-vis the state, even though it is improbable that any of them are sustainable or that they would produce tangible results or significant value for money.

There are two reasons for this. First, the GoB has been meticulous in its curtailment of the activities of the Bashingantahe and relegation of them to the status of a “non-state actor.” This progressive abolishment of the legal standing of the Bashingantahe has been an explicitly political project and an acknowledged struggle of power between the GoB and the Bashingantahe. As one interviewee noted, “the leaders are young and tend to mistrust us... They have resorted to violence to attain power and once in power they use force to retain it. And that is why they have attempted to suppress us in the laws the Bashingantahe.” Or, as another interviewee observed, the Bashingantahe’s legal role had to be eradicated because “some politicians thought the Bashingantahe were too independent and could not be manipulated.”⁶² Second, this type of donor support is best characterized as institutional capacity development, even though, in this case, it would be directed toward a non-state actor. More than a decade of lessons learning⁶³ suggests that this institutional capacity development approach, as most often utilized, has limited effectiveness in strengthening the delivery of the public goods of justice and security in the short- to intermediate-term.⁶⁴

62 The GoB’s assault on the Bashingantahe transcends purely legal parameters. Beginning in 2006, in some areas of the country, the GoB has refused to allow the Bashingantahe to use the communal centers in which they had held their dispute resolution public meetings. The GoB has also, in areas of the country, “broken the stick” with which the Bashingantahe symbolically wield authority. Finally, in three provinces, authorities have, since 2005, forbidden the Bashingantahe from investing new individuals. Although this last prohibition may have been recently lifted, the theme is one of continual political attack on the Bashingantahe.

63 See Thematic Evaluation of European Commission Support to Justice and Security System Reform: Desk Report, Vol. 1, Main Report, February 2011. (Brussels, ADE, 2011). The preliminary evaluation findings concluded that there is “limited evidence of cases where the Commission has contributed to the strengthening of legal institutions in the delivery of criminal justice services or improved service delivery.... [in part because] Commission contributions appear generally to have adopted an institutional capacity approach” (p. 46). For an extended conceptual discussion of the difficulties of this approach, see Pritchett, Lant and Frauke de Weijer. *Fragile States: Stuck in a Capability Trap?* World Development Report 2011 Preparatory Paper, November 2010. See also the World Development Report 2011, which, in Chapter 5, clearly indicates that institutional capacity building has not been an effective strategy, as it, often, overloads domestic capacity; imports generic ‘best practice,’ which is usually anything but ‘best;’ adopts an ‘output’ model of development rather than an output/results approach; and tends to cocoon development projects.

64 The underlying challenge is, better, to blend and balance donor support so that it integrates the three models of development assistance with the institutional capacity development approach, namely, in order of increasing complexity and whole-of-government approaches: (1) service delivery, (2) problem-solving, and (3) thematic. The thematic approach may be the one best suited to address questions of gender violence.