

What Justice for Rwanda? *Gacaca* versus Truth Commission?*

By Min Reuchamps

Abstract. In post-genocide Rwanda a truth commission is needed in addition to *gacaca* courts in order to promote justice and foster reconciliation. In the context of transitional justice, retributive justice, which seeks justice and focuses on the perpetrators, appears to be inadequate to lead a society towards reconciliation. Therefore, some forms of restorative justice, which emphasize the healing of the whole society, seem necessary. In Rwanda, *gacaca* courts and a truth commission are complementary. The former can bring justice, the latter can seek the truth; both crucial ingredients of a peaceful future for Rwandans. The essay opens with a discussion of the nature of the genocide and the responses to post-genocide Rwanda's crisis. The second and third parts present the existent *gacaca* system and a theoretical framework for a truth commission. The combination of both approaches in view of the double goal of justice and reconciliation concludes this paper.

Introduction

On April 6, 1994, one day after President Juvenal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi were killed in a rocket attack on their plane,¹ the Rwandan capital of Kigali dissolved into terror and chaos as disparate Hutu troops led by the *interahamwe* as well as police forces, followed by civilians, went on a rampage, killing Tutsi and moderate Hutu. In fewer than a hundred days, 800,000 Rwandans throughout the country

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¹ The two leaders were returning from Dar es Salaam in Tanzania, where they and other African leaders met in an attempt to end years of ethnic warfare in their countries. According to a Belgian investigation, some evidence has emerged that extremist Hutu carried out the attack (in order to spark a coup), and that foreigners were also likely involved, though for whom the foreigners were working remains a mystery.

lost their lives, four million refugees fled their home to seek protection in camps, located inside and outside Rwanda, and innumerable numbers of people either died as an indirect result of the genocide through disease, malnutrition, or depression or suffered from non-deadly violence (e.g., Daly 2002; Des Forges 1999; Drumbl 2000; Gourevitch 1998). Everyone in this tiny country of central Africa plunged into the horror, either as a victim or as a perpetrator, sometimes as both. After the massacres and the fleeing of the former government officials, a multiethnic government, led by the leaders of the so-called rebel forces (the Rwandan Patriotic Front), came into power. For the last eleven years, Rwandan officials have promoted justice and reconciliation, but the country still faces a very long haul.

Following the mass killings, national and international trials set out to punish perpetrators, promote peace, and foster national reconciliation. However, it soon became evident that neither the national judicial system nor the International Criminal Tribunal for Rwanda (ICTR) could reach—or even approach—these goals. The ICTR suffers from a difficult relationship with the Rwandan government, daily dysfunction, internal bureaucratic conflict, and insufficient resources, all of which can explain the minuscule figure of fifteen verdicts in eleven years. The national judicial system was all but destroyed in terms of personnel and infrastructure and thus incapable of coping with the tremendous task of judging 130,000 suspects. Therefore, in order to achieve justice and reconciliation, the government resurrected, in April 1999, a traditional civil dispute resolution process: *gacaca*, which literally means “justice on the grass or on lawn” in Kinyarwanda and refers to “the grass that village elders once sat on as they mediated the disputes of rural life in Rwanda” (Fisher 1999a).

In this article I shall argue that in addition to a truth commission, *gacaca* courts are needed in order to promote justice and, above all, foster reconciliation in post-genocide Rwanda. In the context of transitional justice², retributive justice, which seeks justice and focuses on the perpetrators, appears to be inadequate to lead a society towards reconciliation. Therefore, some forms of restorative justice, which emphasize the healing of the whole society, seem necessary. In Rwanda, *gacaca* courts and a truth commission, two modes of restorative justice, are complementary. The former can bring justice, the latter can seek the truth; both are crucial ingredients of a peaceful future for Rwandans. The essay opens with the historical context of the genocide as well as a discussion of the nature of the genocide and the responses to post-genocide Rwanda’s crisis. The second and third parts present the two modes of restorative justice: the existent *gacaca* system and a theoretical framework for a truth commission. A comparison and synthesis of both approaches in view of the dual goals of justice and reconciliation in post-genocide Rwanda conclude this article.

² Transitional justice is the response to crimes and violations of human rights that occurs “in countries emerging from violent conflict or repressive regimes” (Tutu 2007: 6).

What Justice for Rwanda?

A. Pre- and Post-Genocide Rwanda

Each genocide is unique. Indeed, the experiences of survivors and perpetrators differ, and the historical context from which the violence emerged varies from case to case. A second proposition derives from this uniqueness: the responses to genocide must be viewed in the context of the massacres, and the healing process must meet the needs of the society in order to allow it to embark on the path of reconciliation. Therefore, history as well as the social geography of post-genocide Rwandan society should determine policy responses to the extermination of 800,000 Rwandans. To understand clearly the underlying forces that led to the mass murders and assess the responses adopted by the Rwandan government, I shall give background information on Rwanda, and the broader historical and political context of the genocide.

1. *A Short History of Rwanda*

The inhabitants of the country called Rwanda are known as the “Banyarwanda,” which means “the people of Rwanda.” The Banyarawanda consist of three groups of people: the Bahutu, the Batutsi, and the Batwa (also known as the Hutu, the Tutsi, and the Twa).³ They share the same Bantu language and before the colonial time “lived side by side with each other without any ‘Hutuland’ or ‘Tutsiland’ and often intermarried. But they were neither similar nor equal” (Prunier 1995: 5). When the first explorers came, Banyarwandans had lived together for hundreds of years.

In 1885 the area that later became Rwanda and Burundi was placed under the control of Germany—and integrated in German East Africa—by European leaders during the Conference of Berlin. After the First World War, Belgium became the administering authority of the region under the mandates system of the League of Nations. The Belgian authorities kept Rwanda and Burundi in a single administrative entity called the Territory of Ruanda-Urundi—until the early 1960’s when Rwanda and Burundi became two independent countries.

In the context of this essay, the extent of the inter-relationship between the Hutu and Tutsi is an important issue to examine because it is highly contested and controversial (Daly 2002: 358–360; Drumbl 2000: 1243–1244). For some, ethnic rivalries between the majority Hutu and the minority Tutsi in Rwanda and Burundi have been a major ingredient in the life and politics of both nations since each became independent from Belgium in 1962.⁴ The Hutu had been subject to the political domination of the minority Tutsi elite in both countries long before independence. In Rwanda, after independence and the subsequent civil war, the

³ The Twa, accounting for less than 1 percent of the population, are “pygmoids who either lived as hunter-gatherers in the forested areas or else served the high-ranking personalities and the King in a variety of menial tasks” (Prunier 1995: 5).

⁴ The Belgians played an important role in the construction of ethnicity in Rwanda. For instance, in 1933–1934, they introduced identity cards that indicated the ethnicity of the holder.

Hutu gained power and held the fate of the country until the mainly Tutsi forces of the Rwandan Patriotic Front (RPF)—or in French *le Front Patriotique Rwandais* (FPR)—overthrew the official government in July 1994.

However, the Hutu and Tutsi cannot properly be called distinct ethnic groups, they are Banyarwandan. Inter-ethnic marriages were common and mitigated the physical characteristics that once distinguished the Tutsi (tall and thin) and the Hutu (short and broad) (Gourevitch 1998: 48; Mamdani 2001; Prunier 1995: 370–400). Moreover, they speak the same language, worship the same God, and share many of the same cultural traditions. The complexity of this situation explains the controversy and debate around the causes of the Rwandan genocide.

Before turning to a narration of the genocide itself, it is important to briefly summarize the broader political and historical context of the genocide. As mentioned above, the independence of Rwanda in 1962 was followed by a civil war between Hutu and Tutsi forces, which led to the massacre of several thousand Tutsi by the Hutu as well as to the fleeing of countless Tutsi. Between 1963 and 1990 two Hutu political leaders—in fact, dictators—led the country. Gregoire Kayibanda was the president of Rwanda from 1962 to 1973. Kayibanda's presidency ended in 1973 when he was overthrown in a bloodless coup led by Major General Juvenal Habyarimana. Habyarimana was leader of both the country and the sole political party, *Le Mouvement Révolutionnaire National pour le Développement* (MRND) from 1973 to 1990.

In 1990, between 5,000 and 10,000 Tutsi of the RPF invaded Rwanda from neighboring Uganda (where most of them fled in the early 1960s) and started a civil war with the official government forces (Stedman, Rotchild, and Cousens 2002). One year later, on March 29, 1991, the rebels and the official government agreed to a ceasefire. In June, political parties were legalized and quickly several parties came into the political arena to form a multiparty government in February 1992. This transitional government started peace talks in Arusha, Tanzania, with the Tutsi forces of the RPF in July 1992, which led thirteen months later, on August 4, 1993, to the signing of the Arusha Peace Accords. This peace agreement was supposed to end the three-year civil war in which approximately 10,000 people died, and to foster political pacification (Khadiagala 2002). However, opposition to the agreement grew among the majority Hutu. A few months after the Arusha Accords, on April 6, 1994, the death of President Juvenal Habyarimana triggered the mass murders in the land of a thousand hills.

2. *The Genocide*

In a mere 100 days, from April 6 through July 4, 1994, 800,000 Rwandans were killed and many more were severely injured by other Rwandans (Daly 2002; Des Forges 1999; Gourevitch 1998; Mamdani 2001). Mark Drumbl (2000: 1245) argues that the genocide “was organized by the Rwandan government, supported by local authorities, and undertaken by ordinary men and women.” The violence was driven by a shared rationale, a social norm: “the government, and an astounding number of its subjects, imagined that by exterminating the Tutsi people they could make the world a better place, and the mass killing had followed” (Des Forges 1999: 203). However, the violence can be viewed not only as the result of an

ethnic problem but also as a political one. The extremist Hutu leaders planned the massacres of both moderate Hutu and Tutsi politicians for fear that they would lose power as a new multi-ethnic government ruled the country (Bonner 1994a).

Whether the violence that occurred in Rwanda from April to July 1994 was ethnic or political (probably both), the rest of the world witnessed it but did virtually nothing. The failure of humanity filters through Dallaire's (2003) *Shake Hands with the Devil*. Lt. Gen. Dallaire, like many other authors, holds the international community, especially the first world nations and the UN, accountable for failing to prevent the outbreak of the genocide, for not intervening while the killings were occurring, and finally for being unable to deal with the massive flows of refugees (Barnett 2002; Dallaire 1996). Furthermore, the continued indifference of the international community for the Rwanda crisis is apparent in their failure to recognize the crisis as genocide and label it as such.⁵ Although the United Nations, through the voice of its general secretary Boutros-Ghali, was angrily condemning the massacres and calling them genocide, neither the United States nor the other powers described the atrocities committed in Rwanda as genocide, yet they conceded that acts of genocide may have occurred.⁶ Four years afterward, President Clinton acknowledged for the first time that "we did not immediately call these crimes by their rightful name: genocide."⁷

3. Post-Genocide Rwanda

The uncontrollable spasm of lawlessness and terror left Rwanda ravaged by ethnic hatred and political turmoil. The newly self-established government quickly called for justice and tried to implement a successful regime change. In a post-genocide society such as Rwanda, two prominent concerns with regard to justice and reconciliation are raised (Drumbl 2000: 1239). On the one hand, the danger of genocide can not disappear unless an institutional structure can be designed to accommodate both groups within the same polity. On the other hand, punishing past violence may incite more violence. Yet it is vital to allocate responsibility for

⁵ See Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III), December 9, 1948. Genocide means "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group" (art. 2). The same definition is used in the article 6 of the Rome Statute of the International Criminal Court (U.N. Doc. A/CONF.183/9,* July 17, 1998).

⁶ The Western powers refusal to call the Rwandan situation genocide allowed them to avoid the legal obligation (stipulated in the 1948 convention, which was ratified—and thus became domestic law—by the United States and the other world powers) to prevent the occurrence of genocide or, at least, to contain it and to end it. Since the world powers were not willing to get involved in Rwanda, they had to avoid calling the atrocities genocide (Lewis 1994a; Jehl 1994; Editorial 1994).

⁷ A word that President Clinton used eleven times in a speech given before a Rwandan audience. See Weiner 1998.

wrongdoing as well as to heal the scars of victims in order to foster reconciliation. Therefore, any solution to Rwanda's post-genocide crisis must be built on a few fundamental premises. First, silence is not a sufficient answer (Hayner 2001; Minow 1998). The path to peace and to reconciliation requires official responses. Second, the victims as well as the perpetrators belong to both groups. Many moderate Hutu were slain alongside Tutsi. And "while Hutu constituted the vast majority of the killing population, not all the Hutu were killers nor were all the killers Hutu" (Daly 2002: 365). Some Tutsi, especially the RPF troops, are accused of committing gross human rights abuses before, during, and after the genocide.⁸ Finally, the change of regime must be taken into account to comprehend the full context of post-genocide Rwanda.⁹ With these premises in mind, we now turn to the study of transitional justice.

B. Retributive Justice

Dealing with past injustices is a crucial test for a society in transition. Jeremy Sarkin argues that "the need of victims and the society as a whole to heal from the wounds [...] often has to be balanced against the new political reality" (Sarkin 2001: 143). As the violence stopped, the new Rwandan government wished to proceed with trials for the members of the ousted government and for thousands of civilians suspected of taking part in genocidal attacks and other human rights violations during the recent civil war. Meanwhile, in an attempt to compensate for its failure to intervene during the slaughter, the international community agreed to establish an international war crimes tribunal that would prosecute the planners and the organizers of the genocide (Lewis 1994b). Thus, national and international trials were to assuage Rwanda's burden via the punishment of the *génocidaires*. That is retributive justice.

Retributive justice is punitive. It focuses on the defendant and the adversarial relationship between defense and prosecution. Above all, what matters is the fairness of the process and the equality and proportionality of the sanctions (Tiemessen 2004: 60). In contrast, restorative justice, another mode of transitional justice, focuses on the victim(s) and the relationship between the victim(s), the perpetrator(s), and the entire community. Restorative justice focuses not only on justice but also, and especially, at reconciliation (Braithwaite 1999; Llewellyn and Howse 1999). My intention is to show that Rwanda needs restorative justice because retributive justice, although necessary, is not sufficient to heal the Rwandan society from its past. The question that follows is what form of restorative justice best suits post-genocide Rwanda. First, I discuss why national and international trials are insufficient.

1. The Genocide Trials

The 1994 genocide was massive, not only because the death toll reached the tremendous number of 800,000, but also because almost the same number of people were implicated,

⁸ This is a very sensitive chapter of the genocide's history. Human Rights Watch estimates the number of people killed by Tutsi forces to be at least 25,000 to 30,000 people; see Fisher 1999b.

⁹ In *Rwanda: The Preventable Genocide*, the Organization for African Unity (2000a) notes that Hutu were terrified of being arrested or killed by the new rulers.

with varying degrees of responsibility,¹⁰ in the mass killings. In July 1994, the already weak Rwandan judicial system was all but destroyed in terms of personnel and infrastructure. The judiciary was a primary target of attacks; many judges, attorneys, and lawyers were killed, some imprisoned, and others fled into exile (Lorch 1995; Neuffer 2001: 257). Thus, the judicial system was not capable of handling the 130,000 Rwandans arrested on suspicion of alleged crimes of genocide (although none of these people had been officially charged with a crime) who would “require a capable and extensive national court system” (Tiemessen 2004: 59). The trials did not begin until December 1996, and their fairness has been questioned (Sarkin 2001: 157). Defendants often did not have counsel, some trials were concluded in as little as four hours, and there have been numerous instances of suspected government interference in court decisions. To date, less than ten percent of individuals detained have been tried,¹¹ which leaves the other 90 percent languishing in overcrowded prisons serving sentences without due process (Amnesty International 2004; Amnesty International 2005; McKinley 1997; Schabas 1996; Tiemessen 2004: 59).

2. The International Criminal Tribunal for Rwanda

In November 1994, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) in Arusha to provide collective response from the international community—a response that was never offered during the genocide itself.¹² The tribunal is to judge persons, of whatever nationality, accused of genocide and crimes against humanity, committed from January 1 to December 31, 1994. In the wake of the genocide, the tribunal was created to “contribute to the process of national reconciliation and to restoration and maintenance of peace.”¹³ But Martha Minow, professor of law at Harvard University, doubts that trials can achieve these goals. She does “not think it wise to claim that international and domestic prosecutions for war crimes and other horrors themselves create an international moral and legal order, prevent genocides, or forge the political transformation of previously oppressive regimes” (Minow 1998: 45). However, Richard Goldstone (2005), former prosecutor of the tribunal, indicated that the “essential objective” of his office is “to bring justice to those most responsible [...] for the mass killings,” referring in particular to persons in positions of leadership and authority. Thus a division of labor appeared between the national and international trials: the prosecution of the architects of the genocide for the latter, the prosecution of the rest of the defendants for the former. Nonetheless, in eleven

¹⁰ Mark Drumbl states that “individual involvement with the genocide occurred at six levels: (1) zealous participant, (2) “following orders,” (3) participation under duress, (4) aiding and abetting, (5) passive acquiescence, and (6) active opposition” (2000: 1246).

¹¹ Amongst the 7,000 Rwandans who have been tried: 10 percent received the death sentence (twenty-three were executed before April 1998, since then no death penalty has been enforced), 30 percent were imposed life imprisonment, and acquittals made up about 20 percent of the total.

¹² See the preamble of the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A [III], December 9, 1948).

¹³ ICTR Statute, preamble.

years, the results are meager: fifteen verdicts. Furthermore, the credibility of the institution has been hurt by management problems due to insufficient means, internal bureaucratic conflicts, lack of respect for international human rights standards regarding the trial rights of defendants, and above all a difficult relationship with the Rwandan government. Ultimately, instead of providing the symbolic effect of prosecuting even a limited number of leaders, “which would have considerable impact on national reconciliation as well as deterrence of such crimes in the future” (Akhavan 1997: 339), the ICTR failed to render justice, which hinders the much-needed healing process of the Rwandan society.

3. Towards Restorative Justice

Facing the tension between justice and reconciliation, the transitional process occurring in Rwanda entails tremendous challenges. In Arusha and in Rwanda, trials have failed to bring justice, let alone reconciliation. The justice process remains “laborious and frustrating” (Gaparayi 2005). In order to improve the process, Rwandan officials turned, in 1999, to the *gacaca* courts system. This is a traditional civil dispute resolution process based on a community approach, a form of restorative justice. Meanwhile, the national judicial system as well as the ICTR would continue to render justice, retributive justice. These two modes of transitional justice should not be seen as mere alternatives but as partners, reinforcing each other. Reconciliation cannot be reached without some sense of justice, provided by retributive justice. Nevertheless, retributive justice alone does not lead a society towards reconciliation.

Gacaca Courts

In Rwanda, long before the colonial period, communities developed informal neighborhood courts where people gathered to have disputes heard and settled claims relating to land rights, property damage, or minor attacks. These customary local courts are known in Kinyarwanda as *gacaca*, which literally means “justice on the grass or on lawn” and refers to the lawn where traditionally elders mediated the disputes of rural life in Rwanda (Reyntjens 1990). *Gacaca* was intended to “sanction the violation of rules that are shared by the community, with the sole objective of reconciliation through restoring harmony and social order and reintegration of the person who was the source of the disorder” (Tiemessen 2004: 61). The idea of restorative justice is at the heart of *gacaca*.

A. The Resurrection of *Gacaca* courts

The Rwandan government resurrected *gacaca* as a response to the crisis in the national judicial system, even though this the traditional mode of dispute resolution never dealt with criminal justice (Reyntjens 1990). The use of *gacaca* courts has been adopted as a mechanism to ease the burden on the national courts as well as to deal with overcrowded jails—the sources of many human rights violations (Organic Law No. 40/2000). *Gacaca* offers a community-based approach that emphasizes the reintegration of *génocidaires* back into the community without neglecting the victim(s). Indeed, the latter can start their healing

process through the truth-telling nature of the confessions. Above all, the entire community benefits from *gacaca* and engages on the path to a peaceful future.

1. *Gacaca* Courts

The government has developed a wide-scale pyramid structure for the *gacaca* courts; 11,000 courts have been created at four different levels, from local (“*la cellule*”) to national via the regional and provincial levels. The law categorizes criminal responsibility through four categories indicating the severity of the crime committed (between October 1, 1990 and December 31, 1994) and the appropriate punishment. Whereas national and international trials deal with the most serious crimes and suspects (category 1, the leaders and planners of the genocide), *gacaca* courts judge the three other categories of suspects: from the perpetrators, conspirators, or accomplices of intentional homicides, to those who destroyed property. Unlike for category 1 crimes, the possible punishments for category 2–4 crimes do not include the death penalty. They range from life imprisonment to community service (see Table 1).

Gacaca is a community-based approach: evidence is gathered through an audience participation process where all evidence is presented orally (Rwanda Supreme Court and Lawyers Without Borders 2005). After the debate, the verdict is given by the *gacaca* Seat, which is composed of nineteen lay judges who have been elected from among “honourable” Rwandans. In 2001, the *gacaca* Assemblies—composed of every Rwandan older than eighteen, in each village—elected 260,000 judges to lead the 11,000 *gacaca* courts around the country. A seven step pre-trial process (which includes drawing lists of suspects and witnesses, collecting evidence and establishing the appropriate categories for offences) preceded the actual trials. The trial itself opens with the introduction of the suspect to the audience and the recalling of the accusations. The accused can either plead his/her innocence or confess his crimes. In the former case, the *gacaca* Assembly members as well as the state prosecutor testify for or against the accused. The hearing is to be run “in a non-adversarial, deliberative manner, and lawyers are prohibited from taking any part in the proceedings” (Harrell 2003: 73). If no one testifies against the defendant and no evidence is provided, the accused is found not guilty by default and freed immediately. In the other cases, after the debate, the Seat of *gacaca* retires *in camera* to deliberate on the suspect’s guilt. The determination of guilt and penalty is to be made by consensus, or “failing that, a simple majority of the 19 will suffice” (Harrell 2003: 74). An appeal procedure enables a defendant to have his case heard *de novo* by the appellate *gacaca*. In the case of a confession, after a public hearing of the suspect’s testimony and apologies, the *gacaca* Assembly reflects on the defendant’s account and testifies as to its veracity. If, in the opinion of the Seat, the confession is full and complete, the defendant is granted a reduced penalty.

Table 1: Categorization, Confessions, and Sentencing of Genocide Suspects under *Gacaca*.

Categories of Crimes	Confession/guilt pleading	Sentencing with or without confession)	Competent Jurisdiction
1. Planners, organizers, supervisors and instigators of the genocide; those in positions of authority; renowned murders; those committing rape and other sexual torture	Has not made a confession ----- Has made confession prior to publication of their name on the list of alleged criminals of category 1	Death or life imprisonment ----- 25 yr. to life imprisonment	Specialized chamber of the modern court system
2. Authors, co-authors, accomplices of those who killed; those having the intention to kill and have caused injury, committed serious violence, but not resulting in death	Has not made a confession ----- Has made a confession at the time of trial ----- Has made confession prior to publication of the list of alleged criminals of category 2	25 yr. to life imprisonment ----- 12 to 15 yr. imprisonment; half of sentence spent in prison, half spent in community service ----- 7 to 12 yr.; half of sentence spent in prison, half spent in community service	District (Commune) <i>Gacaca</i> Court
3. Those having committed criminal acts or participated in crimes without intending to kill	Has not made a confession ----- Has made a confession at the time of trial ----- Has made confession prior to publication of the list of alleged criminals of category 2	5 to 7 yr.; half of sentence spent in prison, half spent in community service ----- 3 to 5 yr.; half of sentence spent in prison, half spent in community service ----- 1 to 3 yr.; half of sentence spent in prison, half spent in community service	Sector <i>Gacaca</i> Court
4. Those having committed serious infractions against property ----- Those having committed serious infractions against property, but having made an agreement with the victims or before an authority	No provisions	Restoration or reimbursement for property that was destroyed or consumed ----- If the agreement is adequate the case is not brought into the courts	Cell <i>Gacaca</i> Courts

(From Pitsch 2002: 6)

2. *Gacaca as Restorative Justice*

Although the new *gacaca* courts diverge largely from their traditional form, they still emphasize the restoration of the social order over punishment. Moreover, not only do they ease the burden on the conventional judicial system and on the overcrowded prisons, but they also foster reconciliation, starting from the community and to society as a whole. These are patterns of restorative justice. The community is at the heart of *gacaca* justice. The *gacaca* Assembly brings together every adult member of the community to judge an alleged perpetrator. Plea bargaining offers the perpetrator the opportunity to confess and apologize, and by doing so to be reintegrated into the community. This truth-telling nature of the confessions offers hope for reconciliation. Indeed, the “ordinary killers” wish to regain their humanness (Hatzfeld 2005). The lawn of the village is an appropriate starting point. A consensus is needed amongst the participants to decide whether to reintegrate someone into the community and under which conditions. What is fundamental is that a local narrative emerges from this interaction among victims, perpetrators and the rest of the community.

According to Michelle Wagner, however, we should not over-estimate *gacaca*'s potential since the communities as well as the families have been destroyed and the community is at the core of *gacaca* (see Fisher 1999a). Nevertheless, *gacaca* brings recognition to the specific post-genocide demographics where the responsibilities of women increased dramatically (Heather 2000). For Alana Erin Tiemessen (2004: 63) “the community basis of *gacaca* allows women to participate on various levels [of the act of justice], recognizes their role in the reconciliation process, and brings their identity beyond that of victimization.”

Furthermore, *gacaca* courts allocate compensation to victims. The compensation can take the form of community service and/or financial aid from a still-to-be-created governmental compensation fund. However, monetary compensation runs counter to Rwandan cultural norms, for which “receiving monetary compensation for human life simply amounts to treachery against their loved ones” (Gabirol 2002). Above all, some sort of compensation is needed to establish the foundations of a peaceful society.

With the *gacaca* courts, in addition to the national and international trials, Rwanda is pursuing a “dual-pronged goal to justice and reconciliation” (Fullerton 2003: 8). No peace can be built upon impunity and injustice, but no lasting peace can be built without reconciliation, either. *Gacaca* courts and their emotional texture set the stage for the creation of local narrative on which the community can base its reconciliation. *Gacaca* seems to be able to promote both justice and reconciliation; the following section will assess this hope.

B. Trying Genocide through Gacaca

On March 10, 2005, the first trials opened in 113 *gacaca* courts throughout Rwanda. Two days later, the first sentence was rendered. Today, the enterprise is still at its very beginning. Above all, the modernized *gacaca* is controversial.

1. *Due Process and Fairness*

The most widely voiced concern about *gacaca* is that “due legal process will be compromised and the rights of the defendants ignored.” The OAU report continues with “speed and efficiency, important as they are, must also be accompanied by fairness. Basic Human rights must not be sacrificed either to productivity or local participation” (Organization for African Unity 2000b). The *gacaca* system profoundly compromises principles of justice as defined by criminal law standards (Uvin 2000). There is no separation between prosecutor and judge, no legal counsel for the defendant, no legally reasoned verdict. There is strong pressure for self-incrimination (the plea bargaining); a potential risk for major divergences in punishment (though the *comité de coordination*’s role is to ensure uniformity in the decision process throughout Rwanda); a threat of intimidation towards the *gacaca* organs, witnesses, and defendants; and a risk of “vigilante’s justice” (Daly 2002: 383) where vengeance and will of empowerment may dominate the accusations. Moreover, the competence and expertise of the *gacaca* judges, whose role will determine the decisions that emanate from the court, is questionable.

Nonetheless, for Michael Ignatieff (2002: 35), “while *gacaca* certainly falls far short of international ‘fair trial’ standards, insistence on the latter could result only in much more serious violations of the rights of those accused who would remain in prison indefinitely, absent any alternative means of determining their guilt or innocence.” Similarly, Peter Uvin identifies the cultural inappropriateness of the international law critiques of *gacaca* courts: “the practice of *Gacaca* may well be able to respect key conditions of fair trial and due process, but in an original, locally appropriate form, and not in the usual western-style form” (Uvin 2000: 5). Here lies one of the major issues: the implementation of safeguards, in order to respect the international criminal standards, may reinvent the same formal justice system that is clearly not working. Yet, the government, with the support of the international community, should seek to put into place a system that maximizes the positive potentials and minimizes the negative ones. Foremost, the evaluation of *gacaca* should not only focus on the judicial level, for it is primarily a social and political experiment.

2. *Victor’s Justice*

In July 1994, the bloodbath stopped with the victory of the RPF over the official government in the ongoing civil war, and the subsequent fleeing of extremist Hutu to neighboring Congo. As already mentioned, not all the victims were Tutsi and not all killers were Hutu. It is true that the Tutsi forces of the RPF ended the genocide, but meanwhile they committed numerous atrocities. Human Rights Watch estimated the number of people killed by Tutsi forces to be at least 25,000 to 30,000 people. This is one of the most sensitive chapters of the genocide’s history (Fisher 1999b). If justice through *gacaca* is to promote reconciliation (as the government officials claim) it cannot be a victor’s justice. The legitimacy of *gacaca* constitutes one of the keys for its success. *Gacaca* courts should not be used by the Tutsi (who proclaim Rwanda to be an ethnicity-free country where ethnic divisions are obsolete) to protect their hold on power and ensure their survival. In fact, according to Filip Reyntjens (2004: 187), “tutsification” is occurring, leading Rwanda to a Tusti ethnocracy. Hence, the policy of eliminating ethnicity is a political tool to legitimate Tusti authority. Above all,

gacaca jurisdictions should be free from any power holders' interference especially regarding the crimes perpetrated by the RPF forces.

3. *Towards Reconciliation*

The modernized *gacaca* pursues a twofold goal: speeding up the trials and emptying the prisons; and involving the community (including the victims) in establishing the truth and, through that, promoting reconciliation. Rwandan officials believe that without justice no reconciliation is possible. Hence, *gacaca* jurisdictions not only seek the discovery of the truth via the full confession and plea bargaining processes, but also punish the perpetrators. The end of the culture of impunity is an essential ingredient of *gacaca* courts. Indeed, generalized amnesty is currently politically and socially out of the question. *Gacaca*, as a community-based approach of both justice and reconciliation, emphasizes the relationship between victims, perpetrators, and the rest of the village. It tries to heal the suffering of the victims and to reintegrate the perpetrator after he/she has confessed and apologized. The effort demanded from the victims is tremendous: they have to publicly re-open the wounds that they painfully have tried to close. Yet Priscillia Hayner (2001) believes that we, as a community composed of victims, perpetrators and bystanders, need to remember past atrocities in order to forget them.

Moreover, the objective is to restore the social order and to integrate the person who was the source of the disorder. *Gacaca* offers a shame-based rather than a guilt-based remedy. Such remedies constitute the best response to radical evil (Nino 1996). When violence occurs in situations where acting violently is simply not deviant (i.e., radical evil), punishment and retribution do not prevent radical evil from re-occurring and do not restore the broken social order. In fact, shame, a consciousness of one's own responsibility, is accompanied with "feelings of regret, blameworthiness, and sometimes even disgrace" (Drumbl 2000: 1257). *Gacaca* can offer re-integrative shaming to the *génocidaires*. This tremendous endeavor to heal engages a last actor. The international community must financially support this effort. Its role is vital especially if it is accompanied by an "accompagnement critique" (Digneffe and Fierens 2003: 78) that would encourage Rwandan officials to improve the *gacaca* system. The revival and transformation of the traditional *gacaca* will elicit many different reactions from Rwandans who, however, are willing to give *gacaca* a chance since it seems to be the only reasonable solution.

Truth Commission

In countries emerging from periods of gross violations of human rights, the question of how to deal with the past needs to be resolved if the country is to progress towards a peaceful future. In post-genocide Rwanda, retributive justice was implemented first to deal with the past. The failure of national and international trials to bring either justice or reconciliation has encouraged the government to turn to a traditional—though modernized—mode of justice: *gacaca*. Yet, another mode of restorative justice could have been implemented: a

truth and reconciliation commission.¹⁴ In this section, I suggest a theoretical framework for the use of such a commission in Rwanda considering both its pitfalls and benefits.

A. The Turn Towards Truth

On their visits to South Africa in 1996 and 1997, Rwandan officials commented that justice was needed in order to engage with the process of reconciliation: “there can be no reconciliation with victims unless there has been justice” (Sarkin 2001: 154). The emphasis was on justice, not on truth.

1. From Justice to Truth

According to Priscilla Hayner (2001: 14), “the limited reach of the courts and [...] the recognition that even successful prosecution do not resolve the conflict and pain associated with past abuses” explain the turn toward truth-seeking as a central component of the response to past atrocities. Martha Minow (1998: 87–88) favorably explores the usefulness of public inquiries and truth commissions as well-suited mechanisms to meet goals for societal responses to collective violence. Truth commissions should be utilized to pursue efforts at reconstituting a united society. The truth-seeking process promotes collective accountability, heals the victims, generates the record of the human rights violations, and therefore roots out the causes of genocide and minimizes future violence.

Rwanda’s history shows a turn towards truth in 1993. Following the signing of the Arusha agreement between the government and the armed opposition, Rwandan human rights organizations set up an international commission to investigate violence committed by the belligerents during the civil war (Hayner 2001: 17–20). The effectiveness of the commission was undermined by the resentment of both ruling and opposition groups, which led to ongoing violence while the commissioners were investigating. The murders of potential witnesses impinged upon the truth-telling, reconciliation, and healing process. However, when the report was published in 1993, the response was positive in both Rwanda and Europe. “The commission’s work served an important function in promoting international awareness of the Rwanda crisis” (Sarkin 1999: 778–79). Nevertheless, the report, which concentrated on human rights abuses committed by the government forces, was despised by Rwandan officials. Most important of all, the report and its recommendations failed to prevent the outbreak of genocide one year later.

2. Learning from Others

Thus far, eighteen truth commissions have dealt with gross human rights violations throughout the world. Lessons can be learned from these experiences. Priscilla Hayner (2001: 24), in her insightful account of official truth bodies, notes that “though with varying degrees of emphasis, a truth commission may have any or all of the following five basic aims: to discover, clarify, and formally acknowledge past abuses; to respond to specific needs of

¹⁴ I use the terms *truth commission* and *truth and reconciliation commission* to refer to the same concept—a process of truth-seeking via the establishment of an independent body that has the task of investigating past atrocities and reporting its findings.

victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past.” These goals set the stage for reflection on the possibility of a Rwandan truth commission to investigate the past.

B. A Theoretical Framework

Although the post-genocide Rwandan government has never considered the opportunity of utilizing a truth commission to deal with the past, the benefits and pitfalls of such bodies have been raised in the literature on transitional justice (Drumbl 2000; Hayner 2001; Minow 1998; Sarkin 1999; Sarkin 2001).

1. A Truth Commission in Rwanda: Benefits and Pitfalls

The establishment of a truth and reconciliation commission in Rwanda could be a means of healing Rwandans’ wounds, beginning reconciliation and rebuilding a unified country, and therefore reducing the risks of future conflicts. Moreover, such a commission could have been the response to the criminal judicial system’s inability to cope with the legacy of the genocide. Instead, the Rwandan government opted for the revival of *gacaca*. Unlike *gacaca* courts, a truth commission has the potential to (re)write a collective narrative upon which peace can be built.

The important issue here is timing—when to launch the process? Herein lies the paradox: if there is still ongoing strife, the time might never be right; but the longer we wait, the greater the damage to the society as a whole.¹⁵ In the case of Rwanda, since the genocide itself was ended by the seizure of power by the RPF in July 1994, the time is right for a truth commission, even though violence still occurs in some parts of the country.

On the basis of public accounts, a truth commission can draw a picture of the human rights abuses that is as complete as possible, and above all make it publicly known. It includes the nature and the extent of the crimes as well as a record of the names and fates of the victims. This narrative of the atrocities and the underlying forces that led to them would hinder “the current tendency of the Hutu to deny of the genocide [and] at the same time justify their actions on the basis of their own perceived losses” (Sarkin 1999: 798). Martha Minow (1998: 47, 58–59, 78) suggests that truth commissions may be more effective than trials at establishing an incontrovertible historical record. It is on the foundations of this new narrative—accepted by all—that Rwandans can establish a new united society. Furthermore, a truth commission could provide victims “a forum through which to reclaim their dignity and perpetrators will have a channel through which to expiate their guilt” (Sarkin 2000: 167). Rwanda remains a traumatized country, and Rwandans need a means to release their pain and allow them to live together in a peaceful society. A truth commission could offer such a possibility: victims could tell the truth and vent their hostilities in a controlled and non-violent manner. Retributive justice leaves unaddressed the important need to treat depression

¹⁵ Priscilla Hayner observes that there is a “the quicker the better” rule (2001: 221). See also, Sarkin (1999: 798).

in Rwanda, which is populated by the *bapfuye buhagazi*, the “walking dead” (Drumbl 2000: 1270). A truth and reconciliation commission can facilitate a national catharsis since it creates the conditions for mourning and grieving. Meanwhile, *génocidaires* would be given the opportunity to expiate their wrongdoings and apologize to the victims or their families. The dialogue coming out of the truth may lead all Rwandans to live peacefully together.

To achieve collective reconciliation, a society needs individual forgiveness. While “it is senseless to make generalizations about forgiveness, they are nevertheless important insights that can be gleaned” (Gobodo-Madikizela 2003: 98) from experiences of dealing with past atrocities. Atonement from the perpetrators eases forgiveness (Brooks 2004: 163–169). To forgive means neither to forget nor to lose (Tutu 1999). The act of forgiving can heal grief, forge a new relationship, and break the cycles of violence (Minow 1998: 14). In Rwanda, no one can force any survivor to forgive; yet a truth and reconciliation commission could facilitate the restoration of the relationship between victims and perpetrators, which may lead to the tender of apologies by *génocidaires*, followed by forgiveness from the victims. In turn, the transformation of that relationship will strengthen the process of reconciliation. In this context, should amnesty be granted? Mark Drumbl claims that “amnesty could heighten the comprehensiveness of the historical record,” but should be “accompanied by apologies, public yet re-integrative shaming and compensation for the victims” (2000: 1274). However, international law prohibits the granting of amnesty for the gross violations of human rights. Foremost, the decision to grant amnesty, and under what conditions, belongs to Rwandans.

Nonetheless, a truth and reconciliation commission holds “the potential of opening up old wounds, renewing resentment and hostility against the perpetrators of abuses” (Sarkin 1999: 800). Moreover, the success of the commission will rely greatly on its legitimacy. Independent commissioners should seek a truth shared by all Rwandans and not only a victor’s truth. Hence, the participation of both Tutsi and Hutu is a *sine qua non* condition. In addition to being legitimate in the eyes of all Rwandans, a truth commission should be tailored to both the country’s current situation and its history. Only such a commission would provide the best chance of success for the laborious task of leading a country towards national reconciliation. To maximize the chances of successful truth-seeking as well as of reconciliation, the truth and reconciliation commission must be carefully designed and the right persons ought to be appointed.

2. *The Process*

Establishment of the Commission. The majority of truth commissions have been established by presidential decree (Hayner 2001: 214). However, if a law creates the commission, this allows a broader mandate and reflects the will of the whole nation to seek truth, and not the new government’s particular will. Additionally, a neutral process for appointment of the commissioners must be guaranteed. An independent, well-balanced commission is critical to ensure that Rwandans regard it as legitimate and credible and therefore are willing to participate. On the basis of the Salvadoran experience, Jeremy Sarkin (1999: 806) proposes that a panel of personalities, a mix of Rwandan and foreigners, appoint Rwandan commissioners.

This approach benefits from the combined involvement of the international community and a truth commission staffed and run by Rwandans.

Mandate. The commission needs a broad mandate to attain its goal of delivering an official record of the past atrocities. The investigated time period should not be reduced to the three months of the actual genocide, but should include the civil war period as well as the post-genocide period. This would avoid blaming only one group of the population. Both Hutu and Tutsi have committed massive murders and both Tutsi and Hutu have suffered from them. The types of human rights abuses that would be examined as well as the scope of the rights need to be defined beforehand. In addition, the parameters of what truth is to be recorded (and how), and what level of proof is needed could be defined by the panel (Hayner 2001: 228–33).

Publicity. In countries such as Rwanda, “where a primary goal of a truth commission is to advance understanding and reconciliation and to reduce animosities” (Hayner 2001: 228) there are persuasive reasons to hold public hearings. By giving the victims a chance to tell their story publicly, a commission acknowledges their sufferings and helps to release their pain. By bringing the survivors’ voices to the public (aired on television and radio), a commission can encourage public understanding and sympathy for the victims, and therefore reduce the denial of the truth by some Hutu. In Rwanda, using the same means that called for the killings—the radio—to promote reconciliation could have a symbolic effect on the entire population.

Resources. A truth commission is extremely time and resource intensive (Hayner 2001: 227). This huge cost should be shared by the international community. Foreign countries could financially support the organization of the panel and the commission—therefore it would not rely on governmental funding—as well as provide logistical aid in the field of information management and analysis. This latter point, though very important in the establishment of the record of the abuses, is usually not given enough attention. Commissioners from countries that have experienced a truth commission (for instance, South Africa) could help Rwandans to implement and carry on their own truth-seeking.

Final Report. The *raison d’être* of a truth commission is the establishment of an official record of the past abuses. The hope is that such a report, listing the causes, the nature, and the extent of the atrocities as well as the names of the victims, brings Rwandans to acknowledge the same truth. On the foundations of that truth, and after apologies from the perpetrators followed by compensation, reparation, and some sense of forgiveness, Rwandans can build together a united and peaceful future where a culture of human rights and the rule of law reign.

3. Challenging the Past and Shaping the Future

The legitimacy of such a commission constitutes a key element of its success. Should it be absent, reconciliation would remain a vain hope. The establishment of the truth-seeking process ought to seek the inclusion of every Rwandan. Although there is no “objective truth, it is critical that the version of “the truth” [...] embraces the experience of all” (Sarkin 1999:

802). Therefore, a positive attitude of the government is vital. On the one hand, the endorsement by the government of the project would show its will to seek the truth—even though it has to admit its responsibility for abuses committed by it—and such support would encourage an honest and full participation of all. On the other hand, the Rwandan government should avoid interference; otherwise the commission would be viewed by the Hutu as victor’s justice. In countries where a legitimacy crisis faces the newly established government, the work of a truth commission, if successful, can improve the legitimacy of the new government and thus create the conditions for reconciliation.

A truth commission could address the problem of land disputes. Since the genocide, latent conflict over property has been a major source of tension. “As Hutu refugees return [from exile], they find others on the land they used to occupy. Fear of being denounced as genocide perpetrators stops many from reclaiming their land” (Sarkin 1999: 786). A special committee of land disputes could be created within the truth and reconciliation commission. Its task could be limited to the collection of testimonies over land disputes, followed by recommendations for the government or encompass a mission of mediation between parties. Above all, the committee should provide a forum where land disputes can be discussed without the fear of being accused of participation the mass murders.

We can conclude the design of the framework for a Rwandan truth commission with Priscillia Hayner’s (2001: 9) words: “the decision to dig into the details of a difficult past must always be left to a country and its people to decide, and in some countries there may be reasons to leave the past well alone.” Only a truth commission designed for Rwandans by Rwandans has a chance of success—bringing Rwanda towards reconciliation via the acknowledgment by all Rwandans of a common historical record based on the stories of both victims and perpetrators.

Conclusions

***Gacaca* versus Truth Commission?**

Three different responses have addressed post-genocide Rwanda. The first two—national and international trials—quickly demonstrated their inability to bring justice or reconciliation. In order to ease the judicial burden and deal with the overcrowded jails, the Rwandan government resurrected and transformed the traditional *gacaca*, a mode of restorative justice. Moreover, *gacaca* bears the potential to restore the social order via the participation of the whole community in the healing process. Victims are offered a forum through which they can reclaim their dignity, and *gacaca* provides the perpetrators with a channel through which they can expiate their guilt and tender apologies. The public accounts and hearings generate local narratives on which a better future will be built and thus lead Rwandans to reconciliation.

In the particular context of post-genocide Rwanda, the restorative benefits of a truth commission would be similar to the benefits brought by *gacaca*. Both modes need the same conditions to be successful: support from the rulers and international community but not interference; protection and participation for all (victims, alleged *génocidaires*, and the rest of the community); and above all, legitimacy.

Table 2: Comparison *Gacaca* versus Truth Commission.

Institutional Component	<i>Gacaca</i>	Truth Commission
<i>Goals</i>	Justice for reconciliation	Truth for reconciliation
<i>Institution</i>	Court	Commission
<i>Members</i>	“Honourable” community members for the Seat; the whole community for the Assembly	Independent Rwandan commissioners chosen on the basis of their competences
<i>Crimes investigated</i>	Crimes from cat. 2 to cat. 4	To be defined by the panel
<i>Punishment</i>	Imprisonment; reintegration	No punishment but recommendations
<i>Amnesty</i>	No amnesty but reduced penalty in case of full confession	To be defined by the panel
<i>Time-period</i>	From Jan. 1, 1990 to Dec. 31, 1994	To be defined by the panel
<i>Publicity</i>	Among the community	Throughout Rwanda via radio
<i>Process</i>	Trials; negotiations	Investigations; public hearings
<i>Burden of proof</i>	Testimonies; accusations	Testimonies
<i>Narrative</i>	Local narratives that can vary	One single narrative established in an official record
<i>Compensation and reparation</i>	Depends on nature of crime	To be defined by the panel
<i>Protection</i>	For victims, perpetrators, witnesses, and judges	For victims, perpetrators, witnesses, and commissioners
<i>Role of the Rwandan government</i>	Support but no interference	Support but no interference
<i>Role of the international community</i>	Support (financial and logistical) and “ <i>accompagnement critique</i> ”	Support (financial and logistical) and participation in the panel

Yet, *gacaca* and a truth commission diverge on a fundamental premise. Whereas *gacaca* seeks justice for reconciliation, a truth commission seeks truth for reconciliation. The *raison d'être* of a truth and reconciliation commission is the establishment of an official record of the past atrocities based on the public accounts of both the victims and perpetrators. Such a clarification of history results, according to Roy Brooks (2004: 148), to “a collective judgment regarding the magnitude of the injustice, including its lingering effects, and the extent of the perpetrator’s responsibility.” A truth commission could explore Robert Lifton’s notion of “atrocious-producing situation” (Lifton 1986; Lifton and Markusen 1990) in the particular case of Rwanda where many “ordinary people” transformed into “ordinary killers.” The final report could describe not only the actual chain of events, but also the mechanisms of the 1994 mass murders, the characters of the planning, and the underlying forces that compelled so many Rwandans to participate in the bloodbath. Moreover, Elazar Barkan suggests that “setting the historical record straight can fuse polarized antagonistic histories into a core of shared history to which both sides can subscribe” (2000). It would help post-genocide Rwanda to create what Jürgen Habermas (1990) calls “discourse ethics,” a set of norms on which people with different interests can agree. A truth commission could deal best with this crucial issue of establishing a legitimate historical record and should therefore be implemented.

Next to national and international trials, which must continue to prosecute the leaders and the architects of the genocide in symbolic trials, a truth commission should operate conjunctively with *gacaca* proceedings. Although the latter are controversial as shown in this article, they constitute the only reasonable solution for post-genocide Rwanda. Thus, the truth-seeking body could foster the establishment of a new narrative shared by all Rwandans on the basis of the local narratives that came from the emotional texture of *gacaca* public hearings but which also may largely vary from one community to another, especially between majority-Hutu and majority-Tutsi communities. This new narrative could encompass the ideal of an ethnicity-free country as promoted by the Rwandan officials (Bonner 1994b; McKinley 1996; Lacey 2004b). The interaction between trials, *gacaca*, and a truth commission can shed light onto collective responsibility as well as on individual responsibility. The conjunction of these three different responses to post-genocide Rwanda has the potential to engage Rwandans onto the path towards reconciliation. Furthermore, the international community, which did little while atrocities were committed, owes it to Rwandans to assist them in providing support and resources to ensure that such a perilous exercise has the best chance of success.

Eventually, alongside justice and truth seeking processes, memorials and new symbols (Agence France Presse 2002; Lacey 2001; Lacey 2004b) encourage the reconciliation of a united nation and above all favorably shape a new narrative, which if shared by all Rwandans constitutes the best protection against the reoccurrence of radical evil.

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