

**JUSTICE AND RECONCILIATION AS INSTRUMENTS OF  
POLITICAL STABILITY IN POST GENOCIDE  
SITUATIONS: A CASE STUDY OF RWANDA**

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*DECLARATION*

This dissertation is my original work and has not been presented for a degree in any other university.

Andrew Rwigamba (sign) \_\_\_\_\_ Date: \_\_\_\_\_

This dissertation has been submitted for examination with my approval as a University Supervisor

Makumi Mwangiru, Ph.D. Signature: Mwangiru Date: 12/11/05

## **ABSTRACT**

The study sought to investigate the demands for justice could under gird reconciliation and examine what type of leadership, social processes, policy and institutional framework needed to be in place. Lessons were drawn from the Gacaca Judicial system, the National Reconciliation Commission and the International Criminal Tribunal for Rwanda (ICTR).

It emerged from the study that justice is not only about the law and punishment, justice must repair, reconcile and eliminate the inequalities within the society. There is no uniform formula to the approaches of justice and reconciliation. Institutional frameworks like the National Unity and Reconciliation Commission and the Community Gacaca Courts are very effective in facilitating the process of reconciliation.

The challenge for Rwanda is how to employ justice and social reconstruction to respond to past abuses in a manner that allows communities with different experiences, needs and goals to learn to live together again.

## **ACKNOWLEDGEMENTS**

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## **ABBREVIATIONS.**

1. ANC African National Congress
2. AVEGA Association of Widows of Genocide Agahozo
3. BNR Central Bank of Rwanda (*Banque Nationale du Rwanda*)
4. COMESA Common Market for East and Southern Africa
5. DRC Democratic Republic of Congo
6. ex-FAR Former Rwandese Armed Forces
7. FARG Genocide Survivor's Fund
8. ICC International Criminal Court
9. ICTR International Criminal Tribunal for Rwanda
10. IMF International Monetary Fund
11. MDR Republican Democratic Movement
12. MINALOC Ministry of Local Government, Information and Social Affairs
13. MINECOFIN Ministry of Finance and Economic Planning.
14. MINEDUC Ministry of Education and Scientific Research
15. MINERENA Ministry of Environment and Natural Resources
16. MINIJUST Ministry of Justice
17. PARMEHUTU Party for the Promotion of Hutu
18. PDC Centrist Democratic Party
19. PDI Ideal Democratic Party
20. PL Liberal Party
21. PSD Social Democratic Party
22. PSR Rwandese Socialist Party
23. RPA Rwandese Patriotic Army
24. RPF Rwandese Patriotic Front
25. RTLM Radio Télévision Libre des Mille Collines
26. RTRC The Reception, Truth and Reconciliation Commission (East Timor)
27. UNAMIR United Nations Assistance Mission to Rwanda.



- 28. UNICEF United Nations International Children's Emergency Fund
- 29. UNO United Nations Organisation
- 30. UNTAET United Nations Transitional Administration in East Timor

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# CHAPTER ONE

## Introduction

Strategies for coping with the past deep-rooted conflict that resulted in genocide have ranged from massive criminal prosecutions to amnesty of perpetrators. The effective prosecutions and punishment of offenders are intended to deter others from committing the same crimes and perhaps to convince those groups engaged in such behaviour to stop. This argument is based on the assumption that if potential wrongdoers believe that they are likely to face punishment for their misdeeds they may be persuaded not to initiate such activity. This aspect of punishment resulting from prosecutions is therefore linked to prevention and deterrence.<sup>1</sup> It is also justified as being in support of the rule of law,<sup>2</sup> and the need to protect society.

The concept of reconciliation on the other hand, remains elusive in countries trying to get over conflict and massive violence. A question often asked is whether there can be reconciliation without justice. The majority of people do not have to read the philosophers in order to hold some basic ideas about justice. Nearly all would argue that crimes deserves to be punished, whatever the nature of the offence. They further argue that punishment of the

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<sup>1</sup> MC Bassiouni (1996) "Searching for Peace and Achieving Justice : The Need for Accountability "

<sup>2</sup> CS Ninno (1991) " The duty to punish past abuses of human rights put into context: The case of Argentina" 100 Yale law journal 2619 - 2020

perpetrators will bring justice ultimately.<sup>3</sup> The issue of positive contribution by criminal trials to the process of reconciliation, while widely accepted is also a matter of debate and controversy. Reconciliation, generally, refers to a process by which people who were former enemies put aside their memories of past wrong, forego vengeance and give up their earlier group ideals in favor of wider community aspirations. Reconciliation is part of religious and philosophical traditions of most communities, mainly as essential for a cohesive society and therefore peace and social security.<sup>4</sup> With reconciliation having some links to religion for social preservation and continuity, it also has connotations that imply faith. It means therefore that it is something that people must build and does not just happen. It demands a positive action from the perpetrators and victims in the group, which means therefore that the process involves interaction between the victim and perpetrator.

Reconciliation of individuals can be done through the process of justice and the acknowledgement of truth.<sup>5</sup> Reconciliation therefore is just as indispensable as justice to reestablish a new relationship. Although some people do not believe in it, they are at the same time reluctant to do away with it altogether. The majority of people believe that the cycle of violence, revenge and counter violence can only be stopped if the process of reconciliation has been initiated and the momentum maintained.

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<sup>3</sup> Preamble, Rwanda Organic Law No.16/2004 of 19/6/2004

<sup>4</sup> Idi T Gaparayi, (2001) "Justice and Social Reconstruction in the Aftermath of Genocide in Rwanda : an evaluation of possible role of Gacaca Tribunals " African Human Rights Journal.

<sup>5</sup> Ibid

## **Statement of the Research Problem.**

Few states in Africa today continue to be haunted by their process of state formation like Rwanda. Believed to have emerged as a state in the eighteenth century,<sup>6</sup> Rwanda has had to grapple with a culturally deep-rooted socio-economic and identity crisis over the Hutu (traditionally agriculturalists) and Tutsi (pastoralists). Over time, during the colonial and post-independence Governments during the Kayibanda and Habyarimana regimes, these socio-economic identities were politically manipulated polarizing the society, eventually leading to the 1994 genocide that saw nearly a million Rwandans dead.

With the RPF triumph and takeover of government in the aftermath of the genocide, the key challenge was how to reconcile its stated objectives of rebuilding the Rwandan society and ensuring an all-inclusive state after policies of division and discrimination that were sustained for decades leading to the 1994 tragedy. This demanded social reconciliation at one level and the demands for justice as perceived by the victims of genocide at another.

The question, therefore, was: Can the demands for justice undergird reconciliation? If the answer to this question is in the affirmative, what type of leadership, social processes, policy and institutional frameworks needed to be in

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<sup>6</sup> Alison Des Forges (1999), Leave non to tell the story. Human Rights Watch USA

place? To what extent is this process either constrained or facilitated by external institutions?

This is the question that has to be answered in appreciating the task before Rwanda as it continues to emerge from a divided and polarized society to a unified and reconciled one.

### **Objectives Of The Study**

Broadly stated, this study seeks to examine and analyse the extent to which justice and reconciliation can be pursued to mutually engender state reconstruction. Specifically, this study seeks to:

- (a) Examine and analyse the role of institutions in engendering justice and reconciliation processes. The study shall examine, the roles played by leadership in evolving policies, organizing ideologies and how these help to re-orient a people's belief system.
  
- (b) Draw lessons from the Gacaca judicial system, the National Reconciliation Commission of Rwanda and the International Criminal Tribunal for Rwanda (ICTR).

### **Justification of the study.**

Many societies emerging from genocide yearn for guidelines on how to heal and rebuild their societies. Despite efforts towards this end, our long-standing legal and philosophical analyses in this regard has not been adequate.

Rwanda has delved to draw from its history and cultural heritage to emerge from the effects of the 1994 genocide to reconstruct the country and gear the society towards national development. To this extent, this study seeks to analyse Rwanda's approach to justice, reconciliation and reconstruction in the aftermath of the 1994 genocide.

### **Literature Review**

The study will examine literature from academic journals, news articles and scholarly books on justice, and especially as it relates to reconciliation, in the concept of restorative justice. While the literature may exist, there don't seem to be much appreciation of the idea of restorative justice. Justice as a concept can span extremely wide areas of thought and philosophy, including legal, social, political and economic areas, to name but a few.

The debate concerning justice can go on in much depth when it comes to linguistic analysis, especially when it is connected to its philosophical reasoning. Justice is a permanent passion of public life. Every policy maker and litigant

claims it. Everyone points to it to justify his or her claims. Daniel C. Maguire argues that when we speak of justice, we are reaching for foundations of human existence.<sup>7</sup> Justice is not just one virtue among the lot. It is the cornerstone of human togetherness. To try to define it is to address the most profound questions ever to challenge the human mind. In trying to define justice one is defining a person and his or her relationship with the society. The theory of justice implies fair-play in the absence of alternatives among individuals and their society.

Maguire defines justice as "The virtue which renders to each his own".<sup>8</sup> Justice is a response to a powerful moral intuition that 'something must be done,' that something (someone) has disturbed the way things ought to be and something must be done to right the wrong, to make things right. In fact, this sentiment is often expressed as the imperative: "justice *must* be done."

Justice however takes on a different conception, as Zehr points out, when looked at in terms of reconciliation in what has been described as restorative justice.<sup>9</sup> The root of the word reconciliation comes from the Latin word *reconciliare*, which means to be friends again, to bring together the spirits that were separated. It also comes from the Greek word *katalligie*, which refers to the process of changing something thoroughly. In other words, it means a change of attitude or relationships, a change from enmity to friendship. A combination of

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<sup>7</sup> Daniel C. Maguire (1980) A New American Justice : A moral proposal for the reconciliation of personal freedom and social justice. Winston Press 430 Oak Grove Minneapolis, MN 55403

<sup>8</sup> Bell Richard (2002) African Philosophy. Rontledge "New Fetter Lane London".

<sup>9</sup> Howard Zehr "Retributive Justice, Restorative Justice" *New Perspectives on Crime and Justice -- Occasional Papers Series* (Kitchener: Mennonite Central Committee, Canada Victim Offender Ministries 1985) p12

this definition of reconciliation with the concept of justice is what has been described as restorative justice.

Restorative justice is fundamentally concerned with restoring social relationships, with establishing or re-establishing social equality in relationships. That is, relationships in which each person's rights to equal dignity, concern and respect are satisfied. What practices are required to restore the relationship at issue will, then, be context-dependent and judged against this standard of restoration. As it is concerned with social equality, restorative justice inherently demands that one attend to the nature of relationships between individuals, groups and communities. In order, therefore, to achieve restoration of relationships, restorative justice must be concerned both with the discrete wrong *and* its relevant context and causes.<sup>10</sup>

While Albert Eglash is generally credited with coining the term "restorative justice" in his 1977 article "Beyond Restitution: Creative Restitution,"<sup>11</sup> the conception of justice to which he referred was not new. Such conceptions of justice have been more or less prominent through most of history. As criminologist John Braithwaite observes, "[r]estorative justice has been the dominant model of criminal justice throughout most of human history for all the worlds' people."<sup>12</sup> Restorative conceptions of justice claim their roots in both

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<sup>10</sup> Sarre, R. (1999b). Restorative Justice: Translating the Theory into Practice *University of Notre Dame Australia Law Review*, 1(1) 11-25.

<sup>11</sup> Eglash, A. (1977), Beyond Restitution: Creative Restitution, in J Hudson and B Galaway (eds). *Restitution in Criminal Justice*, Lexington Mass: Lexington Books

<sup>12</sup> John Braithwaite 1997 *Restorative Justice: Assessing an Immodest Theory and a Pessimistic Theory*.  
Review Essay Prepared for University of Toronto Law Course, Restorative Justice: Theory and Practice in



Western and non-Western traditions, including Africa, as this study shall also remark with the example of pre-colonial justice system in Rwanda, Gacaca in the next chapter.

Van Ness and Strong note that many pre-colonial African societies "...aimed less at punishing criminal offenders than at resolving the consequences to their victims. Sanctions were compensatory rather than punitive, intended to restore victims to their previous position."<sup>13</sup> One of the main functions of precolonial law, as Mqeke describes it, was "...the restoration of the disturbed social equilibrium within the community."<sup>14</sup>

The African concept of *ubuntu* is the philosophy of personhood underlying the traditional conception of justice. Providing a precise definition of *ubuntu* is difficult. It denotes a sense of humanity, of the natural connectedness of people. Villa-Vicencio explains "...a traditional African understanding of *ubuntu* affirms an organic wholeness of humanity -- a wholeness realized in and through other people. The notion is enshrined in the Xhosa proverb: *umuntu ngumuntu ngabantu* (a person is a person through persons)."<sup>15</sup>

*Ubuntu* is commonly described through the saying "I am because you are" or "my humanity is tied up with your humanity". The effect such a conception of

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Criminal Law and Business Regulation. (This article is also available on the World Wide Web, Australian Institute of Criminology Home Page -- <http://www.aic.gov.au>) p3

<sup>13</sup> Daniel Van Ness and Karen Heetderks Strong *Restoring Justice*, Cincinnati: Anderson Publishing Co., 1997, p9

<sup>14</sup> R. B. Mqeke "Customary Law and Human Rights" *The South African Law Journal* 1995, pp364-365

<sup>15</sup> Charles Villa-Vicencio "Identity, Culture, and Belonging: Religious and Cultural Rights" John Witte, Jr. and Johan D. van der Vyver eds., *Religious Human Rights in Global Perspectives: Religious Perspectives* The Hague: Martinus Nijhoff Publishers, 1996) at 527. Also see: Gabriel Setiloane *African Theology: An Introduction* (Johannesburg: Skotaville Publishers, 1996); Valiant A. Clapper "Ubuntu and the Public Official" *Publico* December 1996 at 27; Lionel Abrahams, "Ubuntu or not to?" *Sidelines* June 1997 p1

humans must have on one's understanding of justice is clear. If one's humanity is tied up with the humanity of all others what makes others worse off also brings harm to oneself. Responses to wrongdoing, therefore, must aim to repair the damage, to make the wrongdoing better off for it is only in doing so that one can address the harm the victim(s) suffered. In other words, restoration requires attention to each part that suffers, for restoration is impossible if a part of the whole is harmed. Colonialization<sup>16</sup> replaced much of African customary law with a Western retributively oriented system.

Indeed, drawing from this there have existed some debate on the place and suitability of legal concepts such as restitutive justice, corrective justice and retributive justice on the one hand and restorative justice on the other. The former are Western in orientation and the restorative justice African and has therefore gained some connotation of inferiority in the eyes of some Western scholars.

Bianchi suggests that scholars, particularly those from the West, are so attached to the punitive model, which forms the backbone of most current justice systems, that they are unable to contemplate the success of other models in other times and places.<sup>17</sup> According to him, "[a]lthough punitive criminal law is a rather late development in Western history and, in its present form, is a construction of recent modern times, many learned scholars in this field believe

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<sup>16</sup> Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa*, New York, NY: Houghton Mifflin Co., 1998, p103

<sup>17</sup> Herman Bianchi *Justice as Sanctuary: Toward a System of Crime Control*, Bloomington: Indiana University Press, 1994, p67

in the shaky dogma and assume that our present punitive structure of crime control depends on some kind of eternal and natural law, having always existed, though in a cruder form, and having survived because it turned out to be more suitable."<sup>18</sup>

Bianchi even boldly asserts that there is a portrayal in some quarters of pre-modern justice "...as vengeful and barbaric, in contrast to the more rational and humane approach of modern justice."<sup>19</sup> He admits that while there have been many theories attempting to explain the origin of our retributive system, which is most prevalent today, none have succeeded in offering a "plausible and satisfying theory of its origin"

There does seem to be agreement that the move from Western community justice, similar as the one described above in the African concept of *Ubuntu*, to what we know today as public, state centered, retributive justice began as early as the eleventh and twelfth centuries. For centuries to follow, however, the old systems of conflict resolution, repair, and dispute settlement survived, openly or covertly, in many countries. It would take until the nineteenth century for this new model of (retributive) justice to gain prominence.<sup>20</sup> Whatever other factors may have prompted this change, it is

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<sup>18</sup> Ibid, p68

<sup>19</sup> Ibid

<sup>20</sup> Howard Zehr *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, 1990) pp 106-120.

clear, at least in part, that it was motivated by the desire for political power both in the secular and religious spheres.<sup>21</sup>

Legal Historian Harold Berman argues that this change amounted to a "legal revolution."<sup>22</sup> This revolution resulted in a reconceptualization of the nature of disputes. By its end the crown had proclaimed itself "keeper of the peace" and as such would be the victim whenever the peace was violated. The role of the courts changed in suit; no longer was their task to referee between disputing parties requesting their involvement. Courts now took up the role of defending the crown. They began to play an active role in prosecution, taking ownership over those cases in which the crown was deemed victim.<sup>23</sup> Justice as the work of these courts came to mean "applying rules, establishing guilt, and fixing penalties."<sup>24</sup>

This new role of the crown resulted in devastating and lasting effects for the real victims harmed by wrongful acts. They were no longer parties in their own cause, their disputes having been effectively stolen from them. This remains the situation today even in Africa as victims have little or no power with respect to their case. They can not initiate or stop or settle a prosecution without the permission of the state, and can often be locked out of the process altogether if

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<sup>21</sup> Zehr, *Ibid.* Van Ness argues that "countries which trace their legal heritage to England can point to the reign of William the Conqueror as the turning point from restitution-centered justice to state-centered justice. William and his descendants used the legal process to increase their political power, competing with the growing influence of the church over secular matters under canon law, and with local systems of dispute resolution controlled by the barons." Daniel Van Ness "Restorative Justice" Burt Galaway and Joe Hudson eds., *Criminal Justice, Restitution, and Reconciliation* (Monsey, New York: Criminal Justice Press, 1990) pp57-59

<sup>22</sup> Harold J. Berman *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983)

<sup>23</sup> Zehr, *op.cit.* p110

<sup>24</sup> *Ibid.*, p112

they are not useful as a witness in the case. Evidence of this change in focus from victim-centered to state-centered justice can be found in the preference for fines (payable to the crown) instead of restitution and for punishment over settlement. Punishment served the interests of the state serving as a show of power and authority while doing nothing to address the harm caused by the wrongdoing. Crime was about law breaking not harm. As a result, attention was focused on the actions of the offender not the effects of his behaviour.<sup>25</sup>

To come back to the comparison between justice systems, as above mentioned, of restitutive, corrective, retribution and restorative justice, there are discernible differences. Restitution can serve any number of criminal law purposes, most of which are not restorative. First of all, it can be retributive or punitive in the conventional sense, for instance, hard labour in prison, or menial community service, to "pay-back" society for the crime. Secondly, it can be understood as a deterrent, ensuring that "crime doesn't pay." In this sense, restitution is no different than seizing boats and cars that have been purchased with "criminal" money. Thirdly, restitution can be seen as rehabilitative of the perpetrator as an individual, teaching a sense of responsibility. In none of these senses, however, does restitution satisfy the demands of justice conceived of as restorative in nature. Restitution as a common law concept roughly denotes the idea that a gain or benefit wrongly taken or enjoyed should be returned.<sup>26</sup>

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<sup>25</sup> Bianci, *op.cit.* p69

<sup>26</sup> Sarre, R. (1994), *The Evaluation of Criminal Justice Initiatives: Some Observations on Models* *The Journal of Law and Information Science*, 5 (1), 35-46.

Justice as restitution holds that the satisfaction of justice requires the wrongdoer to repay or return what he has taken from the sufferer of wrong, the idea being that through his actions the wrongdoer has been enriched at the expense of the sufferer of wrong. The strength of restitution is that it is more focused on the sufferer of the wrong than say retribution. Through its focus on returning that which was lost to the sufferer of wrong, restitution places the actual sufferer at the center of any attempt to do justice. According to Van Ness, "[r]estitution has its roots in justice systems which viewed crime as an injury more to the victim than to the government."<sup>27</sup>

Restorative justice shares this focus on the actual harm done by the wrongdoer's act and on the person who suffers this harm. In other words, restorative justice and restitution are both outcome focused, directing their attention to the results of an action and not some inherent nature of the action itself. However, restorative justice does not limit its focus to victims. Restorative justice expands its focus to include the perpetrator and the community in attempting to respond to the harm done to the victim. This expanded focus is a product of the difference between restorative justice and restitution with regard to their understanding of the harm resulting from wrongdoing and in what is required to address the situation.<sup>28</sup>

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<sup>27</sup> Van Ness, *op.cit.* Also see: Strong *op.cit.* The authors note the striking similarity between the U.K. guidelines for restitution developed several years ago and King Ethelbert's schedules for restitution developed 1,400 years earlier.

<sup>28</sup> Sarre, *op.cit.*

What justice requires on this account is a material transfer between perpetrator and victim. However, because restitution requires quantification and valuation of that which must be transferred between perpetrator and victim, it cannot account for the non-material harms a victim can and often does suffer. In fact, it is the exception not the rule when the primary loss a victim suffers is material in nature. Restitution then ignores the very real harm victims experience: a harm to their sense of security resulting from a breach in the social relationship between victim and perpetrator as members of society.

Corrective justice, on the other hand, recognizes the intangible aspect of harm resulting from the actions of a wrongdoer. Through the use of compensatory damages corrective justice seeks to correct the inequality created through the interference with the sufferer's rights.<sup>29</sup> Thus, corrective justice answers restitution's failure to address the non-material aspects of harms resulting from wrongdoing. Corrective justice speaks the truth that wrongdoing is not just an interference with the material possession of the sufferer, but with a particular right belonging to him. However, corrective justice offers the same response to such harm as restitution does for material loss, namely, a transfer from the wrongdoer to the sufferer. The result is that the perpetrator is made worse off without altering the position of the victim. This therefore cannot achieve the equality between perpetrator and victim with which justice is concerned.<sup>30</sup>

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<sup>29</sup> E. Weinrib *The Idea of Private Law*, Cambridge, Mass: Harvard University Press, 1995, p78

<sup>30</sup> *Ibid*

Whereas corrective justice is concerned with equality in the abstract sense, a sort of mathematical equality (i.e. if I make you so much worse off then you will be in equally as bad a position as I am), the aim of justice understood as restoration is, for the reason discussed earlier, an ideal of social equality. Thus, the old adage 'two wrongs don't make a right' holds true here. Making the wrongdoer worse off in fact moves us further away from the ideal of social equality, and, thus, further away from meeting the demands of justice.

Retributive and restorative justice share a common conceptual ground in their commitment to establishing and re-establishing *social* equality between the wrongdoer and the sufferer of wrong.<sup>31</sup> Retributive justice is, at its root, concerned with restoration of equality in relationship. Retributive theory identifies the achievement of social equality with a particular set of historical practices (typical of a wide range of societies) often known as punishment. In other words, retributive justice names punishment as the necessary mechanism through which such equality is to be achieved; it identifies the very idea of restoration with punishment. It attempts to restore social equality through retribution against the wrongdoer exercised through isolating punishment.<sup>32</sup> This is the essence of the International Criminal Tribunal for Rwanda,<sup>33</sup> in that it is retributive than restorative.

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<sup>31</sup> Zehr, H. (1985), Retributive Justice, Restorative Justice, in *New Perspectives on Crime and Justice: Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC Office of Criminal Justice*, Issue No. 4, Akron PA: Mennonite Central Committee.

<sup>32</sup> Tomaino, J. (1999a), Punishment Theory in, Sarre, R. and Tomaino, J. (eds) *Exploring Criminal Justice: Contemporary Australian Themes*, Institute of Justice Studies, Adelaide, 151-186.

<sup>33</sup> www.ictr.org



By contrast, restorative justice problematizes the issue of what set of practices can or should, in a given context, achieve the goal of restoring social equality. Accordingly, for restorative justice theory, identification of these practices requires social dialogue<sup>34</sup> that includes wrongdoers, sufferers of wrong, the community to which they belong and demands concrete consideration of the needs of each for restoration. The notion of restoration implies the existence of a state of wrong that disrupts the relationship in society between those implicated in the doing and the suffering of a wrong. This captures important moral intuitions in more conventional understandings of *justice* that are simply lost by conceiving the alternatives in language such as mediation or healing, that would make doing justice indistinguishable from a kind of generalized therapy for society, where justice simply disappears or is submerged by behaviour, or thought modification.<sup>35</sup>

At the same time, in taking the social dimension seriously, restorative justice captures an idea of transformation, of orientation towards the future. While the beginning point of restorative justice is a state of wrong that has disturbed the relationship between the wrongdoer and the sufferer of wrongdoing, its *endpoint* may be quite different than the *status quo ante*. One need only think of the debate in South Africa about the appropriate response to human rights abuses under apartheid. One position, held by some in the anti-

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<sup>34</sup> See for an example of the role of social dialogue in the realization of social equality J. Nedelsky and C. Scott "Constitutional Dialogue" in J. Bakan and D. Schneiderman, eds., *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992) p59

<sup>35</sup> A. Kojève, "The Specificity and Autonomy of Droit", trans. B-P. Frost, R. Howse, D. Goulet, *Interpretation: A Journal of Political Philosophy* (1996).

apartheid movement itself, was that the reconstruction of South African society as a whole as a just society in which all races would enjoy political, social and economic rights was the necessary and sufficient response to these human rights abuses in the past.<sup>36</sup>

The view that prevailed, however, and which is reflected in the Truth and Reconciliation Commission, was that justice could not really be done without somehow addressing the needs for restoration arising out of particular wrongful acts in the past. Yet the overall objective could hardly be understood as restoring the actual *status quo ante* in the relationship in society of the wrongdoers and the sufferers of wrongdoing, which was in fact radically *unequal*. In sum, the ultimate aim of restorative justice as justice could not be fully accomplished, either by forgetting the discrete wrongs of the past, or by ignoring the task of broader social transformation.

Thus, restorative justice begins from the disequilibrium of a relationship in society, but what is ultimately to be restored is not the facts of the relationship before disruption but an ideal of a relationship of equality in society, an ideal that survives at least *qua* ideal when basic rights such as security of the person are respected even within a basically unjust context of social equality.<sup>37</sup>

Without this recognition transformation of society can be hindered, which can be by ignoring feelings of injustices and mistrust on the part of the population against the government and other ethnic groups. Sustaining a peace

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<sup>36</sup> South Africa Truth and Reconciliation Report, March 2003

<sup>37</sup> Sarre, R. (1999b). Restorative Justice: Translating the Theory into Practice *University of Notre Dame Australia Law Review*, 1(1) 11-25.

process after a conflict such as the genocide may be prejudiced if perpetrators of atrocities remain at large in positions of power or are seen to continue to act with impunity in the country or in their own communities. It is therefore necessary to rebuild confidence in the society and eliminate such practices as political killings, ethnic cleansing in order to allow a transition to a peaceful society.

According to Hizkas Assefa, the interactions that transpire between the parties are not only means to communicate their grievances but also to engage in self-reflection about one's role and behaviour during the conflict.<sup>38</sup> Such interaction will in the end make each of the parties acknowledge and accept their responsibility. This recognition will address the injured and construct new positive relations.

According to the president Xanana Gusmao of East Timor, to start reconciliation process requires a balance of interests.<sup>39</sup> On the one hand, the interests of justice and on the other hand the interests of a suffering community. Justice is required as part of the healing process. It is accepted that the universality of pain, suffering and forgiveness, approaches to reconciliation and institutionalizing justice varies from country to country depending on the history and the type of transformation most appropriate to that particular country.

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<sup>38</sup> Peter Harris and Ben Raily(19998) "Democracy and Deep- rooted conflict: options for Negotiators" International IDEA

<sup>39</sup> Hizkas Assefa, (2001). Reconciliation in Peace building. A field guide Eds Inc. Ruychler and Thanya Paffen holding, lynne Reinner Publishers London.

## **Appraisal of the Literature**

It is evident that many studies have grappled with the issue of justice as it relates to reconciliation, whether generally or in post-conflict situations. The literature reviewed has therefore been able to demonstrate the critical role of the concept of restorative justice in social reconciliation, as compared to retributive, corrective or retributive justice systems.

With such different strands of justice it is also evident that there is no common understanding of justice. The development of jurisprudence however traces it to a point in history where pre-modern societies relied on restorative justice in managing conflict and ensuring social cohesion. In many African societies, this would hold until the coming of colonialism. The challenge is how to use restorative justice in political stability, social development and conflict management. This is a question that needs to be answered, and from which this study draws from the example of Rwanda.

## **Conceptual Framework**

A post-conflict country like Rwanda is characterized by a polarized population, with the people living in mistrust of each other and therefore finding little common ground on which to base their unity and mutual development. However, as the literature bears it out, restorative justice problematizes the issue of what set of practices can or should, in a given context, achieve the goal of restoring social equality.

Accordingly, for restorative justice theory, identification of these practices requires social dialogue<sup>40</sup> that includes wrongdoers, sufferers of wrong, the community to which they belong and demands concrete consideration of the needs of each for restoration. The notion of restoration implies the existence of a state of wrong that disrupts the relationship in society between those implicated in the doing and the suffering of a wrong.

In taking the social dimension seriously, restorative justice captures an idea of transformation, of orientation towards the future. While the beginning point of restorative justice is a state of wrong that has disturbed the relationship between the wrongdoer and the sufferer of wrongdoing, its endpoint ideally should be understanding between the belligerents for political stability and more so socio-economic development.

Post-genocide Rwanda embarked on a socio-political agenda emphasizing justice and reconciliation. Drawing from the above mentioned framework as informed by the concept of restorative justice, this study aims to analyse the Rwandan situation beginning with the history of its conflict and the institutions currently in place to gauge how the country has fared in the post-genocide period and what lessons can be drawn.

It will also dwell on the International Criminal tribunal for Rwanda and contrast its framework of retributive justice to Gacaca as the embodiment of restorative justice.

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<sup>40</sup> See for an example of the role of social dialogue in the realization of social equality J. Nedelsky and C. Scott "Constitutional Dialogue" in J. Bakan and D. Schneiderman, eds., *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992) p59

## **Hypothesis of the study**

1. That justice and reconciliation are mutually reinforcing variables whose operationalisation is inherent in the type of social process and symbolic constructions undertaken by leadership in a given society.
2. That justice and reconciliation is a function of institutions' ability to promote collectivized values of both victims and perpetrators of injustice in question.

## **Methodology**

In carrying out this study, a variety of data will be used. Primary sources will include interviews with the local population and institutional leaders. Secondary data will be derived mainly from relevant literature that addresses the issue of justice and reconciliation. The study will also use magazines, newspapers, and relevant journals, published and unpublished papers from relevant workshops and seminars.

## **Brief outline of the proposed thesis**

### **CHAPTER 1. Framework of the study.**

**Introduction;** Research problems; Objectives of the study; justification of study; Literature Review, Theoretical framework; Hypothesis and Methodology.

### **CHAPTER 2. Socio-Political History of Pre- and Post-Genocide Rwanda**

Introduction; Background; Pre-colonial Rwanda and its institutions; The Colonial Period; Post-Independence Period; The Rwandan Genocide; Post-Genocide Rwanda: Laying the Foundation Towards National Reconciliation.

### **CHAPTER 3. Justice and Reconciliation in Post-Genocide Rwanda**

Introduction; The Post-Genocide Responses; Justice and Responsibility; International Criminal Tribunal for Rwanda; Genocide Trials; Gacaca Courts; The National Unity and Reconciliation Commission; Comparative Analysis of the National Commissions on Reconciliation; Challenges.

### **CHAPTER 4. The Role of the International Criminal Tribunal for Rwanda in Regional Governance**

Introduction; International Criminal Tribunals; The Basis for Prosecuting perpetrators of Genocide; Amnesty; The case for prosecution; International Law and the Prosecution of the Crime of Genocide; The impact of Prosecutions on Regional governance.

### **Chapter 5. Analysis.**

**Introduction;** Justice in the process of social reconstruction; Substantive and assessment of GACACA law; General overview of the legislation; Jurisdiction;

General principles of procedural law; Fair trial guarantees; Reconciliation and social reconstruction.

## **Chapter 6. Conclusions and recommendations.**

Introduction; Conclusions and recommendations



## CHAPTER TWO

### SOCIO-POLITICAL HISTORY OF PRE- AND POST-GENOCIDE RWANDA

#### INTRODUCTION

In a post-conflict situation, reconciliation is a must, but can also be quite difficult to achieve. The role of the state is of paramount importance to make sure that reconciliation takes root. National unity and a culture of human rights prerequisites for the reconciliation process to take off.<sup>41</sup>

Reconciliation, however, has to find its basis on the history of the conflict it seeks to prevent. It is against this background that this chapter traces the history of the conflict that led to the 1994 Rwandan Genocide. It delves into pre-colonial Rwanda and emphasizes the socio-economic and political unity that prevailed under the Rwandan monarch (*mwami*) before the coming of colonialism. The chapter also discusses the colonial period, dwelling on the lasting negative effects of social division that resulted in the genocide.

The colonial administration with the connivance of the Roman Catholic Church, based on divisive and false racial differences between Rwandans, led to

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<sup>41</sup> Daniel Van Ness "Restorative Justice" Burt Galaway and Joe Hudson eds., *Criminal Justice, Restitution, and Reconciliation*, Monsey, New York: Criminal Justice Press, 1990

the formation of sectarian political parties and, beginning with the so-called 1959 Hutu Revolution, saw the first mass killings and exile of Tutsi from Rwanda. There followed more killings and official government marginalisation of the Tutsi in the Nineteen Sixties through to the early Nineteen Nineties. In appreciating this history, the chapter also looks at the efforts of the post-genocide government to lay the foundation towards national stability and reconciliation.

The basis of the post-genocide government's efforts drew from the Arusha Peace Agreement of 1993, which has informed the road to national reconciliation and development. The chapter therefore also dwells on the Arusha Peace Agreement, and the Rwanda Patriotic Front's struggle that helped initiate the Arusha peace process.

## **BACKGROUND**

Rwanda is one of the smallest countries in Africa with just over twenty six square kilometres in size. Situated immediately south of the Equator, it shares its borders with the Democratic Republic of Congo (DRC), Uganda, Tanzania and Burundi. Rwanda's population is just over eight million in a country dominated by mountain ranges and highland plateaus of the great watershed between the Nile and the Congo River basins.

It is a land-locked country with an economy that depends on a costly and vulnerable transit trade to the Indian Ocean through Tanzania or Uganda and Kenya, or to the Atlantic through the Congo. The distance from Kigali to the

Indian Ocean is approximately one thousand five hundred kilometres and to the Atlantic coast some two thousand kilometres. Agriculture is the mainstay of the country's economy with a vast majority of the population being peasant farmers. Rwanda has an average population density of over 400 per square kilometre, which is among the highest in the world.<sup>42</sup>

Administratively, Rwanda is divided into ten *préfectures* (regions), each headed by a *préfet* (prefect) appointed by the President of the Republic. The *préfectures* are divided into one hundred and forty three *communes*, governed by a *bourgemestre* (mayor). The mayors are also appointed by the President.

## PRE-COLONIAL RWANDA

### Pre-colonial History and Institutions

Rwanda has a history of over two thousand years<sup>43</sup>, and was traditionally composed of *one* people sharing the same culture, language, religion, beliefs and socio-administrative institutions<sup>44</sup>. Its three social groups of the Twa, Hutu and Tutsi already inhabited the present-day Rwanda by about 1000 AD as one people. They shared the same culture and language (*Kinyarwanda*), and recognised the authority of a king (*umwami*) and his unifying supremacy through institutions such as the military (*Ingabo z'u Rwanda*), judiciary (*Gacaca*) and

<sup>42</sup> [www.britannica.com](http://www.britannica.com)

<sup>43</sup> Kanimba Misago, *Cahiers Lumiere et Societe* N0 18, August 2000, Kigali, p.6

<sup>44</sup> Harroy, J-P, *Rwanda*, Hayez/Bruxelles, 1984, pp.40-46

religion (*Imana*). The Banyarwanda believed that they had a common ancestor, *Kanyarwanda* or *Gihanga*, with whom tradition associates with the founding of the monarchy of Rwanda under the Nyiginya clan.<sup>45</sup>

The three social categories were integrative and unifying through eighteen common clans of Banyarwanda<sup>46</sup>. Through the Hutu-Twa-Tutsi social categories Rwanda was able to integrate conquered communities such as the Bashi and Bahavu from the Congo, and the Bakiga and Bahororo from Uganda, according to socio-economic activities of the communities.<sup>47</sup> These categories to some extent also defined the socio-economic order and allowed social mobility depending on the people's economic activity.<sup>48</sup> The Hutu were agriculturalists, the Tutsi pastoralists and therefore the more prosperous in the cattle economy, and the Twa were mainly artisans. However, there are examples in which a Hutu, for instance, in acquiring cattle could become a Tutsi (*kwihutura*) and the other way round (*gucupira*).<sup>49</sup> All this proved that the Hutu-Tutsi-Twa concepts of ancient Rwanda were far from being antagonistic 'racial' or 'ethnic' identities<sup>50</sup> as it was to be claimed by the colonialists.<sup>51</sup>

Indeed, what also kept Rwandans together is the institution of the *ubuhake* - a highly personalized relationship between two individuals of unequal

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<sup>45</sup> A Kagame, *Le Milices du Rwanda Précoloniale*, IRSAC 1962, pp. 15-18

<sup>46</sup> d'Hertefeldt, *Les Clans du Rwanda Ancien: Eléments d'ethnosociologie*, MRAC, Tervuren, 1971

<sup>47</sup> Kanyamacumbi, *Société, culture et pouvoir politique dans l'Afrique interlacustre: Hutu, Tutsi et Twa du Rwanda Ancien*, 1995

<sup>48</sup> A. Kagame, *Un abrégé de l'histoire du Rwanda de 1853 à 1972*. Butare p..21

<sup>49</sup> *Ibid.* p.21

<sup>50</sup> *Cahiers* N0 18, op.cit. p.16

<sup>51</sup> De Lacger Louis, *Rwanda, Première partie, le Rwanda ancien*, Louis de Lacger du clergé d'Albi. Edité par Grands Lacs, Namur, 1939

social status<sup>52</sup>. This patron/client relationship involved reciprocal bonds of loyalty and exchange of goods and services. It provided a place and a status within a hierarchical system. The patrons were mostly Tutsi, for their being the more wealthier in terms of cattle ownership, but the client could be a Twa, Hutu or Tutsi of inferior social status. However, a patron could have a client, but be a client himself.

The *ubuhake* system and social order were predominant in central Rwanda. In the regions dominated by Hutu in the northern and south-western areas, the system was referred to as *uburetwa*, and was based on land-lease contracts or donation of agricultural products.

The three categories therefore socio-economically complemented one another, with the unity and cohesion of the Banyarwanda as a people also being ensured through the *Gacaca* (traditional justice system) as the mechanism for settling disputes, therefore perpetuating unity (*ubumwe*) of the Banyarwanda.

### **Pre-colonial Justice System (*Gacaca*)**

*Gacaca*, like most traditional African justice systems, is collectivist, where the individual has no rights or duties other than within his or her group. The individual and the group are mutually complementary. This collective aspect was

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<sup>52</sup> Maquet, J. J. The kingdom of Rwanda. D. Forde (ed.) African worlds. Studies in the cosmological ideas and social values of African peoples. London, Oxford University Press, 1954, p98

an indispensable medium in which individuals lived out their relations with each other, and with the wider society<sup>53</sup>.

*Gacaca*, by definition, are traditional councils and tribunals made up of elders to resolve conflict and administrate justice. *Gacaca* literally means 'a resting and relaxing green lawn in the Rwandan homestead' where family members or neighbours met to exchange views on issues directly affecting them. Being communal and participatory, the *Gacaca* derived its impetus and legitimacy from *ubumwe bw' Abanyarwanda* (the unity of Rwandans), in as much as it complemented the same unity by being the cement that strengthened social relations in the name of justice<sup>54</sup>.

The administration of justice in Rwanda followed the natural social structure that began with the nucleus family, followed by the lineage, the clan and eventually the nation under *Mwami* (the king), who was the guarantor of justice for all. It is because of that hierarchy that the king was referred to as *Sebantu* (father of the people; the king was also *Umuryango mugari w' Abanyarwanda*, which translates to mean the head of larger national family). The family heads settled all simple cases within the family, and would represent the family in case of a dispute with another family in the *Gacaca*.

In essence, every Rwandan knew all the channels of arbitration to resort to in case of any litigation, starting from his own family head up to the king. This would include the political administrators, such as the *Préfets* of the Soil or

<sup>53</sup> Vedier, R., *Feodalites et Collectivisme Africain*, Presence Africain, 1961, p.79

<sup>54</sup> F.K. Rusagara, "Gacaca as a Reconciliation and Nation building Strategy in post-genocide", *Conflict Trends Journal*, 2/2005, pp20-25

pastures (*Abatware b'Ubutaka* and *b'Umukenke*) depending on the case, whether it was about land or cattle and pastures.

There also would be the military *préfet* who would settle socio-military cases. The king would be the final arbitrator in case of any sustained dispute through the established channels<sup>55</sup>.

The saying was that "The king does not kill; it is his entourage who are the conspirators (*Ntihic 'Umwami, hica rubanda*)." This emphasized that he was above personal, petty issues and trivialities in the society. He was the caretaker of justice among his people in all matters and was easily accessible to all. Since he was being at the top of the hierarchy as the head of all families and the people, under whom they found their unity (*Rubanda rw'Umwami*), the king could never conspire against his people or subvert justice.<sup>56</sup>

Given the foregoing, justice in the *Gacaca* system would only be possible because of *ubumwe* (unity), first within the family and on to the nation as a unified whole under the *mwami*. This unity is worth emphasis, as it would soon breakdown with the coming of colonialism.

## THE COLONIAL PERIOD

### The Coming of the Colonialists

The first colonialist in Rwanda, the German Gustav Adolf von Goetzen, met King Kigeli IV Rwabugiri on May 30th 1894. His claim to Rwanda came from the 1884

<sup>55</sup> Kagame A, *op.cit.* pp.114-115 & Muzungu B, *op.cit.* p.208

<sup>56</sup> Muzungu, *Ibid*

Berlin Conference as part of a territory that came to be known as the German East Africa, which included Tanzania and Burundi. Rwanda and Burundi, however, were administered as one for their proximity and close similarities in language and culture, and as a territory were referred to as Ruanda-Urundi.<sup>57</sup>

However, when, in 1916, Belgium occupied Ruanda-Urundi as a result of the World War I East African campaign against Germany, the two kingdoms of Rwanda and Burundi had only been marginally administered from Berlin since 1899. When they discovered that the existing *mwami* kingdoms already functioned as fully-fledged nations before the arrival of the Europeans and also, because of a shortage of colonial personnel, the Germans decided from the very beginning to favour a policy of indirect rule. The occupation came about through protectorate "treaties" negotiated between the Germans and the *mwami*<sup>58</sup>. This meant that full use was to be made of the existing political system, which was much stronger and more centralized in Rwanda than in Burundi<sup>59</sup>.

Belgium continued this policy with the Decree of 6 April, 1917<sup>2</sup> stating that,

*"under the authority of the Resident Commissioner the Sultans (bami) exercise their political and judicial powers to the extent that these are in*

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<sup>57</sup> Louis, W. R., Ruanda-Urundi, 1884 - 1919. Oxford, Clarendon, 1963, p30

<sup>58</sup> Reyntjens, F., L'Afrique des Grands Lacs en crise. Rwanda, Burundi: 1988 - 1994. Paris, Editions Karthala, 1994, p76

<sup>59</sup> Louis, W. R., op.cit. p32



*accord with indigenous customs and the instructions of the Royal Commissioner*<sup>60</sup>.

After World War I, the League of Nations mandated Belgium to administer Rwanda and in 1946 the country became a Belgian trust territory under the United Nations. During forty years of Belgian administration, there was a disintegration and distortion of indigenous social and political structures that would have far-reaching consequences<sup>61</sup>, leading to the 1994 genocide.

### **The Colonial Policy of Divide and Rule**

While the indigenous pre-colonial patron/client relationship was flexible and contained an important element of reciprocity, the Belgian colonizers actually rigidified the system and did away with mutual obligations. They introduced forced labour and strengthened the socio-economic divisions between Tutsi and Hutu.<sup>62</sup>

The greatest impact was the conscious colonial division of a people basing it on different races. The early European colonialists and missionaries essentially relied on mythological narratives that were current in Europe. These were essentially ancient legends on the source of the Nile and narratives by explorers about territories neighbouring Rwanda. They had read Aristotle, Ptolemy, and John Hannington Speke, whom they quoted. Aristotle wrote that Pygmies

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<sup>60</sup> Rumiya, J., *Le Rwanda sous le régime du mandat Belge 1916 - 1931*. Paris, Editions L'Harmattan, 1992

<sup>61</sup> Generally see Logiest Guy, *Mission au Rwanda* Didier Hatier, Bruxells, 1998

<sup>62</sup> Ibid

inhabited "the Mountains of the Moon", a description he gave the Ruwenzori Mountains.<sup>63</sup>

Explorer Speke presented a theory depicting the Tutsi into descendants of the Biblical Ham, Noah's son, who had to suffer the curse of banishment for seeing his father naked; thus the Hamites, of whom the Tutsi were part of, as Ham's descendants. Since that time, narratives by explorers and missionaries referred to the Twa as "Pygmies", "myrmidons", "dwarfs", while the Tutsi were described as absolute sovereigns of a fabulous kingdom, a people whose "biblical features", their slenderness, long noses and giant height indicated that they were "Caucasoid", and therefore distant cousins of the white race.<sup>64</sup>

The Tutsi, the colonial administrators and missionaries asserted, bore a dignity not often seen with many Africans, and were therefore "best for command" as they demonstrated in their absolute reign over the Hutu "poor Negroes" of the Bantu race.<sup>65</sup>

This is best illustrated by Monsignor Leon-Paul Classe, the Vicar Apostolic to Rwanda. In a letter dated 21 September 1927, he wrote to Georges Mortehan, the Belgian Resident Commissioner:

*"If we want to be practical and look after the real interest of the country we shall find a remarkable element of progress with the Mututsi youth [...]  
Ask the Bahutu whether they prefer to be given orders by uncouth*

<sup>63</sup> Adam Hochschild, King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa, New York, NY: Houghton Mifflin Co., 1998, p154

<sup>64</sup> Semujanga, The Origins of Rwandan Genocide, Humanity Books, 2002, p.139

<sup>65</sup> Ibid, p.140

*persons or by nobles and the answer will be clear: they will prefer the Batutsi, and quite rightly so. Born chiefs, the latter have a knack of giving orders*<sup>66</sup>.

This led to preferential treatment of the Tutsi and discrimination and marginalisation of the Hutu. Aided by the Catholic Church, therefore, the colonial administration opened the best schools that admitted princes first, then Tutsi, and finally Hutu. Monsignor Classe again writes, giving instructions to schools:

*“Education of the Bahutu is necessary to train catechists, schoolmasters and tutors, and in order to instruct and train youth in general...Schooling for the Batutsi, here, must take precedence over schooling for the Bahutu. The Father in charge of schools must set his heart on the development of this schooling”*.<sup>67</sup>

It was against this background that the Belgian colonial administration embarked on an ‘all-out *Tutsization*’ of administrative structures. This was instituted by Resident Commissioner Mortehan in 1926, in what would infamously come to be known as the Mortehan Reforms. In a series of decrees culminating with that of 19<sup>th</sup> December 1926, Mortehan suppressed the traditional functions of the Prefect of the Soil (*umutware w’ubutaka*) – mostly Hutu – of the Prefect of Pastures (*umutware w’umukenke*) – mostly Tutsi – and of the army local chief

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<sup>66</sup> de Lager, L., Rwanda. Kabgayi (2 ed.), 1961

<sup>67</sup> Gamaliel Mbonimana, « L’Instauration d’un royaume chrétien au Rwanda », (Ph.D, Université Catholique de Louvain), 1981, p.352

(*umutware w'Ingabo*), who came from any of the three social categories. This also did away with any Hutu chiefs in the 1930's and their replacement with the Tutsi.<sup>68</sup>

### **The Genesis of Sectarian Political Parties**

All these measures accentuated division, that was further reinforced by the introduction of identity cards in 1933. Every Rwandese was henceforth (on the basis of quite arbitrary criteria) registered as Tutsi, Hutu or Twa<sup>69</sup>. In essence, the colonial intervention caused the groups to become distinct political categories.

Since the mid-1950s, political demands in Rwanda were formulated in these divisive terms. The most defining was the Bahutu Manifesto of March 24, 1957, which demanded Hutu emancipation as well as democratization. It began with the colonial thesis that Tutsi were outsiders/foreigners and claiming that Hutu (in majority) were true Rwandese nationals, and thus the rightful rulers of Rwanda, the manifesto was a significant statement for both the social revolution from 1959 and the deepening divisions, which had now become "ethnic". This document, originally published as "Notes on the Social Aspect of the Racial Native Problem in Rwanda" and aiming to influence a United Nations Trusteeship mission to the territory, was drafted by nine Hutu intellectuals. The signatories included the future president, Gregoire Kayibanda. It attacked the whole concept

<sup>68</sup> A Kagame, *Un abregé de la l'ethnohistoire du Rwanda*, 1975, pp.183-84

<sup>69</sup> Reyntjens, F. (1985). *Pouvoir et droit au Rwanda*. Tervuren, Musée Royale de l'Afrique Centrale, p142

of Belgian administration and maintained that the basic problem of Rwanda was a conflict between Hutu and Hamitic Tutsi<sup>70</sup>

When political parties were set up in the late 1950s, political structures had already been established along the "ethnic" cleavage: The Parmehutu (Parti du mouvement de l'émancipation des Bahutu) and APROSOMA (Association pour la promotion sociale des masses) were essentially Hutu, whereas UNAR (Union Nationale Rwandaise) and RADER (Rassemblement Democratique Rwandaise) were essentially Tutsi.

It is clear, however, that by excluding Hutu from political power, the Belgian colonial administration and the Roman Catholic had created and institutionalised a latent conflict that they would exploit at the end of colonialism. This is the irony, as at the time of agitation for independence by the late 1950s, the Belgian colonial administration turned around and unloaded all its political errors onto the Tutsi because they were the first to agitate for the country's independence. The Hutu, on the other hand, were made to believe that it was the Tutsi who were their oppressors, and therefore agitated for emancipation from the Tutsi other than demanding for national independence. The Belgian colonial administration and the Catholic Church henceforth adopted a policy of sustained support for the Hutu against the Tutsi.<sup>71</sup>

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<sup>70</sup> Dorsey, L., *Historical Dictionary of Rwanda*. London, The Scarecrow Press, 1994, p98

<sup>71</sup> Logiest, *op.cit.*, p67

Instigated by the 1957 Bahutu Manifesto, the situation exploded in the 1959 Hutu Revolution that saw tens of thousands of Tutsi massacred and more than a one hundred thousand exiled. This marked the flagging off of the Tutsi pogroms in the long process that would culminate in the events leading to the 1994 genocide. Thereafter, the Hutu took over and Tutsi chiefs were deposed by Governor Logiest, with the other massacres targeting the entire Tutsi group taking place in 1960-61, and again in 1963. There were other mass killings of Tutsi in 1967, 1973, 1990, and 1992 eventually leading to the 1994 genocide.<sup>72</sup>

## **THE POST-INDEPENDENCE PERIOD**

The peculiarity of the Rwandan genocide is the time span it took, from 1959 to 1994, to come to fruition. During that time, and especially after the country's independence in 1962, impunity for crimes committed against the Tutsi was institutionalized. Blanket amnesty was extended to those who committed the crimes against the Tutsi during the so called Hutu Revolution. In the same vein, laws dispossessing internally displaced Tutsi and refugees' property were enacted. An instance of such a law was the *Arrete Presidentiel* No.25 of 28<sup>th</sup> February, 1966. Other instances include the summary executions of the Tutsi whenever *Inyenzi* attacked from exile, and subsequent Amnesty granted to Tutsi Killers<sup>73</sup>.

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<sup>72</sup> Semujanga, op.cit.

<sup>73</sup> Law of 20 May 1963, Decree of 30 Nov 1974, and Law no 90/91 of 13 Dec 1991

This is how the two post-independence leaders of Rwanda put it in explaining the differences between the Hutu and Tutsi:

Kayibanda Gregoire, President, First Republic (1962-1973): *"Two nations in a single state; two nations between whom there is no intercourse and no sympathy, who are as ignorant of each other's habits, thoughts and feelings as if they were dwellers of different zones, or inhabitants of different planets."*<sup>74</sup>

Habyarimana Juvenal, President, Second Republic (1973-1994): *"The unity of ethnic groups is not possible without the unity of the majority. Just as we note that no Tutsi recognizes regional belonging, it is imperative the majority forge unity, so that they are able to wade off any attempt to return them into slavery."*<sup>75</sup>

The two post independence leaders used the Hutu identity as dogma for political organization in the Hutu parties, such as PARMEHUTU, Mouvement Démocratique Républicain (MDR) and Coalition pour la Defence de la République (CDR) that would in the end hatch and execute the 1994 genocide.

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<sup>74</sup> Kayibanda Speech on 27th November, 1959

<sup>75</sup> Habyarimana Speech at MRND Congress, 28th April, 1991

## **Formation of the Rwanda Patriotic Front and the Subsequent Struggle**

In the period after the overthrow of Idi Amin in Uganda in 1979, the Rwandan refugees in the country were scapegoated and at times blamed for the excesses of the Idi Amin regime. When the National Resistance Movement started the guerrilla campaign in 1981, President Milton Obote blamed Rwandans for supporting the then rebel leader, Yoweri Museveni, who was derogatorily being referred to as a Rwandan, and therefore a refugee or alien.

In 1982, Rwandan refugees in Uganda alongside some Kinyarwanda speakers in the country were expelled, thereby disenfranchising the latter. These Rwandan refugees and Uganda Rwandaphones found themselves stranded and were refused entry into Rwanda by the Habyarimana Government. This provoked a new sense of Rwandan nationalism within the region. In the meantime, the Habyarimana regime tightened its noose around the Tutsi in Rwanda, the perennial enemies of the regime. Thus the "racial" hatred within Rwanda deepened under government orchestration with continued Tutsi killings.

It is against this background that the Rwanda Patriotic Front (RPF)<sup>76</sup> was formed to end the discrimination and gain back their natural, inalienable rights as Rwandan citizens, even if it meant use of force. The continued pogroms in and outside Rwanda led to the RPF gaining in strength and membership. It also led to the RPF resolve to end the regional conspiracy and menace against the

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<sup>76</sup> Rich Orth, "Four Variables in Preventative Diplomacy: Their Application in the Rwanda Case", *Journal of Conflict studies*, University of New Brunswick, Spring 1997



Rwandans through armed struggle, beginning with the October 1990 RPF invasion of Rwanda<sup>77</sup>.

As the RPF struggle intensified, the Habyarimana regime was in the meantime consolidating the genocidal machinery that had started with the 1959 so-called Hutu Revolution and continued with the Tutsi killings. Under pressure from the RPF struggle and the international community, the Habyarimana regime agreed to go to the negotiating table. This led to the 1993 Arusha Peace Agreement between the Government of Rwanda and the RPF, which was brokered by the international community.<sup>78</sup>

### **The Arusha Peace Agreement of 1993**

The Arusha peace negotiations were an African initiative in which both the OAU and several African and Western states played a central role, with President Ali Hassan Mwinyi of Tanzania facilitating the process. The OAU was instrumental not only in bringing the parties to the bargaining table, but also in setting an agenda that addressed the imagined root causes of the conflict.

In a series of separate negotiations, some of the major issues tackled included the establishment of the rule of law and a culture of human rights; power sharing in all public institutions; the transitional arrangements that would obtain until elections were held; the repatriation of refugees; the resettlement of

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<sup>77</sup> Rich Orth, "Rwanda's Hutu Extremist Insurgency: An Eyewitness Perspective", in Susan E. Cook (ed.), *Genocide in Cambodia and Rwanda New Perspectives*, New Haven, Yale Center for International and Area Studies, 2004, p.231

<sup>78</sup> Rich Orth, op.cit.

internally displaced persons; and, the integration of the two opposing armies.

The Arusha Protocol III on military integration was the most difficult part of the negotiations, as it was based on "ethnically" perceived quotas that would still ensure the Hutu domination of the military. For instance, the Rwandese Patriotic Army were allotted 40 per cent of the men in the military, and the Force Armée Rwandaises (FAR) 60 per cent on the understanding that the former were Tutsi and the latter Hutu. This illustrates how the root cause of the conflict, that is, the constructed racism, was not addressed, but used as part of the solution by allotting quotas to the supposed different people and parties<sup>79</sup>.

The Rwanda chief military negotiator, Colonel Théoneste Bagosora, had intimated that there were preparations for an impending "*apocalypse deux*", an indication therefore they were not committed to the Arusha negotiations.<sup>80</sup>

In his speech, Leon Mugesera addressed a large crowd in Satinskyi in these words, "Recently I told PL member (a Tutsi of the new liberal party), the mistake we had made in 1959 because I was a child was that we had allowed them to leave unharmed. Then I asked him if he had not heard of the recent history of Falashas who returned to Israel from Ethiopia. He replied that he knew nothing about it. I added; you must be deaf and illiterate, I am telling you that your country is Ethiopia, and we are soon to send you back home via

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<sup>79</sup> Arusha Peace Agreement, 1993

<sup>80</sup> Witnessed by this researcher as a member of the RPF negotiating team

Nyabarongo<sup>81</sup>. That's it. I do repeat to you that we must quickly get down to work.<sup>82</sup>

It was therefore not surprising that the Arusha Peace Agreement could not prevent the 1994 Rwanda genocide that led to over one million people dead. The aftermath of that "apocalypse", also saw the massive exodus of 2.5 million Rwandan refugees into neighboring countries. Alongside, the refugees were the fleeing genocidaire Government that in exile would continue their violence in the Great Lakes Region<sup>83</sup>.

### **The 1994 Rwandan Genocide**

on April 6<sup>th</sup> 1994 the plane of the Rwandan president Habyarimana was shot down by unknown assailants, and there were no survivors. In less than an hour, urged on and inspired by the Radio Television Libre des Mille Collines (RTLM), roadblocks were set up near the airport by the Hutu militia men and the *Interahamwe* assisted by the military began systematic killing of those whose identity cards classified them as Tutsi.<sup>84</sup>

By nightfall, systematic killings had spread throughout the capital city of Kigali, with gangs using pre-established lists and maps to locate their victims.

The plan to exterminate the Tutsi was implemented, leading to the genocide of about one million Tutsis and Hutu who did not share the same ideology. The

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<sup>81</sup> Nyabarongo is a river beginning in Rwanda that is supposed to be the source of the Nile

<sup>82</sup> Speech by Leon Mugesera, MRND influential member, in front of militants of his party on 11<sup>th</sup> November, 1992, in the Sous Prefecture of kabaya.

<sup>83</sup> Orth, Op.cit

<sup>84</sup> Melvern, L. A People Betrayed: The Role of the West in Rwanda's Genocide, New York, Zed Books, 2000, p140

Rwandan Patriotic Front ended the 1994 genocide by defeating the civilian and military authorities responsible for the killing campaign.<sup>85</sup>

As important actors in the genocide, the United Nations did not just stand by and watch it unfold, but also withdrew a large part of the United Nations Assistance Mission to Rwanda (UNAMIR) peacekeepers, as lamented by Dallaire.<sup>86</sup> On their part, the French aided the genocidaire government with training and equipment of the military, and protected the militia and the genocidaire during the Operation Turquoise towards the end of the genocide.<sup>87</sup>

Article II of the International Convention on the Prevention and the Punishment of the Crime of Genocide, defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group<sup>88</sup>."

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<sup>85</sup> Gen Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda*, Random House Canada, 2003, p156

<sup>86</sup> Ibid

<sup>87</sup> Melvern, L. *A People Betrayed: The Role of the West in Rwanda's Genocide*, New York, Zed Books, 2000, p142

<sup>88</sup> Daniel de Beer, *The Prosecutions for Crime of Genocide and Crimes against Humanity: Legal basis*, Editions RCN.-Rwanda, 1995

## **The Rwanda Genocide Process**

The above definition fits the Rwandan genocide, as can be demonstrated by the eight stages enumerated by Dr Gregory Stanton.<sup>89</sup> According to him, there are eight stages of the conflict process leading to genocide, namely, Classification, Symbolization, Dehumanization, Organization, Polarization, Preparation, Extermination and Denial.

The first stage, classification, can be described as the cultural and racial distinction between the three social categories of Rwanda so that we have the Tutsi Caucasians, the Hutu Bantu Negroids and the Twa Pigmoids.<sup>90</sup> This was in denial of the three categories being one people with the same culture and language, beginning with the German and Belgian colonialists who taught a racist ideology that was adopted by the First and Second Republics of Kayibanda and Habyarimana.

The second stage, symbolization, affirms the classification by attributing symbolic characteristics that could be physical or otherwise. For instance, the size and shape of the nose become symbolic or even the very names we use to describe a group through stereotypes and clichés.

Classification and symbolization are fundamental operations in all cultures.<sup>91</sup> They become steps of genocide only when combined with

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<sup>89</sup> <http://www.genocidewatch.org/8stages.htm>

<sup>90</sup> Semujanga, *Op.cit*, 140

<sup>91</sup> Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda*, Kumarian Press, West Hartford, CT. 1998, p54

dehumanization, the third stage. Denial of the humanity of others is the step that permits killing with impunity. In incitements to genocide the target groups are called disgusting animal names, such as when the Tutsi were referred to as *Inyenzi* and *inzoka* (cockroaches and snakes) made them less human and therefore easier to kill.

Genocide is always collective because it derives its impetus from group identification. It is always organized, often by states but also by militias and hate groups<sup>92</sup>. In Rwanda, in the fourth stage of organisation, death squads were trained for mass murder. For instance, the 5,000 man FAR rapidly expanded with French training and assistance to nearly 30,000 by 1993. The Presidential Guard and Hutu extremist militias MRND's *Interahamwe* and CDR's *Impunzamugambi*, who comprised the main perpetrators of the genocide and preceding political violence, received training leading and up to the execution of genocide.<sup>93</sup>

Genocide is aimed at polarization, the fifth stage, which is a negation of the fact that people can be reasonable to work things out, where one group attacks the other, coupled with the systematic elimination of the reasonable citizens who would otherwise slow the process. In this instance, the Hutu stuck to their group mentality and saw nothing good from the moderates and Tutsi. Thus among the first to be killed during the genocide were Hutu moderates, even as the killings of the Tutsi intensified.

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<sup>92</sup> Perter Uvin, *Ibid.*

<sup>93</sup> Richard Orth, *Four Variables in preventive Diplomacy: Their Application in the Rwanda Case*, *Journal of Conflict Studies*, University of New Brunswick, Spring 1997

In the sixth stage, preparation, lists of victims were drawn up in Rwanda. Individuals were forced to carry ID cards identifying their "ethnic" group because identification greatly speeds the slaughter. In the genocide, Tutsis could then be easily pulled from cars at roadblocks and murdered. Throwing away the cards did not help, because anyone who could not prove he was Hutu, was presumed to be Tutsi. Radio RTLM was used to mobilize and identify potential victims by name and place of residence.<sup>94</sup>

The seventh stage provides the final solution, which is extermination. It is considered extermination, rather than murder, because the victims are not considered human. They are vermin, or cockroaches and snakes. Targeted members of alien groups, who the Tutsi were perceived to be, were killed, including children because they were not considered persons. Their bodies were mutilated, buried in mass graves with dog carcasses to emphasize the perpetrators' contempt for the victims.<sup>95</sup>

In the eighth stage, Stanton notes that "the perpetrators of genocide dig up the mass graves, burn the bodies, try to cover up the evidence and intimidate the witnesses. They deny that they committed any crimes, and often blame what happened on the victims."

This denial, in every way, is what happened and is still happening to Rwanda. There is cover-up of evidence through further killings, which serve to intimidate witnesses. Then there are the exiles still to be brought to justice,

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<sup>94</sup> Melvern, L. A People Betrayed: The Role of the West in Rwanda's Genocide, New York, Zed Books, 2000, p156

<sup>95</sup> Ibid

including the *Interahamwe* and ex-FAR who continue to terrorize, maim and kill within and outside Rwanda. They do not accept that they committed any crime.<sup>96</sup>

The irony of the Rwandan genocide is that the majority of the population were bystanders, whose passiveness and inaction was construed by the perpetrators as agreement with the persecution of the Tutsi. In fact, passivity reinforced the perpetrators' perception of themselves as Hutu heroes, thereby legitimizing the denial and negation of the genocide. This state of affairs continues to be the problem dogging the Gacaca judicial process.<sup>97</sup>

Given the complexity of the post-conflict Rwanda, establishing the truth pertaining to the roles of the various actors (victims, perpetrators and bystanders) during what happened is of necessity in the national reconciliation and healing process.

## **POST-GENOCIDE RWANDA: LAYING THE FOUNDATION TOWARDS RECONCILIATION**

### **Appraising the Immediate Aftermath**

In the aftermath of a settlement, especially after conflict during the transition from violence to peace, there is usually a unique set of factors present that together affect the ease with which the necessary but painful issue of reconciliation, reconstruction and stability must be tackled.<sup>98</sup>

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<sup>96</sup> Interahamwe: A serious military threat, BBC, <http://news.bbc.co.uk/1/hi/world/africa/288937.stm>

<sup>97</sup> Interview with Madam Domitila Mukantaganzwa, Coordinator, Gacaca Courts, September, 2005

<sup>98</sup> Bloomfield David, Barnes Teresa and Huyse Luc (2003). Reconciliation after violent conflict.

International Institute for Democracy and Electoral Assistance, Sweden



In the case of post-genocide Rwanda, President Paul Kagame, in ascribing these factors as they pertain to the country, recalled that there was one million people dead, an entire population displaced internally or having fled as refugees, and a divided society. He also noted a collapsed socio-economic infrastructure and perpetrators of genocide defeated but relocated in neighbouring countries, especially in the Democratic Republic of Congo. There was, he observed, an absence of functioning institutions, and lamented about the discredited International Community, whose failure to prevent or stop genocide made it skeptical about Rwanda's chance to survive as a nation. There were also the relentless efforts by those who had supported the genocidal regimes to support the remnants of the latter to regroup and recapture state power so as to complete the genocide.

*"This was a defining moment," the president said, "for those were indeed huge challenges which if not addressed were a recipe for another catastrophe. Most observers had written off Rwanda as a failed state".<sup>99</sup>*

### **The Fundamental Law and the Organisation of power.**

Prior to the 1994 genocide, as already discussed, the governments of the First and Second Republics had put in place sectarian state institutions. It may be recalled that political parties that formed the governments pursued sectarian Hutu interests. The judiciary, the army and the legislature espoused and worked to discriminate and sideline the Tutsi from their ranks.

Inspired by the Arusha Peace Agreement of 1993, therefore, the RPF brought together those political parties that had not participated in the genocide process to form the "Government of National Unity and the Transitional National

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<sup>99</sup> President Paul Kagame's address at the Institute of International Studies, University of Denver, Colorado, USA, in 2004, [http://dec.edu/news\\_kagame.html](http://dec.edu/news_kagame.html)

Assembly".<sup>100</sup> On the basis of the same agreement, a five year transitional period (1994 – 1999) was defined. This period was extended to four years later (2003). This transition referred to changing from the period of conflict to the post conflict period. The transition was considered as an important phase where efforts had to be combined in order to achieve minimum organization, the rule of law and cessation of hostilities. Peace does not mean cessation of hostilities only but rather comprehensive and deep examination of the reasons that led to the genocide with a view to leading the society to accept the change.

Changing the Rwandan society required cleansing the governing body too. It was therefore deemed necessary to have a new fundamental law adapted to the context in order to ensure the efficient functioning of the system.<sup>101</sup> It was also necessary to organize the existing political forces, to ensure social equality, and to start different reforms necessary to establish minimum socio-political equity. Based on the Arusha Peace Agreement, the Government of National Unity set up the new fundamental law to govern the transition period as the Grundnorm.<sup>102</sup> This provided a tool of governance, the establishment of the rule of law based on democracy, participation of the population in the decision making process and unity and reconciliation of the population of Rwanda.

In its preamble, the fundamental law states that the parties agree that the rule of law is the best guarantee of national unity, respect for fundamental human rights and liberties based on national unity, democracy, pluralism and respect for human rights.

Another principle provided for in the Arusha Peace Agreement and reinforced by the Protocol of Agreement in the Fundamental Law between the political parties was power sharing. Members of government and parliamentarians were appointed from the different political parties present in the

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<sup>100</sup> Arusha Peace Agreement, 1993

<sup>101</sup> The texts that formed the fundamental law included the Arusha Peace Agreement, the Rwanda Constitution of 10th June 1991, the RPF Declaration of July, 1994, and the agreement between the political parties RPF, MDR, PDC, PDI, PL, PSD, PSR and UDPR on the establishment of national institutions, signed on November 24, 1994

<sup>102</sup> Hans Kelsen, Pure Theory of Law (1934)

country according to quotas fixed in the Arusha Peace Agreement. For instance the RPF was to get ten ministries and thirteen number of seats in the legislature, the MDR thirteen seats and four ministries, PSD eleven seats and three ministries, PL eleven seats and three ministries, PDC with four seats and one ministry. The allocation of the ministries and parliamentary seats was based on the political strength of each, of which RPF held the moral authority for having stopped the genocide.<sup>103</sup>

Considering the complexity of the situation, the agreement between the political parties also set up new rules with regard to the functioning of political parties. This marked the creation of a new framework known as "the Forum for Political Parties".

### **A New Framework for the Functioning of Political Parties**

In the post genocide environment, the population no longer trusted political parties because they still had a vivid recollection of the behaviour of some extremist parties and their role in the perpetration of genocide. It is with this view in mind that the Government of National Unity tried to find a mechanism to associate political parties to the exercise of power without upsetting the population. The forum for political parties was put in place for the purpose of political management of the transitional period. All political parties agreed to function only at the level of their executive committees with no public rallies organized at the grassroots level.<sup>104</sup>

To give the population time to adequately reconcile their perceived sectarian differences and be able to take part in the making of an appropriate political system, it was decided that no new political party would be registered before the end of the transitional period. Up to this time no law was enacted to

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<sup>103</sup> Article 3, RPF Declaration of July 17, 1994 Concerning the Establishment of Institutions,

<sup>104</sup> Protocol of Agreement between the Political Forces RPF, MDF PDC, PDI, PL, PSD, PSR and UDPR on the Establishment of National Institutions

bar the formation of new political parties during the transitional period. It was an agreement reached by political parties within their forum. The political management of the transitional period has had to adapt to the requirements of the aftermath of genocide in order to adequately meet the challenges brought by that terrible tragedy. The Arusha peace accords were not applied word for word and some political parties, such as MRND and CDR, were excluded from power sharing because of their role in the genocide.<sup>105</sup> The duty of political actors was to ensure peaceful transition to free and fair elections.

### **Power Sharing and Ethnicity.**

The Arusha Peace Agreement as the basis for the management of the transitional period set out the principle of sharing power among the political forces. The parties that participated in the genocide were excluded from power sharing arrangement while the remaining political parties collectively formed the forum, and shared ministerial portfolios and parliamentary seats.

Power sharing was generally accepted as a good option because it gave all the political forces the opportunity to have a share in the management and exercise of power. In a country like Rwanda, where the struggle for power by political parties led the population into ethnic struggles, threatening national stability, power sharing was an appropriate answer to such sensitive issue as politically motivated ethnic divisions. In spite of the consensus on the principle of power sharing, the practical modalities for its implementation had resulted in debates and questions about the merit and ability of the particular individuals representing the political parties in government and legislature.

Merit was no longer the criteria for appointment but rather a system of quota according to one's "ethnic" origin. For instance, where the prime minister is a Hutu, the president had to be a Tutsi. There however exists some sort of

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<sup>105</sup> Article 3, RPF Declaration, *op.cit.*

subtle power sharing based on the "ethnicity" known to the population and the government, but which everybody refuses to recognize openly.

In Rwanda, ethnicity is still the major issue in the country's political management because of the role it played in the political history of the country. The question remains whether the sustainability of such a system based on ethnicity to govern a country is possible. Burundi which has embarked on such kind of a system is yet to see the end of the tunnel and the polarisation between Hutu and Tutsi.

### **The National Decentralisation Policy.**

In a bid to understand the root causes of the Rwandan conflict and work out long-term solutions, the then President of Republic Pasteur Bizimungu organized consultations in 1998 in order to collect views from the population on this issue. Most current reforms emerged from these consultations. One of the major political decisions that came out of those consultations was the adoption of the decentralization policy as a national administrative strategy. The key underlying ideas of this policy included, enabling the population take part in the decision making process at all levels, enabling the population choose their leaders freely, ensuring transparency and accountability in the management of public affairs at grassroots level, promoting the rule of law and equality of all citizens before the law and setting up a ministry that was entrusted with implementing those principles. The Ministry of Local Government was set up in 1999 and assigned the duty of elaborating and submitting to the cabinet a national decentralization policy. The cabinet adopted the decentralization policy in May 2000. It established three Administrative levels; the central administration which included the ministries and central organs, the decentralised administrative entities which

were mainly Provinces and the decentralised administrative entities which included districts and towns<sup>106</sup>.

A new administrative division was carried out in order to delimit the new borders between the districts and the newly set-up towns. Currently, Rwanda has ninety two rural districts and fourteen towns. This territorial division was carried out with a view to boosting the national economy at community level by establishing economically viable administrative entities. Before these divisions were carried out, economic potentialities were inequitably shared among the districts. The aim of the decentralization policy, therefore, was to ensure minimum equitable distribution of resources among districts in order to enable the decentralisation policy to rest on a firm foundation.

One of the assets of the decentralization policy is that all decisions are taken by a college and allows local administration to deliver quality services to the population, since basic services are provided at community level. It also improves democracy as it gives the communities the opportunity to choose their leaders. It contributes to enhancing unity and reconciliation because all Rwandans, irrespective of their background, take part in the exercise of power at the local level. Information is easily accessed because all elected leaders live and share the same living conditions with the population they represent. Community participation in the decision making process puts an end to the overall tendency on behalf of the population to always expect the government or its central organs to do everything for them.

### **Elaboration of the new Constitution**

In order to phase out the transition period and laying the foundation of a new society, the government of National Unity set up a constitutional commission to draft and elaborate a new Constitution for the country. The Arusha Peace

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<sup>106</sup> See diagram in the Annex

Agreement in its provisions on power sharing had instituted the constitution commission. The mandate of this commission was to collect the views of the Rwandan people from all walks of life, about the type of governance thought most appropriate and draw up a new constitution based on ideas emanating from consultations and debates across the country.

The constitution commission solicited for ideas from across the whole country, compiled them into a draft constitution which was then discussed in several meetings at national level. The new Constitution was finally submitted to Parliament and later widely approved by the population through a national referendum held on 26<sup>th</sup> May 2003. The new Constitution sets out a number of major principles. It laid down the modality for assessing power. The President of the Republic and members of Parliament are elected following universal, direct and secret suffrage. It established multipartism as means to ensure competition for power. The new constitution makes guidelines for the function of political parties. It provides, among other things that no political party shall be formed on ethnic, regional or family grounds and to make sure that political parties have no direct contact with the population, the new constitution only allows them to establish their organs up to provincial and national levels. This is in light of the fact that since the colonial period, exalting ethnicity had been the principal means to legitimise the search for and conquest of power, as discussed above (see "The Genesis of Sectarian Political Parties", above).

To date there are eight registered political parties in the Ministry of Local Administration. The genocide spirit that brought about the 1994 sectarian massacres has tainted all the political parties, as all of them were existing or formed during the conflict that led to the genocide. It is for this reason that two fundamental principles have been included in all political manifestos: condemnation of any genocidal inclination and defence of national unity at all costs. All the eight political parties have the common denominator of fighting against and prevention of genocide, equality of all citizens before the law,

promotion of human rights, implementation of the culture of democracy and unity and reconciliation.

To these fundamental principles, each party adds a summary of its political, economic and social programme with similarities on economy, development, improvement of living standard of the population, the fight against corruption, rejection of impunity, education and consolidation of regional and international cooperation.



## **CHAPTER THREE**

### **JUSTICE AND RECONCILIATION IN POST-GENOCIDE RWANDA**

#### **INTRODUCTION**

As this study has shown in Chapter Two, the 1994 genocide in Rwanda was a result of a falsified history by the colonial administration in complicity with the Catholic Church, and the failure to draw a forward-looking, nation-building and development agenda on the part of the First and Second Republics. The study notes the unity that existed among the Banyarwanda in their pre-colonial history, and how sectarian pre-occupations flourished through political parties and entrenched division as it concentrated power in the hands of destructive elements among the Hutu in the colonial and post-independence periods.

Chapter Three seeks to examine how the post-genocide government went about to undo the damage wrought by the First and Second Republics in the aftermath of the 1994 genocide. The chapter begins by summing up the dire situation of a broken-down country with a destroyed socio-economic infrastructure and human resource to reconstruct the country. The core issues, however, are about institutions of justice and reconciliation. Consequently, Chapter Three discusses the role of the Gacaca in the meting out of justice, as well as the International Criminal Tribunal for Rwanda (ICTR) and its limitations.

The National Unity and Reconciliation Commission set the pace in involving the entire population in the efforts towards reconciliation. This is also discussed as the study looks at the challenges to be surmounted.

## **THE POST-GENOCIDE RESPONSES**

The post-genocide government considers unity and reconciliation of the Rwandese people as *sine qua non* for lasting peace, security and development .

As Alison Des Forges has put it in her book *Leave None to tell the Story*:

*"There must be justice for the genocidaire, political murderers and other violations of human rights in 1994. The guilty must be punished and prevented from inflicting further harm. The innocent must be freed from unjust assumptions about their culpability and, if jailed, they must be released...Demanding justice is morally and legally right and it is also politically sound. Without justice, there can be no peace in Rwanda, nor in the surrounding region".*<sup>107</sup>

The government was faced with enormous problems among which were the repatriation of refugees and their resettlement, integration of the armed forces, restoring public trust in the legal system, breaking the impunity culture and most

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<sup>107</sup> Alison des Forges, Leave None to Tell the Story. Human Rights Watch, Washington, 1999, p87

importantly reconcile the Rwandan society while at the same time seeking to bring to justice those responsible for the genocide. As President Kagame put it:

*"Of course, there is no-one-size-fits-all prescription for conflict Resolution in Rwanda or anywhere else. There is no single cause of conflict and there can never be a magic bullet to troubleshoot every time it breaks out".*<sup>108</sup>

Establishing the responsibility of individual Hutu was the only way to diminish the ascription of collective guilt to all Hutu. The unexamined and incorrect assumption that all Hutu killed Tutsi or at least actively participated in the genocide in some way had become increasingly common both among Rwandans and outsiders. Fair trials and other mechanisms for discovering the truth such as commissions of reconciliation would help to establish a record of events of the 1994 that is credible to all Rwandans and therefore promote reconciliation.<sup>109</sup> In addition, judicial decisions about responsibilities are necessary before the courts can decide on reparations, including allocating damages to the victims. Payments must be made to compensate for the suffering of victims, survivors of genocide must at least be compensated for lost property and see their destroyed homes rebuilt. As Grillet argues, the international community, the Rwandan State and other nations who were participants in some way in the genocide or witnesses to it must share the

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<sup>108</sup> Kagame Paul (2004) "Rwanda Remembering, Reconciliation and Rebuilding ". President Kagame's address at Denver University. <http://www.du.edu/news/Kagame.html>.

<sup>109</sup> Alison des Forges, op. cit., p98

burden of rendering justice for the crimes committed in Rwanda in 1994.<sup>110</sup> The French government in particular, as already observed in Chapter Two, that trained, supplied weapons to the Rwandan armed forces at the time and the United Nations whose peacekeepers looked on as people were killed must share the burden.

## **JUSTICE AND RESPONSIBILITY**

On August 30<sup>th</sup> 1996, the transitional national assembly passed an organic law to regulate prosecutions for genocide, crimes against humanity, and other crimes committed in connection with them.<sup>111</sup> The law divided the accused into four categories according to the extent of their alleged participation in crimes committed after October 1 1990 and before December 1994.

Category One included planners, organizers, inciters, supervisors and leaders of the genocide and crimes against humanity, including anyone who acted in a position of authority from the national level down to the level of the cell in political parties, the army, religious organizations, or the militia. It included all those who committed criminal acts or encouraged others to commit them. It also included notorious murderers, those known for the brutality of their crimes and persons who committed acts of sexual torture. Category One reflects the letter and spirit the Nuremburg Charter in its Article Six, which defines

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<sup>110</sup> Grillet Eric, '*Genocide devant la Justice, les Temps Modernes*, ' 1994, p111

<sup>111</sup> Organic Law n<sup>o</sup> 8/96 of 30<sup>th</sup> August 1996.

jurisdiction and general principles of the Nuremburg Tribunal. Category Two included the authors of or accomplices in homicides or attacks that resulted in the death of the victim. Category Three comprised those who caused serious injury to victims and Category Four included persons who committed crimes against property<sup>112</sup>.

Those found guilty in Category One were liable to punishment of up to and including the death penalty. Persons found guilty of Category Two crimes were to be sentenced to punishment up to life imprisonment. Those convicted in Category Three were subject to imprisonment and payment of damages as specified in the ordinary criminal code and those in Category Four were merely to deliver reparations to their victims in an amount settled by discussion between the parties, and with the mediation of their fellow citizens in the community.

Persons convicted in Category One are jointly and severally liable for all damages caused anywhere in the country, regardless of where they personally committed a crime, while those convicted in other categories are liable for damages resulting from their own acts. In addition, persons convicted in Category One lose all civic rights for life, while those in Category Two may lose the right to vote, to stand for election, to serve as witness, to carry arms and to secure employment as a member of the armed forces, as a policeman or as a teacher. Persons convicted in Category Three may also lose civic rights for a period of up to twenty years as provided for in the country's Penal Code<sup>113</sup>.

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<sup>112</sup> Ibid.

<sup>113</sup> Organic Law of 30 August, 1996, Chapter 7.4 Art.2

The definitions of Category One are broad, including "notorious murderers who by virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves in their areas of residence or where they passed."<sup>114</sup> The guidelines for the words "notorious murderers" "zeal" and "excessive malice" refer, according to the relevant clause, to "persons who might be placed in Category Two, but who have committed countless excesses against more than one person; criminals who premeditatedly murdered many people; those who committed acts, such as causing the collapse on top of people who had taken refuge there...*Excessive malice* may cover acts of torture and barbarism committed against several persons."

Persons convicted under the genocide law have the right to appeal the verdict but only on the relatively narrow grounds of errors of law or flagrant errors of fact and only for the brief period of fifteen days after the verdict is handed down.<sup>115</sup>

The genocide law instituted a system of confusion and reduced sentences. For instance, if an accused made an apology and a full confession, including details concerning all others involved in the crime, he could benefit from lesser penalties. The extent of the reduced sentence depended on whether or not the confession had been made before the trial. Persons who might be assigned to Category One and who confessed before trial could be placed in Category Two

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<sup>114</sup> Ibid, Cap.7.2 Art.2

<sup>115</sup> Organic law n° 8/96 of 30<sup>th</sup> August 1996.

and therefore avoid the death penalty, but only if their names had not already been published on the list of Category One criminals.

According to the organic law on prosecutions of genocide, trials for persons accused of genocide, crimes against humanity, and related crimes were to be held solely in specialized chambers which were enacted within ordinary civilian and military courts (for the military).

Although the confession procedure was intended to reduce on the high numbers of prison inmates, the situation did not improve and in 1996 and 1997 old prisons were expanded while new ones were opened. The cost in terms of money and human resources to maintain these prisons remained high. For instance, the budget for Kigali central prison for the year 2005 was one billion one hundred and sixty nine million, six hundred and fifty five thousand, two hundred and ninety five (1,169.655.295) Rwandan francs, which is just over two million (US\$2m) US Dollars.<sup>116</sup> There are sixteen gazetted prisons in Rwanda.

## **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

On 30<sup>th</sup> April, 1994, just over three weeks after the start of the genocide, the United Nations Security Council issued a presidential statement recalling the definition of genocide. The Security Council established the International

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<sup>116</sup> The government of Rwanda, budget for fiscal year 2005.

Criminal Tribunal for Rwanda (ICTR) in November 1994 under Chapter VII of the UN Charter concerning threats to international peace.

The tribunal is competent to judge persons who “planned, instigated, ordered, committed or otherwise aided and abetted” in executing the crimes within its jurisdiction.<sup>117</sup> The tribunal takes precedence over the national courts of UN member states and can ask any national jurisdiction to defer to its competence. Persons tried by the tribunal cannot be charged for the same crime in national courts, or vice versa, except if the national trial is deemed to have been a charade.<sup>118</sup> The Security Council Resolution<sup>119</sup> passed in February 1995 specifically asks member countries of the UN to arrest those suspected of crimes that fell under the competence of the tribunal.<sup>119</sup>

## **GENOCIDE TRIALS**

Trials progressed slowly under the genocide law but the prison population continued to swell. By December 1997, three hundred and twenty two persons had been judged in one hundred and five trials held in the specialized chambers created by the genocide law. One hundred and eleven of them were found guilty and sentenced to death, while one hundred and nine were condemned to life imprisonment and eighty one to shorter terms. Nineteen persons were

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<sup>117</sup> Statute of the International Tribunal for Rwanda Article 6, (2) of the Resolution establishing the Tribunal

S/RES/955.

<sup>118</sup> Chapter Four will discuss in detail the International Tribunal for Rwanda.

<sup>119</sup> Security Council Resolution 5/Res/978 of February 1995.



acquitted.<sup>120</sup> The job was enormous; it would take over two hundred years to try all those one hundred and thirty five thousand suspects already in prisons. It however, offered some hope but the confusion and logistical problem in dealing with such a large number of suspects may prejudice the rights of others. There was no country or institution anywhere that had ever processed one million murder cases so that it would provide a precedent. The government was desperately looking for a solution; the national courts were extremely overwhelmed by the high numbers. The International Criminal Tribunal for Rwanda in Arusha was not a solution for these high numbers either, since it concentrated on genocide cases of the first category.

In addition, those on trial at the ICTR were isolated from community life in Rwanda during the genocide. Many of the prisoners held in Rwanda saw for the first time in the Arusha Tapes what the orchestrators and leaders of the genocide looked like.<sup>121</sup> The reactions to the tapes revealed concerns among the prisoners over the absence of the death penalty at the tribunal and the luxurious living conditions of the tribunal prisoners as compared to those of the Rwandan prisons. The issue of the death penalty is significant because it is used by the national courts in Rwanda but not at the international tribunal. One prisoner observed, "why is it that the tribunal gives them more lenient sentences than us,

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<sup>120</sup> Annual Report of the United Nations Human Rights for Rwanda 1997.

<sup>121</sup> Uvin, Peter. "The Introduction of a Modernized Gacaca for Judging Suspects of Participation in Genocide and the Massacres of 1994 in Rwanda." Discussion Paper prepared for the Belgian Secretary of State for Development Cooperation. <http://fletcher.tufts.edu/humansecurity/pdf/Boutmans.pdf>

they are the ones who told us to kill on radio . . . how come we are paying the higher price?"<sup>122</sup>

As the tribunal is also isolated from Rwanda in terms of its geography and impact, and its defendants equally distanced by their former elite status in the genocide, the indictment of the genocide leaders at the ICTR has very little effect on reconciliation within Rwandan communities, as it emphasizes retributive justice.<sup>123</sup>

In Rwanda, therefore, the form that justice should take is at the heart of the national reconciliation debate, as already noted. The 1994 genocide left over One Hundred and Thirty Thousand (130,000) in prison upon suspicion of committing acts of genocide. With the judicial infrastructure destroyed and most prosecutors and judges killed in 1994, there was no chance that the ICTR and the national court system could prosecute all those responsible for such crimes. Even now, after years of rebuilding, the national courts cannot handle such a high volume of cases. In response to the ineffectiveness of the tribunal and the incapacity of its national court system, the Rwandan government instituted the pre-colonial form of dispute resolution, Gacaca, as discussed in Chapter

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<sup>122</sup> The Arusha Tapes highlight the guilty plea of Kambanda, Rwanda's prime minister during the genocide, the trial of George Rutaganda, former vice-president of the Interahamwe militia, Clement Kayishema, a former provincial governor of Kibuye and many other genocide leaders including district mayors and businessmen. Kimani, Mary. "Arusha Tapes Amaze Rwandan Prisoners: Thousands View Documentary on Trials of Top Genocide Suspects." *Internews*, (28 May 2001).

<http://allafrica.com/stories/200105280120.html>

<sup>123</sup> See Literature Review, Chapter One

Two. Ten Thousand (10,000) Gacaca courts are to-date trying genocide suspects in the communities where their crimes were committed.<sup>124</sup>

## **GACACA COURTS**

The Government of Rwanda believes that the people of Rwanda should reconcile after many decades of division and hatred. In order to do this, it is pertinent to the reconciliation that Rwandese feel that justice is being done. There can be no reconciliation without justice.

The sheer bulk of genocide suspects and cases due for trial has placed a severe strain on Rwanda's criminal justice system which is already crippled by poor infrastructure and the death of professionals during the genocide. Rwanda's prisons are heavily congested and the cost of feeding and clothing prisoners is a drain on the economy.

*The Gacaca* courts are aimed at speeding trials of genocide by having cases heard in community courts. As observed in Chapter Two, Gacaca courts are generally based on various indigenous norms and mechanisms largely based on traditional values, which determine the generally accepted standards of an individual and community behaviour.

The present aim, however, is not to use these courts as they are in the traditional set up but rather to create a new process that shows similarities with the indigenous mechanism. The new process incorporates a modern legislative

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<sup>124</sup> Hirondelle News Agency. "Gacaca Courts Edge On." (5 June 2003).  
<http://allafrica.com/stories/200306120056.html>

framework that helps to expedite trials of thousands of suspects of genocide and to enhance social reconstruction.

The process allows the population to participate in the justice process and therefore enable reconciliation. President Paul Kagame explained on behalf of the government that Rwanda expects *Gacaca* courts to establish the truth about what happened, to expedite the back log of genocide cases, to eradicate the culture of impunity and to consolidate the unity of the Rwandan people.<sup>125</sup> The courts offer the opportunity for truth to come out in the open and to shed light on how those in authority misused their positions to kill people through their actions. The Bill establishing the *Gacaca* courts was presented to the transitional national assembly for debate culminating into a law by an act of Parliament.<sup>126</sup>

Victims of genocide express the hope that the traditional courts will “enable survivors to lift the veil of anonymity” and those currently in jails look forward to quickened justice.<sup>127</sup> The Rwandan government points out that the benefits range from those of justice to those of local communities solving their own problems. Critics, however, suggest that it will increase the case load and that it provides few safeguards for the accused, including no provision for any sort of defense counsel and that it has virtually no guarantees against witness intimidation.<sup>128</sup>

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<sup>125</sup> President Kagame Paul of Rwanda. [http://1<sup>st</sup> – Socrates.berkeley.edu/ - war crime / Rwanda/Rwanda – Gacaca htm](http://1st-Socrates.berkeley.edu/~war-crime/Rwanda/Rwanda-Gacaca.htm).

<sup>126</sup> Organic Law n° 40/2000 of 20<sup>th</sup> January 2001 and amended by organic law n° 16/2004 of 19/6/2004.

<sup>127</sup> Interview with Ngarambe Francis, Chairman of the Rwanda Genocide Survivors Association (IBUKA)

<sup>128</sup> Erin T., Alana, *After Arusha: Gacaca Justice in Post-Genocide Rwanda*, (Volume 8, Issue 1 Fall 2004): <http://web.africa.ufl.edu/asq/v8/v8i1a>

The *Gacaca* courts initiative therefore is timely because it will enable the truth to be revealed about genocide and crimes against humanity. It will speed up the trials of those accused of genocide, crimes against humanity and other crimes, put an end to the culture of impunity, reconcile the people of Rwanda and strengthen ties between them. The *Gacaca* has revived traditional forms of dispensing justice based on Rwandese culture, and demonstrates the ability of local communities to solve their own problems and help solve some of the many post-genocide challenges.

The judges of *Gacaca* courts are respectable people of at least twenty one years of age and elected by people of voting age<sup>129</sup>. They take responsibility for ensuring orderly and fair proceedings. The office of the public prosecutions maintain the responsibility of investigations but files are sent to the local communities for distribution. The department of public prosecution supplies *Gacaca* courts with evidence in cases where there have been investigations. Monitoring and supervising the operations of the *Gacaca* Courts all over the country is carried out by the coordination department within the high court. The Ministry of Justice and other local and central government departments play a role in sensitizing the public to take part in the *Gacaca* courts. The organic law sets up the lowest *Gacaca* court in each cell, followed by a higher *Gacaca* court the sector, including a *Gacaca* court of appeal in each sector of the Republic of

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<sup>129</sup> Art; 14 organic law n° 10/2004 of 19/6/2004.

Rwanda. The *Gacaca* court of the cell is made up of the general assembly, a seat for the *Gacaca* court and a coordination committee.<sup>130</sup>

The general assembly of the *Gacaca* court of the cell is composed of all the residents of the cell aged eighteen years and above.<sup>131</sup> When it appears within a cell that the number of inhabitants aged eighteen years and above is less than two hundred people, that cell can be merged with another cell of the same sector to make one *Gacaca* court. The same applies when it appears that the number of upright persons which is 9 persons of integrity (*Inyangamugayo*, see below) and 5 deputies defined in article 8 of the organic law is not reached. The merged cells proceed to new elections for appointing upright persons.

In case the merged cells fail to meet the required number of upright persons and there are no other cells in that sector, these cells are merged with the cell from the neighbouring sector. The sector to which the merged cells formerly belonged is in turn merged with the sector for the cell with which those cells are merged. Each seat of the *Gacaca* court is made up of nine persons of integrity called *Inyangamugayo*. The *Inyangamugayo* are appointed by their own community members as people they hold in high regard and therefore persons of integrity in their own communities.<sup>132</sup> The general assembly for the sector is composed of the seats for *Gacaca* court of the cells constituting that sector, the seat for the *Gacaca* court of the sector and the seat for the *Gacaca* court of appeal.

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<sup>130</sup> Law n° 16/2004 of 19/6/2004, Art. 5 organic

<sup>131</sup> Ibid, Art. 6

<sup>132</sup> Ibid, Art. 8

The organic law establishes organization, competence and functioning of *Gacaca* courts. The courts are charged with prosecuting and trying the perpetrators of the crime of genocide and crimes against humanity, committed between October 1, 1990 and December 31, 1994 or other crimes provided for in the penal code of Rwanda.<sup>133</sup> *Gacaca* courts are competent to try accused persons and their accomplices in Category Two and Three.<sup>134</sup> Category One is tried by ordinary courts.

Members of the *Gacaca* Court elect among themselves, with a simple majority, the a coordination committee whose members made up of a President, first vice president, a second vice president, and two secretaries, all of whom must read and write Kinyarwanda. The secretaries for *Gacaca* courts shall be responsible for report making and assume the function of secretaries for *Gacaca* courts.<sup>135</sup> The coordination committee convenes, presides over meetings, coordinates activities of the seat for the *Gacaca* court, registers complaints, testimonies and evidences given by the population, receives files for the accused, registers appeals, registers decisions made by organs of the *Gacaca* court, forwards appeals and collaborates with institutions in implementing decisions made by the court.<sup>136</sup>

Given all this, the trials will still meet significant difficulties. The judges are a mixture of laymen and those versed in the law. Getting large numbers of

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<sup>133</sup> Chapter 1 organic law of 19/6/2004.

<sup>134</sup> Art. 2 and 5 of the organic law n° 16/2004 of 19/6/2004.

<sup>135</sup> Art. 11 of organic law N° 16/2004 of 16/6/2004.

<sup>136</sup> Art. 12 of the organic law n° 16/2004 of 19/6/2004.

the community together has presented some problems. Since the process began, however, more than three million have been exposed to the proceedings through radio, round-table discussions and sports events to raise awareness. Nevertheless despite the shortcomings and challenges, it has the potential to work a great deal of good in Rwanda.<sup>137</sup>

## **THE NATIONAL UNITY AND RECONCILIATION COMMISSION**

The post-genocide government considered unity and reconciliation of the Rwandan people as a *sine qua non* for lasting peace, security, political stability and development. Rwanda's polity has been defined by ethnic polarization for a long time dating from the colonial and post-colonial periods, as discussed in Chapter Two. This discrimination policy resulted in divide and rule as the governing principle. Inevitably, this divisive and repressive culture led to gross violations of human rights with impunity which culminated in the 1994 genocide.

With this background in mind it was therefore imperative that the government of Rwanda set up the Commission of National Unity and Reconciliation. This Commission was established by an Act of Parliament as a platform for Rwandans to voice their views on reconciliation issues.<sup>138</sup>

Pursuant to article two of this law the National Unity and Reconciliation Commission is mandated to organize and oversee national public debates aimed

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<sup>137</sup> Chapter five gives a detailed critical analysis of Gacaca process, its short comings, challenges and expectations.

<sup>138</sup> Law n<sup>o</sup> 03/99 of 12<sup>th</sup> March 1999.



at promoting national unity and reconciliation of Rwandan people, denounce any written or declared ideas and materials seeking to discriminate the Rwandan people, prepare and coordinate Rwanda's programmes of promoting unity and reconciliation, use all possible means that can sensitize Rwandans on unity and to lay on it a firm foundation, educate Rwandans on their rights, and assist in building a culture of tolerance and respect of other peoples' rights, give views to institutions charged with drafting laws aimed at fostering unity and reconciliation, monitor closely whether government organs respect and observe policies of national unity and reconciliation practices and finally conceive and disseminate ideas and initiatives aimed at promoting peace among Rwandan people and encourage a culture of unity and reconciliation.

The commission has got twelve commissioners drawn from all sections of the population including political parties and civil society organization. They have a renewable mandate of three years until the age of retirement. The commission, though established by the government operates independently without its influence. It is financed from the public treasury.

Since the time of its creation, there have been some divergences and reluctance regarding the mission of the commission. To some people the commission was to limit itself to unity claiming that it was too early to talk about reconciliation. For others, it sounded more appropriate to talk of "unity and cohabitation" because reconciliation for them seemed impossible. There are others who suggested that justice was only to be applied and then reconciliation

would automatically come later. All those views raised a fundamental question "who was to reconcile with who?" was it about reconciling the Hutu with the Tutsi, the killer with the victim or new leaders with the opposition?<sup>139</sup>

Under normal conditions, however, reconciliation takes place between the oppressor and the oppressed through mediation. In any case, prior to reconciliation and restoration of mutual friendly relationships, one who has caused harm to the other should admit and regret wrong doing, apologize to them and if need be given compensation. In the context of Rwanda none of those prerequisites have been met because in most cases the killers do not admit their acts, do not regret them, do not apologize to them. This constitutes one of the major obstacles for the process to be successful.<sup>140</sup> They cannot reconcile when hatred is still felt and the wounds still too fresh. The criminals have not got punished because the process of justice is still underway.

The National Unity and Reconciliation Commission organized national summits to discuss the underlying issues on conflict and reconciliation. The objective of the first summit was to discuss the issue of unity and reconciliation in Rwanda, the causes of the conflict, the current situation and the obstacles to unity and possible solution to the problem. There were debates which focused on four points including the problem of governance and leadership, the problem of justice, the problem of poverty and the problem of teaching the Rwandan

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<sup>139</sup> Interview with Brig. Gen. Rusagara, commentator on Rwanda in the local media, September, 2005, Kigali

<sup>140</sup> Dr Gregory Stanton, see Genocide Process in Chapter Two

history.<sup>141</sup> The summit summed that it behooves each individual Rwandan to take the responsibility of what Rwanda ought to be as a unified country. On this, every possible effort would be put in place to empower Rwandans with historical information and provoke their sense of patriotism to facilitate reconciliation.<sup>142</sup>

The second summit had seven main themes including, the problem of unity and reconciliation, the democratization and decentralization process, justice in Rwanda and *Gacaca* courts in particular, poverty reduction policy as a strategy for unity and reconciliation, the new constitution as a means of establishing the rule of law, the strategies to end the transition period in peace and the security issue in the Great Lakes Region and Rwanda in particular.<sup>143</sup> The main point that came out of the summit summing up all the issues was that democratic principles be followed, but not in contradiction to the country's history and its socio-economic and political histories. As attested by various scholars, the emphasis was on conflict management exclusively on economic and political reconstruction.<sup>144</sup>

In addition to the Summits, solidarity camps, commonly known as "ingando", also constitute an activity of paramount importance for the National

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<sup>141</sup> Report on the National Summit on Unity and Reconciliation, 18-20<sup>th</sup> October, 2000, Kigali

<sup>142</sup> Ibid

<sup>143</sup> Report on the Second National Summit on Unity and Reconciliation, 28<sup>th</sup> October, 2002

<sup>144</sup> See among others, M. Brown, 'Causes and Implications of Ethnic Conflict,' in M. Brown (ed.), *Ethnic Conflict and International Security* (Princeton University Press, 1993), pp. 3-27; 'The Causes and Regional Dimensions of Internal Conflict,' in M. Brown (ed.), *The International Dimension of Internal Conflict* (Cambridge, MA: The MIT Press, 1996), pp.571-603; M.Ross, *The Management of Conflict: Interpretations and Interests in Comparative Perspective* (New Haven: Yale University Press, 1993); T. Woodhouse, 'Commentary: Negotiating a New Millenium? Prospects for African Conflict Resolution,' in *Review of African Political Economy* (N°68, 1996), pp. 129-137; S. Van Evera, 'Hypothesis on Nationalism and War,' in *International Security* (Vol.18, N°4, Spring 1994), pp. 8-9.

Unity and Reconciliation Commission and for the process towards reconciliation. Initially, the solidarity camps were meant to ease the reintegration of refugees returning home, mainly from the Democratic Republic of Congo (DRC), but have now been extended to various categories of the population. Civil servants, students, released prisoners are sometimes organized in those camps in order to have them go through public lectures, public debates on unity and reconciliation process, challenges and opportunities in three-month workshops.

Thus the *Ingandos* form the main reconciliation mechanism. The *Ingando* workshops help the parties redefine their situation, facilitate a mutual understanding of each other, and identify the grievances, perceptions, and values of the parties and disputes. "Creative problem-solving searches for ways of redefining, fractioning, or transcending the conflict so that positive-sum, or win/win solutions, which leave both parties better off, can be discovered."<sup>145</sup> The psychological barriers of suspicion, rejection, fear and deception are changed through the *Ingandos* by injecting knowledge and experience about conflict, conflict behaviour, and psychology into the socio-political relationships. Herbert Kelman, a professor of psychology and conflict resolution, argues that "As long as the psychological barriers persist, the parties are locked into rigid assumptions and postures rooted in past history."<sup>146</sup>

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<sup>145</sup> H. Kelman, 'Interactive Problem-Solving: a Social-Psychological Approach to Conflict Resolution,' in J. Burton and F. Dukes (eds.), *Conflict: Readings in Management and Resolution*, op.cit., pp. 201.

<sup>146</sup> Ibid. p.203

Though the commission has been operative for some years, some questions and expectations are still without an answer. These include the restoration of the Rwandan identity, or how to rebuild the hearts and unique identity of Rwandans so that positive relations are mutually beneficial to all Rwandans.<sup>147</sup>

The optimists argue that the impact is being felt and has positively affected the national socio-political stabilization process and has cleaned the ground to foster justice, equality, citizenship and peace.<sup>148</sup> The pessimists argue that for the mission of the unity and reconciliation commission to be successful in Rwanda, there should be more conducive practices in addition to mere convictions and speeches.<sup>149</sup>

## **COMPARATIVE ANALYSIS OF THE NATIONAL COMMISSIONS ON RECONCILIATION**

As the post-genocide government of Rwanda established a national unity and reconciliation commission with the mandate to forge and facilitate national unity and reconciliation programmes, the post-apartheid government in South Africa established the truth and reconciliation commission (TRC) as a result of a

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<sup>147</sup> Interview with, Ms Fatuma Ndagiza, Chairperson of the National Unity and Reconciliation Commission

<sup>148</sup> Ibid

<sup>149</sup> Interview with, Ngarambe Francis, Chairman of the Association of the Survivors of the Rwandan Genocide (IBUKA), September, 2005, Kigali

negotiated settlement or compromise between the African National Congress (ANC) and the white South African government.

The objectives of the TRC were to establish a picture, as complete as possible, of the causes, nature, and extent of the gross violations of human rights committed from 1 March 1960 to the inauguration of President Mandela in May 1994; grant amnesty to persons who during that period had committed such associated with political objectives, who made full disclosure of all the relevant facts relating to the act and who could demonstrate a proportionality between the act and the desired outcome of the act; establish the fate or whereabouts of victims of gross violations of human rights, and to restore their human and civil dignity by granting them the opportunity to relate their own accounts of the violations they had been subjected to, and by recommending reparation measures; and, compile a report providing an account as comprehensive as possible of the activities and findings of the commission, which would contain recommendations or measures to prevent future violations of human rights.<sup>150</sup>

In East Timor, the Reception, Truth and Reconciliation Commission (RTRC) was formed by the U.N in consultation with the National Consultative Council, which comprised of leaders from political parties, churches, the NGOs, women and youth associations and labour unions. The commission was

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<sup>150</sup> South Africa Promotion of National Unity and Reconciliation Act, No 34 of 1995. Truth and Reconciliation Commission of South Africa Report, March 2003

independent and set to operate for the period of twenty-four months, starting from January 21, 2002 to January 2004. However, this period could be extended by up to six months.

The Commission was tasked with inquiring into the atrocities committed between the collapse of Portuguese colonial rule in April 1974, and the end of the Indonesian occupation in October 1999. Specifically, it was to inquire into human rights violations that had taken place in the context of the political conflicts in East Timor; establish the truth regarding past human rights violation; Promote reconciliation; and support the reception and reintegration of perpetrators of crimes against their communities.<sup>151</sup>

The South African case reveals some unique dimensions because it had the capacity to grant amnesty on the basis of investigative corroboration of the acknowledgement of the commission of gross violation of human rights. It had powers to summon, search and seize which compelled witnesses to testify in seeking truth about the past atrocities. The public and transparent nature of the commission gave society an understanding of the past that no other commission has been able to accomplish to the same degree. The holding of institutional and special hearings designed to identify and understand the involvement of the bystanders and other actors in the perpetration of the apartheid. These included the hearings on the role of the media, the legal profession and faith and business

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<sup>151</sup> Human Rights watch, Justice for East Timor, March 2000; <http://www.un.org/peace/etimor/etimor.htm>; [www.restorativejustice.org/ir3/RS.city/03-03](http://www.restorativejustice.org/ir3/RS.city/03-03)

communities. There was a witness protection program designed to protect those testifying before the commission.

Whereas the Rwandan and the South African commissions are established by law, the East Timor commission (see box below) was established by a joint body composed of East Timor people and the United Nations Transitional Administration in East Timor (UNTAET). Unlike the Rwandan and South African commissions, it is not clear to whom the East Timor commission is accountable and under which administrative structure it can be held responsible. However, all these commissions though different in their mandate have one major commonality in that they are born out of peculiar circumstances to address human rights abuses that have occurred in the past.



## The differences and similarities among the South African, Rwandan and East Timor National Reconciliation Commissions

South Africa	Rwandan	East Timor
<b>Differences</b>		
*Truth and Reconciliation Commission (TRC)	*National Unity and Reconciliation Commission (NURC)	*Reception, Truth and Reconciliation Commission (RTRC)
*Hundred of public hearings	*No public hearings	*Public hearing
*No UN role	*No UN role	*International role UN
*Amnesty Granting Power	*No Amnesty Granting Power	*No Amnesty Granting Power
*Set up by legislation	* Set up by legislation	*Set up by UN Regulation
*Witness Protection Program	*No witness Protection Measures	* No witness protection Measures
* Temporary body three and half (3.5) years	* Not stated in the Legislation-period undetermined	* Temporary two (2) years
* Extensive Media coverage	* Average	* Average
* Apartheid Crimes	* Genocide plus Crimes	* Crimes Against Humanity

### Similarities

- \* All are Set up to address the past abuses
- \* All Commissioners are nationals
- \* All are appointed at a platform for victims
- \* All provide a platform for victims
- \* Write report and Recommendations to the government

## CHALLENGES

The Rwanda National Unity Reconciliation Commission has an enormous task which primarily would require all institutions to work together in order to facilitate reconciliation process. The effects of genocide have been far reaching. The majority of survivors still live in poverty and speaking of reconciliation among poor people is a complex task. They still complain of lack of compensation, which they have not received yet.

The other challenge is the inadequate funding compared to accomplishments expected of the commission. Survivors of the genocide speak injustices, arguing that justice has not been done to the perpetrators of genocide, and fear this could promote impunity again as in the past.<sup>152</sup> Perpetrators on the other hand question their prolonged incarceration without trial.

Despite these challenges, the commission can boast of a few achievements. People are getting increasingly aware of the need for co-existence due to civic education programmes. This has in turn led to formation of national unity clubs particularly in institutions of higher learning. A large number of prisoners are also confessing their crimes as a result nationwide sensitization campaigns in prison and are asking for forgiveness from survivors of genocide.

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<sup>152</sup> Alison des Forges, *op.cit.*, p124

Some conditionally released prisoners are giving evidence against their fellow accomplices who are still at large in the communities. The commission has further helped to repatriate three million and a half refugees due to the sensitization programmes and has also helped in their resettlement.

Notable institutions like the National Examination Board<sup>153</sup>, the National Human Rights Commission set up to investigate human rights abuses<sup>154</sup> and Auditor General's office<sup>155</sup> established to investigate the proper use of public funds have been established to fight for social and economic justice and are helping in trust building among the population and developing a culture of transparency in public institutions without discrimination.

The commission is now entering the most critical stage of national reconciliation. *Gacaca* courts judges elected by community councils will open files of detainees accused of genocide. In search of facts and evidence these judges will hear testimonies from prisoners, survivors and the general population. The immediate questions are, whether the population will testify in great numbers during *Gacaca*, whether survivors and prisoners trust the Judges and procedures of this new institution, and whether *Gacaca* courts will have a positive impact on reconciliation.

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<sup>153</sup> Act of Parliament, law n<sup>o</sup> 19/2001 of March 2001.

<sup>154</sup> Act of Parliament, law n<sup>o</sup> 04/99 of 12/3/1999.

<sup>155</sup> Act of Parliament, law n<sup>o</sup> 5/98 of 4/6/1998.

## CHAPTER FOUR

### THE ROLE OF THE INTERNATIONAL TRIBUNAL FOR RWANDA IN REGIONAL GOVERNANCE

#### INTRODUCTION

The previous chapter dealt with justice and reconciliation as instruments of political stability in the context of Rwanda in the aftermath of 1994 genocide. It examined the post-genocide responses that are expected to help in promoting or facilitating peace and reconciliation, specifically analysing the justice sector, national unity and reconciliation programmes.

On 6<sup>th</sup> April 1994, only a few hours after the plane bringing the Presidents of Rwanda and Burundi from peace negotiations in Tanzania was shot down as it approached Kigali Airport, the slaughter of about one million people began in Rwanda in one of the worst cases of genocide in history.<sup>156</sup> The genocide had been planned long in advance the only thing that was needed was the spark that would set it off. Radio-Television *Libre des Mille Collines (RTLMC)* had been spreading violent and ethnic propaganda on daily basis tormenting hatred and urging its listeners to exterminate the Tutsi.

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<sup>156</sup> Jennings, Christian, *Across The Red River: Rwanda, Burundi and the Heart of Darkness*, Orion, 2001, p81

There is little doubt that genocide had been planned with meticulous care.<sup>157</sup> Working from prepared lists, an unknown large numbers of the population armed with machetes, nail-studded clubs or grenades, methodically murdered those named on the lists and whose identity card indicated Tutsi ethnic origin. Virtually every segment of the Hutu society participated, including doctors, nurses, teachers, priests, nuns, businessmen, government officials of every rank and even children. The murder crusade was led by the Rwandan Armed Forces and the *Interahamwe* and *Impuzamugambi* militias. Its main target was the Tutsis and moderate Hutus.

Surprisingly, these killings took place while a contingent of United Nations peace keeping forces – The United Nations Assistance Mission to Rwanda (UNAMIR) was in the country trying to facilitate the implementation of the peace agreement between the government of the time and the Rwandese Patriotic Front (RPF).<sup>158</sup>

The main question in Rwanda after the genocide was how to deal with the perpetrators of the genocide. The Rwandan government set in motion a process aimed at ensuring individual criminal responsibility for the perpetrators. The Tribunal is competent to judge persons who “planned, instigated, ordered,

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<sup>157</sup> Stanb E (1992) Roots of Evil : The origins of genocide and other group violence. Cambridge University Press, Cambridge, p105

<sup>158</sup> Chris Maina Peter. (1997) “The International Criminal Tribunal for Rwanda: Bringing the Killers to Book”. International Review of the Red Cross No. 321 p. 695-704  
[www.icrc.org/wev/Engl/Siteengo.nsf/iwpList164/Bo6B489181c69E8c1256B6600](http://www.icrc.org/wev/Engl/Siteengo.nsf/iwpList164/Bo6B489181c69E8c1256B6600).

committed or otherwise aided and abetted” in executing the crimes within its jurisdiction.<sup>159</sup>

## **INTERNATIONAL CRIMINAL TRIBUNALS**

The International Criminal Tribunal for Rwanda is a culmination of a long history in international humanitarian law and international criminal law. These laws evolved in reaction to war, providing the basis for the development of the laws of war. In particular, these laws included the Geneva Convention of 1949 and the 1977 Protocols Additional to them. In original development, international criminal law was concerned with crimes that took place during the conduct of war. In particular, from the writings of Hugo Grotius, the laws of war were intended to mitigate the effects of war as far as possible, through prohibiting needless cruelties, and prohibiting the acts that spread death and destruction which were not reasonably related to the conduct of hostilities. However, its scope has broadened to include not only crimes of war but also crimes against peace and those that take place during peace time.<sup>160</sup>

The twentieth century witnessed major developments in both conceptualizing and activating the prosecution of international criminal law. One major development was the active codification of the laws, through, originally

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<sup>159</sup> Statute of the International Tribunal for Rwanda Article 6, (2) of the Resolution establishing the Tribunal S/RES/955.

<sup>160</sup> Mwangi, Makumi, “Thinking Outside the Box: The international Criminal Tribunal for Rwanda and issues of Governance and Reconciliation”, The east African Human Rights Institute Journal, June 2005, pp35-42

the Hague Conventions (1907), and later the Geneva Conventions of 1949. The latter, in particular were a major milestone in the sense that they reflected the flowering of international human rights laws. This process began with the Universal Declaration of Human Rights (1948), and the consequent regimes on genocide, refugees, culminating in the 1966 Covenants on Civil and Political Rights and that on Economic, Social and Cultural Rights.<sup>161</sup>

The codification of international humanitarian law, however, while an important development faced problems of jurisprudence and epistemology. The jurisprudential problem was that while the laws specified general principles of conduct, they did not specify either the means of their enforcement or the penalties for their violations. The epistemological problems faced had to do with the definition of which specific offences were to attract sanctions. In defining its jurisdiction, the Charter of Nuremberg made significant developments in this area of international law.

The major development of the twentieth century, however, went beyond the mere codification and conceptualization of a legal regime for international criminal law. It was concerned with the establishment of tribunals for the prosecution of those who violated these laws. The Nuremberg Charter of the International Military Tribunal in particular was the landmark development in the field. The Charter, in defining its jurisdiction created three sets of offences related to war – and peace. Specifically, it defined crimes against peace (largely

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<sup>161</sup> Ibid

to do with planning and instigating wars of aggression), war crimes such as murder, ill treating prisoners of war, killing of hostages, etc), and crimes against humanity (such as inhumane treatment of civilians before or during war). Signally, the Charter also specified that these were crimes in international law, whether or not they were in violation of the domestic laws of the countries in which they were perpetrated.<sup>162</sup>

These developments also raised two major problems in the epistemology of international criminal law. The first was that the victors essentially established the tribunals so created, hence the question whether tribunals established by the victors could guarantee justice. The second problem concerned procedural issues of how on the one hand to effect a system of international criminal justice, while not, on the other hand seeming to care more about the perpetrators of the international crimes at the expense of their victims. These are both valid issues, which continue to color discourses on doing and effecting international criminal justice.<sup>163</sup>

Alongside these issues is the major structural issue of the kind of tribunals that can best provide the vehicle for implementing international criminal law. Here, the discourse has been about whether there should be a permanent international tribunal, or whether, following the experience of Nuremberg, *ad hoc* tribunals, established to address the violations of international criminal laws in specific conflicts would better serve the needs of international criminal justice. On this

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<sup>162</sup> Ibid

<sup>163</sup> Ibid



issue, contemporary experiences have served to focus the issue sharply. In the current scene, there exist both a permanent court (the International Criminal Court - ICC), and *ad hoc* tribunals such as the International Criminal Tribunal for Rwanda (ICTR), that for former Yugoslavia (ICTY), and the one for Sierra Leone. Far from settling these issues, the establishment of the ICC has further focused the debate, and hence the issue is still very much up for debate.

The main difference between those earlier tribunals and the recent ones is that while after the Second World War it was the Victors who set the rules for punishing the vanquished, today it is the International community as a whole which is seeking to bring perpetrators of genocide and other crimes against humanity to justice. In so doing, the International Community, acting through the United Nations has taken into account the development of both International law and International humanitarian law since 1945. That is why the statute of Rwanda Tribunal takes note of both the Geneva Conventions of 1949 and their 1977 additional protocol II.<sup>164</sup>

Other examples of International Criminal Tribunals in modern times include the International Military Tribunal in Nuremberg and International Military Tribunal for the Far East in Tokyo both of which were set up to prosecute and punish Second World War Criminals in Europe and Japan. The more recent one is the International Special Court for Sierra Leone.<sup>165</sup>

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<sup>164</sup> Ibid

<sup>165</sup> United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000

The International Criminal Tribunal for Rwanda (ICTR) was created under Chapter VII of the United Nations Charter by the UN Security Council in the resolution 955 of 8 November 1994. The purpose of this measure was to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace in the region. The International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. It may also deal with the prosecution of Rwandan citizens responsible for genocide and other such violations of international law committed in the territory of neighbouring States during the same period.<sup>166</sup>

From the very beginning, Rwanda took exception to the time period over which the ICTR would have jurisdiction. According to the ICTR Statute then being drafted in September 1994, only crimes committed between January 1 and December 31, 1994 would come within the jurisdiction of the ICTR. Manzi Bakuramutsa, then Rwandan Ambassador to the United Nations, argued that such limited temporal jurisdiction would prevent the ICTR from fully capturing within its prosecutorial scope the criminal activities that culminated in the genocide of 1994.<sup>167</sup> Those activities, he observed, began with planning and

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<sup>166</sup> [Http://www.unctr.org](http://www.unctr.org), <http://196.45.185.38/default.htm>

<sup>167</sup> U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/PV.3453, at 14-15 (1994)

sporadic massacres, "pilot projects for extermination" as he called them, dating back to 1990.<sup>168</sup>

While there may be an argument for a political motive in the fixed time of 1 January 1994 and 31 December 1994 (for instance, that the French might have had a hand in it to protect themselves and their allies involved in the planning and execution of the 1994 genocide),<sup>169</sup> the ICTR observed that jurisdiction over actual killings, rapes, and other acts constituting genocide, war crimes, and crimes against humanity only if those acts were committed in 1994, it is likely that under the terms of the ICTR Statute, the planning, preparation, or aiding and abetting of those 1994 acts also can form the basis for criminal liability through complicity, even if that preparation occurred prior to 1994.<sup>170</sup>

### **ICTR Law**

The International Criminal Tribunal for Rwanda is governed by its Statute, which is annexed to Security Council Resolution 955. The Rules of Procedure and Evidence, which the Judges adopted in accordance with Article 14 of the Statute, establish the necessary framework for the functioning of the judicial system. The Tribunal consists of three organs: the Chambers and the Appeals Chamber; the Office of the Prosecutor, in charge of investigations and prosecutions; and the Registry, responsible for providing overall judicial and administrative support to the Chambers and the Prosecutor.

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<sup>168</sup> Ibid

<sup>169</sup> Interview with Dr. Charles Muringande, Rwanda Minister for Foreign Affairs, September, 2005

<sup>170</sup> Ibid

The Statute of the Tribunal more or less follows the Genocide Convention of 1948 in defining genocide as any act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Such acts include, killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures to prevent births within the group and forcibly transferring children of the group to another group. According to the statute, genocide itself, conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide are all punishable.

As the study will discuss with case law examples later in this chapter, the Tribunal has powers also to prosecute persons charged with crimes against humanity which include, murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial or religious grounds and other inhumane acts since such crimes can be committed in various circumstances, the statute specifies that they only fall within the purview of the Tribunal when committed as part of widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

Article 4 of the Statute empowers the tribunal to prosecute persons who commit or order to be committed serious violations of Article 3 common to the 1949 Geneva Conventions for the protection of war victims and of 1977 Additional Protocol II relating to the protection of victims of non-international

armed conflicts. Such violations include, violence to life or well being of others, in particular murder and cruel treatment such as torture, mutilation or any form of corporal punishment, collective punishments, the taking of hostages, acts of terrorism, outrages upon a person's dignity in particular humiliating and degrading treatment, rape, enforced prostitution and any other form of indecent assault, pillage, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples, and threats to commit any of the foregoing acts.

### **The Basis for Prosecuting Perpetrators of the Crime of Genocide in International Law**

There is a controversy in academic circles over the wisdom of choice by transitional governments to prosecute the perpetrators of gross violations of human rights such as the Rwandan genocide of 1994.<sup>171</sup> Amnesty is often seen as the right choice for healing society where both the perpetrators and the victims are able to co-exist. The need for accountability for past human right abuses generated a lot of discussions but there seems to be a little analysis to date applicable to rules of international law.<sup>172</sup> In the end, however, it is justice

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<sup>171</sup> MA Drumbl (2000), "Punishment, Post Genocide: Guilt to Shame to Ciris in Rwanda", New York law Review 1221

<sup>172</sup> D F Orentlicher (1991) "Settling Accounts: the Duty to prosecute human rights violations of a prior regime" 100 Yale Law Journal

that must be seen to prevail though there may be disagreement about the form of justice.

Arguments around the term justice tend to fall between two extremes. At the one end justice is discussed with a focus on its retributive dimension or punitive justice. The connotation of this focus is that the perpetrators must pay a price and thus not go unpunished. In this respect, justice is based on prosecution. Such views have been criticized as a narrow reasoning to achieve strict legal outcomes, which to many justifies revenge – making reconciliation a distant possibility. At the other end, justice, it is argued, should be the result of restorative mechanisms. This may include amnesty, truth-telling and reparation. The notion of restoration implies the existence of a state of wrong that disrupts the relationship in society between those implicated in the doing and the suffering of a wrong. In taking this social dimension, as earlier noted, restorative justice captures an idea of transformation and orientation towards the future.<sup>173</sup>

The aim here is not to merely define these forms of justice and end there, but rather to suggest that in a post-genocide peace building phase, policy makers and custodians of justice need to take into account all these aspects in addressing justice needs when prosecuting past violators of human rights.

## **Amnesty**

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<sup>173</sup> J. Nedelsky and C. Scott "Constitutional Dialogue" in J. Bakan and D. Schneiderman, eds., *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992) p59

The proponents of granting Amnesty to those implicated in atrocities argue that Amnesty helps a society to attain reconciliation and healing after a period of conflict and social trauma.<sup>174</sup>

It is argued here that one of the prices of consolidating a post-traumatised democracy is to forego the redress of past human rights violations.<sup>175</sup> States that have rallied on this argument of amnesty include Argentina, Benin, Chile, Elsalvador and South Africa. There is also the reconciliation theory which argues that a retributive approach to past atrocities may provoke a vicious cycle of violence for similar abuses.<sup>176</sup> This view supports amnesty as the best option for sustaining a young and fragile democracy that is emerging from human rights atrocities committed in the recent past.

It has also been argued that granting Amnesty to perpetrators of gross violations of human rights helps to reveal the truth and establish an official record of what occurred.<sup>177</sup> This argument is linked to the reconciliation theory which envisages the exposure of truth as crucial to the promotion of social healing and the provision of victims with at least some psychological satisfaction.

Amnesty has also been proposed as a better alternative to a complete failure to prosecute.<sup>178</sup> The failure to prosecute past violations, it has been argued, may quite often arise from the inability to do so particularly in weak and

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<sup>174</sup> F Vilijooen, (1999) "Bringing Human Rights Violators to Justice, Abroad - Guide to Universal Jurisdiction". International Council on Human Rights

<sup>175</sup> Ibid

<sup>176</sup> C S Nino (1991) "the Duty to Punish Past Abuses of Human Rights put into Context: the Case of Argentina" 100 Yale law Journal 2619-2020

<sup>177</sup> Ibid

<sup>178</sup> Ibid

failed states where the legal structures for such prosecutions are not in place.<sup>179</sup>

This argument may be valid in relation to Rwanda, where large numbers of suspects in detention has almost overwhelmed the country's structures of the Administration of justice.

### **The Case for Prosecutions**

There are several arguments in favour of prosecuting past violators of human rights. The most obvious is that the perpetrators of human rights violations must be brought to justice for the commission of these offenses.<sup>180</sup> The argument here is the use of the term "justice" and its meaning because there should be a difference between seeking vengeance and desirable suitable punishment. However, some argue that punishment of some sort is part of justice.<sup>181</sup>

The second argument is that prosecutions are considered to be in support of the rule of law. Failure to prosecute past violations of human rights will not provide a firm basis for the reconstruction of the rule of law in future. The rule of law requires that all persons and institutions are equal before the law. No one is above the law. Grave crimes therefore if not prosecuted will amount to disregarding these principles and the rule of law. The central importance of the

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<sup>179</sup> Ibid

<sup>180</sup> Ibid

<sup>181</sup> Ibid



rule of law in civilized society requires within defined but principled limits prosecutions of especially atrocious crimes.<sup>182</sup>

The third argument is founded on the premise of the need to protect society. Prosecution is a social undertaking on behalf of the society at large. If perpetrators of human rights violations remain at large, they continue to be a threat to the society in which they live, although due to the fact that they are no longer in power, their capacity to perpetuate the violations with impunity has been greatly reduced.

The fourth argument for the prosecution of perpetrators for past violations of human rights is the deterrence of future abuses. This view is based on the assumption that perpetrators commit crimes in expectation that because they are in power or because the country's legal system is unwilling or unable to prosecute such crimes, they will not face justice which results in impunity.<sup>183</sup> Further, the trials may contribute to the hindrance of human rights abuses in some other countries where tyrannical regimes remain.

The fifth unequivocal argument of criminal trials is that they facilitate instituting or restoring democracy. Prosecution and punishment highlight the democratic character of a new regime, by making a clear distinction between its previous suppressive regime and itself. Moreover, the trials can foster democratic culture, since they provide the public with the opportunity of public discussion and collective deliberation on the social tragedy of killings and torture.

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<sup>182</sup> D F Orentlicher (1991) "Setting accounts: The Duty to prosecute human rights violations of a prior regime." 100 Yale law journal 2537-2540

<sup>183</sup> Ibid

It is noteworthy, however, that these outcomes are not exclusively produced by trials. Possible human rights violations in the future can be prevented to a lesser degree by truth commissions. Public discussion and collective deliberation on the tragedy may also result to some degree through the process of truth commission.

### **International Law and the Prosecution of the Crime of Genocide**

Genocide falls in the category of offences known as international crimes. International law requires states to punish international crimes committed within their territorial jurisdictions and wherever they take place.<sup>184</sup> The term 'international crimes' in its broadest sense comprises of offences which conventional or customary international law either authorizes or requires states to criminalise, prosecute and punish.<sup>185</sup> International law imposes a duty to prosecute these crimes, so that failure to prosecute them violates international law. The duty to prosecute is owed *erga omnes* (to all the world) and those accused of international crimes may be punished by any state, not just the state

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<sup>184</sup> Dugard, John and Christine van den Wyngaert, eds. *International criminal law and procedure*. Aldershot; Brookfield, VT, 1996

<sup>185</sup> Ibid

where the crimes were committed.<sup>186</sup> Commission of such crimes renders one *hostis humanis generis* (enemy of mankind).

The most serious crimes that concern international community as a whole are genocide, war-crimes and crimes against humanity.<sup>187</sup> All those crimes were committed in Rwanda, since the genocide was committed in the context of an armed conflict. Genocide is any act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.<sup>188</sup> War crimes are crimes committed in internal or external conflict. They are governed by international humanitarian law which is a branch of law that aims at safeguarding human rights in conditions of armed conflict. The laws of war are intended to mitigate the effects of as far as possible through prohibiting needless cruelties, and prohibiting acts that spread death and destruction, which are not reasonably related to the conduct of hostilities such as the genocide was. The four Geneva Conventions of 12 August 1949 and the two additional protocols of 8 June 1977 are the principal instruments of international humanitarian law.

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<sup>186</sup> Hoogh, André de. *Obligations erga omnes and international crimes: a theoretical inquiry into the implementation and enforcement of the international responsibility of states*. Hague; Boston: Kluwer International Law; Cambridge, MA:1996.

<sup>187</sup> Art. 5, The Rome Statute of the International Criminal Court adopted on 17<sup>th</sup> July 1998.

<sup>188</sup> Convention on the prevention and punishment of crime of Genocide Adopted in December 1948 (art. 3) UNGA res 260 (III) A 78 UNTS 227; text of the Convention produced in FF Martin et al international human rights law and practice (1997). See also Art. 2 ICTR Statute <www.ictr.org> and Art. 6 of the Rome Statute.

In the case of Rwanda where the conflict was not international armed conflict, the law that governs these war crimes is found in Art 3, common to the four Geneva conventions as modified by Additional Protocol II thereto. The protocol is aimed at safeguarding the dignity and protecting the victims of war, including prosecuting the perpetrators of such acts. The same rules are replicated in the ICTR Statute and criminalise pillage, taking of hostages, extra-judicial executions and rape. The category of crimes against humanity include a long list of acts which also include murder, extermination, rape, and the crimes of Apartheid.<sup>189</sup> In the case of *Prosecutor vs Dusko Tadic*,<sup>190</sup> the International Tribunal for former Yugoslavia held that crimes against humanity do not require a connection to international armed conflict. International law makes it a requirement that these offences must be punished. The most explicit obligation to punish international crimes is established by the convention on the prevention and punishment of the crime of genocide to which Rwanda is a party.

Under the Genocide Convention, contracting parties confirm that genocide is an international crime, and they undertake to prevent and punish it; there is no provision for forgiving it.<sup>191</sup> Article 4 provides that persons committing genocide shall be punished, whether they are constitutionally punishable rulers, public officials or private individuals. The Genocide Convention further requires that persons charged with genocide shall be tried by a competent tribunal of the

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<sup>189</sup> Art. 7, Rome Statute

<sup>190</sup> (1996) 35 International Legal Materials 32-72

<sup>191</sup> Genocide Convention, Preamble, Para 1

state in the territory where the act was committed or such international penal tribunal as may have jurisdiction.<sup>192</sup>

Under the International law doctrine of *pacta sunt servanda* states are required to carry out obligations of the treaties they are parties to in good faith.<sup>193</sup> Rwanda therefore in pressing for the establishment of the ICTR for the prosecution of those implicated in the 1994 genocide and in prosecuting the suspects in its domestic courts, was complying with its obligations under the Genocide Convention. Rwanda was also complying with the requirements of customary international law that impose a duty on states to punish those who commit genocide because the law regards them as *hostis humanis generis*.

The Geneva Conventions of 1949 were the other basis for prosecuting those who perpetrated the tragic events that took place in Rwanda. The conflict that occurred in Rwanda was characterised as a non-international armed conflict and Rwanda is a party to the Geneva Conventions.<sup>194</sup> Article 3, common to the four Geneva Conventions, are applicable to the Rwandan situation. Protocol II is binding even for the states that have not ratified it. State parties are under an obligation to punish violations of common Article 3, as strengthened by Protocol II.<sup>195</sup> Customary international law also regards the rule requiring the punishment

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<sup>192</sup> Art. 6. of Genocide Convention

<sup>193</sup> Art. 26 Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969, entry into force 27 January 1980, UN DOC A/COF, 39/27

<sup>194</sup> IG Tuzinde, (2000), Justice and Social Reconstruction in the Aftermath of Genocide in Rwanda: An Evaluation of the Possible role of the Gacaca Tribunals. Unpublished LCM Dissertation, University of Pretoria 16.

<sup>195</sup> Ibid

of the perpetrators of genocide, war crimes and crimes against humanity as *Jus Cogens*.<sup>196</sup>

*Jus Cogens* is a term usually used to refer to a body of rules called peremptory norms which are so important that they cannot be set aside by acquiescence or agreement of the parties to a treaty. States are therefore required to punish these crimes. This state obligation is unquestionable. Where the state for one reason or the other is unable to prosecute an international crime, international law requires such states to extradite the accused. This requirement is part of customary international law principle of *aut dedere aut judicare*, the duty to extradite or prosecute in international law. The imposition of this obligation binds the states to ensure that individuals who perpetrate crimes against humanity are brought to justice.

### **The Impact of Prosecutions on Regional Governance**

It is reasonable to assume that only an impartial, fair and effective tribunal that abides by the highest UN standards can reverse the cycle of impunity and violence and begin restoring respect for human rights in a country that has suffered gross violations of human rights. The prosecution of the perpetrators of genocide in Rwanda domestically under the ICTR has waived the increased demand for Amnesty for those involved in violations of human rights.

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<sup>196</sup> Ibid

The prosecutions of ICTR have so far concentrated on individuals who wielded political and military power in Rwanda during the genocide. The prosecutions of these high profile individuals have sent a clear message to the current and future leaders in Rwanda and Africa that violations of gross human rights offences may never be tolerated and should be regarded as a thing of the past. The ICTR by convicting a former Prime Minister, Jean Kambanda, for genocide plus violations of international humanitarian law made history as the first international tribunal to do so.

The former prime minister of Rwanda was convicted on his own plea of guilt and was sentenced to life imprisonment. There are other senior people who served the genocide regime that are under the custody pending prosecutions. These include Col Theoneste Bagosora who was the Director of Cabinet of the Ministry of Defence, Andre Ntagerere, Minister of Transport, Pauline Nyiramasuhuko, Minister of Family Welfare and the first woman to be prosecuted by an International Tribunal, and many others.<sup>197</sup> The prosecution of these former wielders of power makes it clear that the concept of sovereign humanity would no longer be tolerated as a defence against individual criminal responsibility for human rights atrocities.

The decisions of ICTR have contributed to the development of international human rights jurisprudence. The *Akayesu* case decided by the ICTR in 1998 was the first in which an international tribunal was called upon to

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<sup>197</sup> <http://www.icttr.org7>.

interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide (1948).<sup>198</sup>

The Chamber also defined the crime of rape in international law. It underscored the fact that rape and sexual violence may constitute genocide in the same way as any other act of serious bodily or mental harm, as long as such acts were committed with the intent to destroy a particular group targeted as such.<sup>199</sup>

As of March 2005, the ICTR had handed down 17 judgments involving 23 accused. Twenty of them were convicted and three acquitted.

The judgments delivered so far involve one Prime Minister, four Ministers, one Prefect, five Bourgmestres and several others holding leadership positions during the 1994 genocide.

In addition to these 17 judgments, eight trials were in progress as of March 2005, involving a total of 25 accused. They include eight Ministers, one Parliamentarian, two Prefects, three Bourgmestres, one Councillor, three military officers, and others holding leadership positions. To date, over 200 prosecution and defence witnesses from Africa, Europe and America have testified, and there have been more than 500 decisions on motions and points of law.

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<sup>198</sup> ICTR 96-4-T. Judgement of 2 September 1998, Improved in (1998) 37 International Legal materials, (1999), 11 African Journal Of International and Comparative Law 336.

<sup>199</sup> M Griffin (2000) "Ending the Impunity of Perpetrators of Human Rights atrocities: A major challenge for International law in the 21<sup>st</sup> Century" International Review of the Red Cross 369



The prosecution of the perpetrators of the Rwandan genocide of 1994 presents an opportunity for the enforcement of international humanitarian law. It is now generally accepted that human rights law and international humanitarian law are distinct but interrelated bodies of law to the extent that the two bodies of law overlap and share the same basic objective which is the protection of human life and dignity.<sup>200</sup> International humanitarian law, without express reference to human rights, protects and promotes the most fundamental rights during armed conflict.<sup>201</sup>

The international humanitarian law usually lacks an enforcement mechanism. The ICTR has distinguished itself by preferring, "to the extent possible, enforcement of its sentences in Africa" by having countries on the continent provide jails for the Tribunal's genocide convicts. On 12 February 1999, the Republic of Mali became the first country to sign an agreement with the ICTR to provide prison facilities for the enforcement of the Tribunal's sentences. A similar agreement was signed with Benin on 26 August 1999. Negotiations with other African countries are nearing conclusion.<sup>202</sup>

The establishment of the tribunal is even more significant in Africa itself where its presence on the continent will help raise people's awareness of the importance and value of human life. The creation of the tribunal has reopened the debate on the possibility of establishing a human rights court on the continent. African leaders have been adamant that the African Commission on

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<sup>200</sup> Ibid

<sup>201</sup> Ibid

<sup>202</sup> <http://www.ictr.org>

Human and Peoples' Rights provides sufficient guarantees and that such a step is therefore unnecessary. Their case is slowly but surely losing ground. The fact that perpetrators of genocide are being prosecuted in Arusha argues in favour of establishing a court where victims of human rights violations might seek redress.

The ICTR has also gone some way in addressing the criticism leveled at it, such as the concern that it may never accomplish its tasks. The Tribunal aims to complete its mandate by 2008, and is contemplating transferring some outstanding cases to states that are prepared to try them. This was made possible by the introduction of Rule 11 to the Tribunal's Rules of Procedure and Evidence. Most of these changes have attempted to enhance due process and judicial efficiency. Procedures have been amended to give the Trial Chamber the discretion to allow an indictment to be changed after the appearance of the accused. The Tribunal has established new rules (rule 46(A), RPE) for dealing with misconduct by defence counsel and prosecutors appearing before the Tribunal. Counsel must now give an undertaking as to their availability and their intention to represent the client for the duration of the proceedings. Judicial flexibility has also been increased by the rotation of judges through the Trial Chambers.

# CHAPTER FIVE

## CRITICAL ANALYSIS

### Introduction

Chapter Five will dwell on a critical analysis of issues raised in this study. The study began by looking at the available literature and found much that has been written on the issue of justice and reconciliation. This particularly took the form of the debate that has been pitting one notion of justice against the other. From this can be drawn a clear difference of outcome, if not intent, between the Gacaca justice system and the International Criminal Tribunal for Rwanda.

The second critical issue identified was that of the unity of Rwandans before the coming of the colonialists, and how in the colonial manipulation, a people were divided along false racial and ethnic identities leading to the genocide. In understanding this unity of the Banyarwanda and basing it in history, it was possible for the post-genocide government to lay the foundation on which justice and reconciliation could be based.

This brings the study to the third critical issue to be raised. The issue, as it has been demonstrated, is about the type of institutions and their role in seeking to heal and unify a divided society. Specifically, these institutions included the Gacaca and the National Unity and Reconciliation Commission (NURC).

The fourth critical issue concerns the role the International Criminal Tribunal for Rwanda has played in the reconciliation process in Rwanda, its impact on regional governance and its contribution to international humanitarian law.

## **GACACA VS INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

The foundations of the Gacaca and the ICTR are rooted in the search for justice and reconciliation. However, the end result of each ruling of a case under the jurisdiction of either, seems to yield different results. While, the Gacaca is basically aimed at bringing the victims, their perpetrators and communities together in seeking reconciliation through justice, the ICTR seems to segregate the perpetrator from the victim and community in the name of justice.

As may be appreciated, the Gacaca may be likened to the spirit of restorative justice, while the spirit of the ICTR may be that of retributive justice. As observed in the Literature Review in Chapter One, retributive and restorative justice share a common conceptual ground in their commitment to establishing and re-establishing *social* equality between the wrongdoer and the sufferer of wrong.

The study was able to show that retributive justice is, at its root, concerned with restoration of equality in a relationship. But that retributive theory identifies the achievement of social equality with punishment. Retributive

justice names punishment as the necessary mechanism through which such equality is to be achieved. It identifies the very idea of restoration with punishment and attempts to restore social equality through retribution against the wrongdoer through isolating punishment. This, as the review also noted, is the essence of the International Criminal Tribunal for Rwanda.

However, there are several arguments in favour of prosecuting past violators of human rights. The most obvious is that the perpetrators of human rights violations must be brought to justice for the commission of these offenses. The argument here is the use of the term "justice" and its meaning because there should be a difference between seeking vengeance and desirable suitable punishment. However, as some argue, punishment of some sort is part of justice (see Chapter 4)

There is also the argument that prosecutions are considered to be in support of the rule of law. Failure to prosecute past violations of human rights will not provide a firm basis for the reconstruction of the rule of law in future. The rule of law requires that all persons and institutions are equal before the law. No one is above the law. Grave crimes, therefore, if not prosecuted will amount to disregarding these principles and the rule of law. The central importance of the rule of law in civilized society requires within defined, but principled limits, prosecutions of especially atrocious crimes.

The third argument is founded on the premise of the need to protect society. Prosecution is a social undertaking on behalf of the society at large. If

perpetrators of human rights violations remain at large, they continue to be a threat to the society in which they live, although due to the fact that they are no longer in power, their capacity to perpetuate the violations with impunity has been greatly reduced.

The next argument for the prosecution of perpetrators for past violations of human rights is the deterrence of future abuses. This view is based on the assumption that perpetrators commit crimes in expectation that because they are in power or because the country's legal system is unwilling or unable to prosecute such crimes, they will not face justice which results in impunity. Further, the trials may contribute to the hindrance of human rights abuses in some other countries where tyrannical regimes remain.

Criminal trials also facilitate instituting or restoring democracy. Prosecution and punishment highlight the democratic character of a new regime, by making a clear distinction between its previous suppressive regime and itself. Moreover, the trials can foster democratic culture, since they provide the public with the opportunity of public discussion and collective deliberation on the social tragedy of killings and torture.

Given the above arguments, it is clear that the ICTR and its retributive character is concerned with restoration of social equality, understood as relationships of equal dignity, concern and respect. If this conception is correct one might suggest that retributive justice looks less like a distinct theory of justice and more like a mechanism for achieving restorative justice. However, as

a theory or strategy the result remains the same: retributive justice cannot serve the aim of justice as restoration of social equality. Punishment is inherently isolating as it is, by definition, imposed on the individual. Punishment removes the wrongdoer from the relationship thereby precluding relation altogether, let alone equality in relationship. A key problem with punishment from a restorative point of view is that it is non-voluntary. On the other hand, in a restorative process the perpetrator must submit to this willingly as a result of negotiations with those affected by the wrongdoing and as part of the perpetrators own efforts to restore equality to the relationship.

Restorative justice is best illustrated by many pre-colonial African societies (see Literature Review). In the traditional African society, justice aimed less at punishing criminal offenders than at resolving the consequences to their victims. Sanctions were compensatory rather than punitive, intended to restore victims to their previous position. One of the main functions of pre-colonial law was the restoration of the disturbed social equilibrium within the community.

It is thus that the African concept of *ubuntu* is the philosophy of personhood underlying the traditional conception of justice. It denotes a sense of humanity or of the natural connectedness of people. A traditional African understanding of *ubuntu* affirms an organic wholeness of humanity -- a wholeness realized in and through other people. The notion is enshrined in the Xhosa proverb: *umuntu ngumuntu ngabantu* (a person is a person through

persons). *Ubuntu* is commonly described through the saying "I am because you are" or "my humanity is tied up with your humanity" (see Literature Review).

The effect such a conception of humans must have on one's understanding of justice is clear. If one's humanity is tied up with the humanity of all others what makes others worse off also brings harm to oneself. Responses to wrongdoing, therefore, must aim to repair the damage, to make the wrongdoing better off for it is only in doing so that one can address the harm the victim(s) suffered. In other words, restoration requires attention to each part that suffers, for restoration is impossible if a part of the whole is harmed. This, indeed, in the entire philosophy and spirit of the Gacaca process as it is being implemented as a mechanism of justice and reconciliation in post-genocide Rwanda.

Restorative justice, as it is being implemented in Rwanda, problematizes the issue of what set of practices can or should, in its given context, to achieve the goal of restoring social equality in the various geographical communities in Rwanda and their local customs. Accordingly, identification of these practices requires social dialogue<sup>203</sup> that includes wrongdoers, sufferers of wrong, the community to which they belong and demands concrete consideration of the needs of each for restoration.

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<sup>203</sup> See for an example of the role of social dialogue in the realization of social equality J. Nedelsky and C. Scott "Constitutional Dialogue" in J. Bakan and D. Schneiderman, eds., *Social Justice and the Constitution: Perspectives on a Social Union for Canada* (Ottawa: Carleton University Press, 1992) p59



## Contrasting Gacaca vs ICTR through Restorative Justice

In conclusion, the principles and procedures of Gacaca with the ICTR are to contextualise the normative differences between the two types of courts. The norms underlying Gacaca reflect both cultural traditions and the characteristics of restorative justice. The benefits that Gacaca will bring to the reconciliation process are tied to the integrity of its traditional roots and its adherence to a restorative model of justice. For the ICTR, the benefits it will bring to the reconciliation process in Rwanda, are linked to international character and its retributive nature of justice.

The following table compares the normative differences between the two types of justice:

Institutional Component	Restorative Justice: Gacaca	Retributive Justice: ICTR
Goal	Justice for reconciliation; ending impunity is secondary	Justice to end impunity; reconciliation is secondary
Venue	Local Communities	Isolation from participants to avoid victor's justice

Due Process	Primacy of truth telling	Primacy of rules and procedures; defendant's rights
Establishing Guilt	Confession; Community Consensus	Judgement
Burden of Proof	Testimony/Accusations	Testimony; investigation
Compensation for Victims	Depends on nature of crime	None
Judiciary	Respected community members	Independent
Punishment	Imprisonment; reintegration	Imprisonment
Process	Trials; negotiations	Trials

## THE UNITY OF THE BANYARWANDA

In Rwanda's post-genocide period, issues of justice, reconciliation and governance remain at the fore in the debate to create conditions for enduring peace and unity. The role of the state, therefore, cannot be over-emphasised in

ensuring that these conditions take root for the unity and prosperity of the Banyarwanda.

Reconciliation however has to find its basis in the history of the conflict it seeks to prevent. In Chapter Two of this study, it was therefore imperative to trace the history of the Rwandan conflict, specifically analyzing the pre-colonial period, colonial period and post independence, period culminating with the 1994 genocide.

During the pre-colonial period state institutions of the judiciary, military, the monarchy, including religion, language and culture were unifying elements of the society. It was observed that the three social categories of Tutsi, Hutu, Twa were integrative and unifying through the 18 common clans of Banyarwanda. These categories were to some extent social economic and allowed social mobility depending on peoples economic activities. There are examples in which Hutu for instance, in acquiring cattle could become Tutsi (*kwihutura*) and the other way round (*gucupira*). There are no indications in this period of racial or ethnic antagonistic conflict based on Hutu, Tutsi differences

The institution of UBUHAKE which was operationalised relationship between two individuals of unequal status kept Rwandans together because it involved a relationship based on reciprocal bonds of loyalty, and exchange of goods and services. The three social categories therefore complemented one another providing basis for the unity and cohesion of the Banyarwanda.

The institutions of the administration of justice emanated from the family as a nucleus, while the King (UMWAMI) was the guarantor of justice for all Banyarwanda. The King was referred to as the father of the people signifying therefore that he was the head of the family of the Banyarwanda. He was the most important factor of unity during this period. Justice was also handled through the Gacaca judicial system which was based, first on the family and second on the nation. Unity is emphasized as a historical factor among the Banyarwanda during the pre-colonial era in this analysis to emphasize the destruction and the breakdown of these institutions with the coming of colonialism.

Colonialism in Rwanda is traced from 1884 after the Berlin Conference when Rwanda–Urundi was given to the German East Africa as part of German territory. The Germans used the centralized monarchy under the *Mwami* in favour of a policy of indirect rule that was formalized through negotiated treaties. After World War One the League of Nations mandated Belgium to administer Rwanda. The Belgium colonial administration entrenched a policy of divide and rule by destroying the pre-colonial flexible patron/client relationship and rigidified it. They introduced forced labour and strengthened the social economic divisions between Tutsis and Hutus. The worst of this colonial policy was the division of the Banyarwanda false racial and ethnic identities. This led the colonial administrators favour the Tutsi as their white cousins, and due to their “dignified” bearing, “best for command” or leadership.

In 1926 the resident Commissioner Mortejan on the advice of the Catholic Church introduced a policy using Tutsis as administrators to the exclusion of other social categories. These so called Mortejan Reforms, which were further re-enforced by the introduction of identity cards in 1933, henceforth and quiet arbitrary led to the two groups of Hutu and Tutsi becoming distinct political categories.

These divisions begin manifestating themselves in the 1950s when political demands in Rwanda were formulated along these divisive lines. The Bahutu Manifesto of March 24, 1957 in particular demanded Hutu emancipation as well as democratization. The agitators for these demands based their campaign on the colonial basis that the Tutsis were outsiders/foreigners, the Hutu were true Rwandese nationals and the majority and therefore the rightful rulers of Rwanda. The Manifesto was a significant historical statement, both for the so called social revolution of 1959 and as the manifestation of the deep divisions which had now become ethnic.

The deliberate exclusion of Hutu from political power and administration by the colonial administration and the Catholic Church had created and institutionalized conflict which they would exploit at the end of colonialism. In the late 1950s the Tutsis, who had been favoured as the only Rwandese administrators began to agitate for independence. This turned out to be a political error because the Belgian colonial administration did not want to give

them independence adopted a shift in policy of sustained support for the Hutu against the Tutsi.

The so called Hutu revolution of 1959 which saw tens of thousands of Tutsi massacred and more than one hundred thousands exiled succeeded due to over whelming support from the colonial administration. This was the beginning of sustained Tutsi massacres and the flagging off of a process of conflict that would end in the events of the 1994 genocide.

Political massacres in Rwanda began during this period where the killing of Tutsi was glorified as heroism and institutionalised with impunity. This is what made what was to come in 1994 possible.

The two post-independence governments continued with this policy of Hutu identity as a political dogma for achieving power. Throughout the post-independence period, the Tutsi who had not gone into exile were excluded from participation in the political power and other institutions of governance. Those that were in exile were refused to come back. The RPF struggle was based on this exclusion and the denial of their natural right to be Rwandese.

The regime of HABYARIMANA never relaxed their policies but rather intensified the genocidal machinery. The RPF armed struggle and political pressure on the regime however forced them to the Arusha negotiating table, culminating into the 1993 Arusha Peace Agreement.

The Arusha peace agreement did not change genocidal ideology of the Kigali regime which used it as an opportunity to organize the 1994 genocide. The

speed and the accuracy with which the execution of genocide was carried out confirmed that it had been in planning for a long time. It is clear from this historical analysis that conflict in Rwanda leading to the 1994 Genocide was institutionalized by the colonial Government, and entrenched by the post independence governments through divisive policies.

The post-genocide government was mainly pre-occupied with building institutions and formulating policies that negated the colonial and post-independence divisive policies and institutions. The core issues of discussion in chapter three are about institutions of justice and reconciliation as responses to the genocide. The Government was faced with enormous challenges, amongst which was the repatriation of refugees and their re-settlement, integration of armed forces, restoring public trust in the legal system, breaking the culture of impunity and, most importantly, reconciling the Rwandan society while at the same time seeking to bring to justice those responsible for the genocide.

This made it imperative that the Government of National Unity had to lay the foundation that would facilitate the unity and reconciliation of the people. It began the process by a drafting a new constitution that would take into consideration the factors that led to division and the genocide. The main problem was that of false ethnicity, and therefore division between the Banyarwanda. The constitution therefore ensured that there would be a forum for political parties and that ethnicity would not be used as a basis for their formation. Power

sharing addressed the issue of exclusion and enable all Rwandans to participate in national governance.

## **INSTITUTIONS OF JUSTICE AND NATIONAL RECONCILIATION**

The issue, as has been demonstrated in Chapter Three, is about the type of institutions and their role in seeking to heal and unify a divided society. Specifically, these institutions include the Gacaca and the National Unity and Reconciliation Commission. As the study has already noted above (see Gacaca vs International Criminal Tribunal for Rwanda), it is pertinent to the reconciliation process that Rwandans feel that justice is being done. There can be no reconciliation without justice, a task that has been accorded the Gacaca process. The process as it applies in today's Rwanda, incorporates a modern legislative framework that helps to expedite trials of thousands of suspects of genocide and to enhance social reconstruction.

The process allows the population to participate in the justice process and therefore enables reconciliation. Victims of genocide express the hope that the traditional courts will "enable survivors to lift the veil of anonymity" and those currently in jails look forward to quickened justice. This is an indication that there is some optimism, and that the Gacaca process has some support among the victims and perpetrators and their communities. The *Gacaca* courts initiative



therefore is timely as it will enable the truth to be revealed about genocide and crimes against humanity.

The courts are charged with prosecuting and trying the perpetrators of the crime of genocide and crimes against humanity, committed between October 1, 1990 and December 31, 1994 or other crimes provided for in the Penal Code. The courts are competent to try accused persons and their accomplices in Category Two and Three. Category One is tried by the national courts and the ICTR. The core issue, however, is the unity and reconciliation of the Rwandan people as a *sine qua non* for lasting peace, security, political stability and development.

The use of *Gacaca* courts to deal with genocide cases is still a controversial concept. There are those who argue that it is simply too unrealistic in the current situation to introduce a concept like that for genocide trials. Others support the idea arguing that it would improve the current situation. Whatever the arguments on the issue, it is a serious indication that people are talking about the possible alternatives.

The *Gacaca* criminal justice system represents a complex compromise. It ensures full and regular criminal prosecution and punishment of every suspected perpetrator that would otherwise be impossible in ordinary national courts due to immense resources required. The *Gacaca* programme will accomplish this crucial element of criminal justice while at the same time contributing to reconciliation and bearing in mind the resource limitations.

Another concern for the *Gacaca* tribunals is the lack of legal training of its members. They are elected members by the population. They would be expected to decide cases of complex nature and award punishments up to life imprisonment. They are expected to categorise defendants into the different categories that determine punishment. If one is classified into category one, he may face the death sentence. Even if these individuals are conscientious and striving to act in good faith, it is most likely that they will be subjected to considerable pressure from the accused and the complainants.

It can be a dangerous destruction to the rule of law if family members and friends refuse to hold people accountable for their crimes so that the culture of impunity is perpetuated. In those areas where there is not any single survivor there might be no evidence "for the prosecution" except the testimonies of bystanders. In such a situation, it would also be difficult to conceive the election of honest persons in the first place since there might not be any opposing voice to the election of a less honest person as a member of the *Gacaca* jurisdiction. At the same time accusations of participation in the genocide can be a powerful and dangerous weapon in Rwanda today as survivor groups can use them as a tool for political or economic control.

The trials that have taken place in ordinary courts in Rwanda have already revealed significant difficulties and controversies. They have illustrated the absolute need for judges to be able to resist political and psychological

pressures, to know how to distinguish genuine from false testimonies and to respect at all times the equal rights of the defence and the prosecution.

This requirement of integrity on the part of the tribunal seems to be catered for in the *Gacaca* law where for one to be eligible as a member, he must be honest, a Rwandese and at least twenty one years of age. The legislation goes on to emphasise that there shall be no discrimination based on sex, origin, religion, opinion or social position. On whether the *Gacaca* courts will be impartial, it would be speculative to give a conclusive negative response. It is safer at this stage to presume that they will be impartial until the contrary is proved.

On the right to defence by the accused before the *Gacaca* tribunals, the law suggests that the accused present at the trial will have the right to defend himself or herself against the charges. Although not explicitly mentioned, it is implied that the accused may be assisted by a defence counsel.

In Rwanda some survivors express fears that the *Gacaca* jurisdiction amounts to some kind of amnesty. This is because if category two plead guilty of intentional homicide or of a serious assault causing death they may be released after serving a short prison sentence.

It is also feared that the proposed system may be used to settle personal scores through some form of collusion between defendants and local inhabitants where there may be no survivors still living. It has been argued that much of the struggle for justice and the battle against impunity is the search for truth. In the

end, however, despite all criticisms that might be levelled against the Gacaca, it still remains the best alternative in dispensing justice and reconciliation on a mass scale in the Rwandan context.

Rwanda's polity has been defined by ethnic polarization for a long time dating from the colonial and post-colonial periods, as discussed in Chapter Two. This discrimination policy resulted in divide and rule as the governing principle. Inevitably, this divisive and repressive culture led to gross violations of human rights with impunity which culminated in the 1994 genocide. It is with this background that the Commission of National Unity and Reconciliation (NURC) was instituted .

The National Unity and Reconciliation Commission is mandated to organize and oversee national public debates aimed at promoting national unity and reconciliation of Rwandan people (see Chapter Three). Solidarity camps, commonly known as "*ingando*", also constitute an activity of paramount importance for the National Unity and Reconciliation Commission and for the process towards reconciliation. Initially, the solidarity camps were meant to ease the reintegration of refugees returning home, mainly from the Democratic Republic of Congo (DRC), but have now been extended to various categories of the population. Civil servants, students and released prisoners are sometimes organized in those camps in order to have them go through public lectures and debates on the unity and reconciliation process, challenges and opportunities in three-month workshops.

Thus the *Ingandos* therefore form the main reconciliation mechanism under the NURC. The *Ingando* workshops help the parties redefine their situation, facilitate a mutual understanding of each other, and identify the grievances, perceptions, and values of the parties and disputes. "Creative problem-solving searches for ways of redefining, fractioning, or transcending the conflict so that positive-sum, or win/win solutions, which leave both parties better off, can be discovered." The psychological barriers of suspicion, rejection, fear and deception are changed through the *Ingandos* by injecting knowledge and experience about conflict, conflict behaviour, and psychology into the socio-political relationships.

As a coordinating body, however, the Rwanda National Unity Reconciliation Commission has an enormous task which primarily would require all institutions to work together in order to facilitate reconciliation process. The effects of genocide have been far reaching. The majority of survivors still live in poverty and speaking of reconciliation among poor people is a complex task. They still complain of lack of compensation, which they have not received yet.

The other challenge is the inadequate funding compared to accomplishments expected of the commission. Survivors of the genocide speak of injustices, arguing that justice has not been done to the perpetrators of genocide, and fear this could promote impunity again as in the past. Perpetrators on the other hand question their prolonged incarceration without trial.

Despite these challenges, the commission can boast of a few achievements. People are getting increasingly aware of the need for co-existence

due to civic education programmes. This has in turn led to formation of national unity clubs particularly in institutions of higher learning. A large number of prisoners are also confessing their crimes as a result of nationwide sensitization campaigns in prison and are asking for forgiveness from survivors of genocide. Some conditionally released prisoners are giving evidence against their fellow accomplices who are still at large in the communities. The commission has further helped to repatriate three million and a half refugees due to the sensitization programmes and has also helped in their resettlement.

Notable institutions like the National Examination Board, the National Human Rights Commission set up to investigate human rights abuses and Auditor General's office established to investigate the proper use of public funds have been established to fight for social and economic justice and are helping in trust building among the population and developing a culture of transparency in public institutions without discrimination.

## **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

The international community having failed to prevent the genocide in Rwanda, felt obliged to address the consequences of the Rwandan tragedy. Given that the international community looked on (see Chapter Two) as the genocide took place, the gesture of instituting a Rwandan tribunal may be construed to have been an afterthought in order to allay any feelings of guilt in the international

community. Though it was established to address genocide and crimes against humanity in Rwanda, the ICTR ended up having an impact on regional governance and enriching international humanitarian law.

The prosecutions of ICTR have so far concentrated on individuals who wielded political and military power in Rwanda during the genocide. These prosecutions of high profile individuals have sent a clear message to the current and future leaders in Rwanda and Africa that violations of gross human rights offences may never be tolerated and should be regarded as a thing of the past. The ICTR, by convicting a former Prime Minister, Jean Kambanda, for genocide and violations of international humanitarian law made history as the first international tribunal to do so.

The former prime minister of Rwanda was convicted on his own plea of guilt and was sentenced to life imprisonment. There are other senior people who served the genocide regime that are under the custody pending prosecutions. These include Col Theoneste Bagosora who was the Director of Cabinet of the Ministry of Defence, Andre Ntagerere, Minister of Transport, Pauline Nyiramasuhuko, Minister of Family Welfare and the first woman to be prosecuted by an International Tribunal, and many others.

The establishment of the tribunal is even more significant in Africa itself where its presence on the continent will help raise people's awareness of the importance and value of human life. The creation of the tribunal has reopened the debate on the possibility of establishing a human rights court on the

continent. African leaders have been adamant that the African Commission on Human and Peoples' Rights provides sufficient guarantees and that such a step is therefore unnecessary. Their case is slowly but surely losing ground. The fact that perpetrators of genocide are being prosecuted in Arusha argues in favour of establishing a court where victims of human rights violations might seek redress.

As scholars such as Dr Makumi Mwangi have pointed in an issue that must bear emphasis, the functioning of ICTR emphasizes the notion that leaders are not merely answerable to national laws but to international laws, that offences specified in International emphasizes the notion that leaders are not merely answerable to national laws but to international Law, that offences specified in international law are applicable regardless whether National Laws specify them as offences. This will alleviate the behaviour by undemocratic leaders who respond to citizens demand for good governance through legal instrumentalism (making laws that legalise illegalities) will come to an end. In Africa, where governance is a problem it trials become the norm that the governed are powerless. One of the normal forms of governance was the military rule whose main characteristics was that leaders were not answerable to the constituents. In the relatively few states where there was semblance of civilian governance and the subjection of the military to civilian authority agents of the state acted with impunity. There was never a thought that there were ultimately answerable to those they governed and like their military counterparts they got away with murder. Worth of note is the ICTR contribution to international



humanitarian law. The decisions of ICTR have contributed to the development of international human rights jurisprudence. The *Akayesu* case decided by the ICTR in 1998 was the first in which an international tribunal was called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide (1948).

The Chamber also defined the crime of rape in international law. It underscored the fact that rape and sexual violence may constitute genocide in the same way as any other act of serious bodily or mental harm, as long as such acts were committed with the intent to destroy a particular group targeted as such.

As of March 2005, the ICTR had handed down 17 judgments involving 23 accused. Twenty of them were convicted and three acquitted.

The judgments delivered so far involve one Prime Minister, four Ministers, one Prefect, five Bourgmestres and several others holding leadership positions during the 1994 genocide.

In addition to these 17 judgments, eight trials were in progress as of March 2005, involving a total of 25 accused. They include eight Ministers, one Parliamentarian, two Prefects, three Bourgmestres, one Councillor, three military officers, and others holding leadership positions. To date, over 200 prosecution and defence witnesses from Africa, Europe and America have testified, and there have been more than 500 decisions on motions and points of law.

The prosecution of the perpetrators of the Rwandan genocide of 1994 presents an opportunity for the enforcement of international humanitarian law. It is now generally accepted that human rights law and international humanitarian law are distinct but interrelated bodies of law to the extent that the two bodies of law overlap and share the same basic objective which is the protection of human life and dignity. International humanitarian law, without express reference to human rights, protects and promotes the most fundamental rights during armed conflict.

The international humanitarian law usually lacks an enforcement mechanism. The ICTR has distinguished itself by preferring, "to the extent possible, enforcement of its sentences in Africa" by having countries on the continent provide jails for the Tribunal's genocide convicts. On 12 February 1999, the Republic of Mali became the first country to sign an agreement with the ICTR to provide prison facilities for the enforcement of the Tribunal's sentences. A similar agreement was signed with Benin on 26 August 1999. Negotiations with other African countries are nearing conclusion.

## **CONCLUSION**

In concluding this analysis, the hypotheses this study sought to prove have been vindicated. The first hypothesis sought to show that justice and reconciliation are mutually reinforcing variables whose operationalisation is inherent in the type of social process and symbolic constructions undertaken by leadership in a given

society. The second stipulated that justice and reconciliation are a function of institutions' ability to promote collectivized values of both victims and perpetrators of injustice in question. Both the assertions have been demonstrated in the discussion on Institutions of Justice and National Reconciliation and in the analysis on the Unity of Banyarwanda above. The discussion on the Gacaca vs International Criminal Tribunal for Rwanda underscore the importance the theories that might inform justice and reconciliation as it applies to Rwanda, and may be replicated elsewhere.

## CHAPTER SIX

### CONCLUSIONS

The previous chapter dealt with the critical analysis of justice and reconciliation as instruments of political stability in post genocide situation. These issues were discussed in the context of Rwanda's social reconstruction in the aftermath of genocide.

The aim of this research sought to examine and analyse the extent to which justice and reconciliation can be pursued mutually to engender state reconstruction, in particular the role of institutions in engendering justice and reconciliation processes and suggestions facilitating justice and reconciliation forces.

The expected outcome on the one hand was that justice and reconciliation are mutually reinforcing variables whose operationalisation is inherent in the type of social and symbolic constructions undertaken by leadership in a given society. While on the other hand the expected outcome was that justice and reconciliation are a function of institutions ability to promote collectivized values of both victims and perpetrators of injustice in question.

A consensus has emerged from this study that justice is not only about law and punishment, justice must repair, reconcile and eliminate the inequalities within the society.

Justice is not just criminal and individual, it is also social and dynamic. It is not enough to change positions because this could trigger a cycle of revenge. The identities have to be transcended not just displaced.

Generally, reconciliation refers to a process by which people who were former enemies put aside their memories of past wrongs, forgo vengeance and give up their prior group aspirations in favour of a commitment to a communitarian ideal. Reconciliation and justice are two inseparable paradigms in post-conflict reconstruction. Justice is necessary but not sufficient condition for reconciliation. Individuals can be helped to reconcile by the process of justice and the acknowledgement of the truth.

The problems of post genocide society are diverse and will depend on a particular society. There is therefore no uniform formula to the approaches of justice and reconciliation. Each response is modelled and shaped by the nature of the conditions prevailing in the local environment and the willingness of the political leadership in place. The Rwandese process of reconciliation is thus different from the South African one.

In post-genocide Rwanda, there was established a National Unity and Reconciliation Commission with a mandate of forging and facilitating national unity and reconciliation programmes. There are community *Gacaca* courts that have powers to try some genocide cases in Categories Two and Three. There is also the trials before national courts and the International Criminal Tribunal for Rwanda (ICTR). They are competent to prosecute, try and pass sentences for

those found guilty of genocide and crimes against humanity committed in Rwanda in 1994.

In many countries, reconciliation commissions have been created to deal with the crimes committed in the past. In some cases reconciliation has forced the extreme governments to exonerate perpetrators get away with their crimes, although the perpetrators of international crimes such as genocide must be prosecuted as a matter of law. This is done as a symbolic gesture against impunity for human rights activities.

The prosecution of the perpetrators of the Rwandan genocide makes it clear that impunity for the gross violations of human rights will no longer be tolerated in Africa.

Rwanda's decision to prosecute perpetrators of genocide was in principle conforming to international law standards of accountability in the post genocide era. Despite this commitment, Rwanda's existing judicial system is incapable of meeting this expectation.

It has become imperative for purposes of expediting procedures, reducing the case load and to increase popular involvement in the judicial system for the government to develop a new law that introduces local tribunals inspired by traditional mechanisms for local disputes resolution called *Gacaca*. The new system of *Gacaca* tribunals is commendable because it brings justice to the local level where most people who experienced genocide and its aftermath live.

The involvement of the local people in the process of collecting and processing information rather than simply the professional staff may initiate a more long lasting process for coming to terms with the past: the process of gathering information of survivors telling their stories in local hearings of having people taking testimonies and participating in the process as the need arises relates to the African concept of justice.

After all, the Rwandese people have on many occasions expressed dissatisfaction about the euro-centric justice because of the manner of its operation in court-rooms and a language that they don't understand.

Rwanda's experience to prosecute perpetrators of genocide will no doubt form a new chapter in the emerging practice of restorative justice.

The challenge for Rwanda is how to employ justice and social reconstruction to respond to past abuses in a manner that allows communities with different experiences, needs and goals to learn to live together again.

The pre-colonial history of Rwanda revealed that Rwanda was traditionally composed of *one* people sharing the same culture, language, religion, beliefs and socio-administrative institutions. Its three social groups of the Twa, Hutu and Tutsi already inhabited present-day Rwanda by about 1000 AD as one people. They shared the same culture and language (*Kinyarwanda*), and recognised the authority of a king (*umwami*) and his unifying supremacy through institutions such as the military (*Ingabo z'u Rwanda*), judiciary (*Gacaca*) and religion (*Imana*). The Banyarwanda believed that they had a common ancestor,

*Kanyarwanda* or *Gihanga*, with whom tradition associates with the founding of the monarchy of Rwanda under the Nyiginya clan.

The greatest impact was the conscious colonial division of a people basing it on different races. The early European colonialists and missionaries essentially relied on mythological narratives that were current in Europe. These were essentially ancient legends on the source of the Nile and narratives by explorers about territories neighbouring Rwanda. They had read Aristotle, Ptolemy, and John Hannington Speke, whom they quoted. Aristotle wrote that Pygmies inhabited "the Mountains of the Moon", a description he gave the Ruwenzori Mountains.

Explorer Speke presented a theory depicting the Tutsi into descendants of the Biblical Ham, Noah's son, who had to suffer the curse of banishment for seeing his father naked; thus the Hamites, of whom the Tutsi were part of, as Ham's descendants. Since that time, narratives by explorers and missionaries referred to the Twa as "Pygmies", "myrmidons", "dwarfs", while the Tutsi were described as absolute sovereigns of a fabulous kingdom, a people whose "biblical features", their slenderness, long noses and giant height indicated that they were "Caucasoid", and therefore distant cousins of the white race.

The Tutsi, the colonial administrators and missionaries asserted, bore a dignity not often seen with many Africans, and were therefore "best for command" as they demonstrated in their absolute reign over the Hutu "poor Negroes" of the Bantu race.



Since the mid-1950s, political demands in Rwanda were formulated in these divisive terms. The most defining was the Bahutu Manifesto of March 24, 1957, which demanded Hutu emancipation as well as democratization. It began with the colonial thesis that Tutsi were outsiders/foreigners and claiming that Hutu (in majority) were true Rwandese nationals, and thus the rightful rulers of Rwanda, the manifesto was a significant statement for both the social revolution from 1959 and the deepening divisions, which had now become "ethnic". This document, originally published as "Notes on the Social Aspect of the Racial Native Problem in Rwanda" and aiming to influence a United Nations Trusteeship mission to the territory, was drafted by nine Hutu intellectuals. The signatories included the future president, Gregoire Kayibanda. It attacked the whole concept of Belgian administration and maintained that the basic problem of Rwanda was a conflict between Hutu and Hamitic Tutsi:

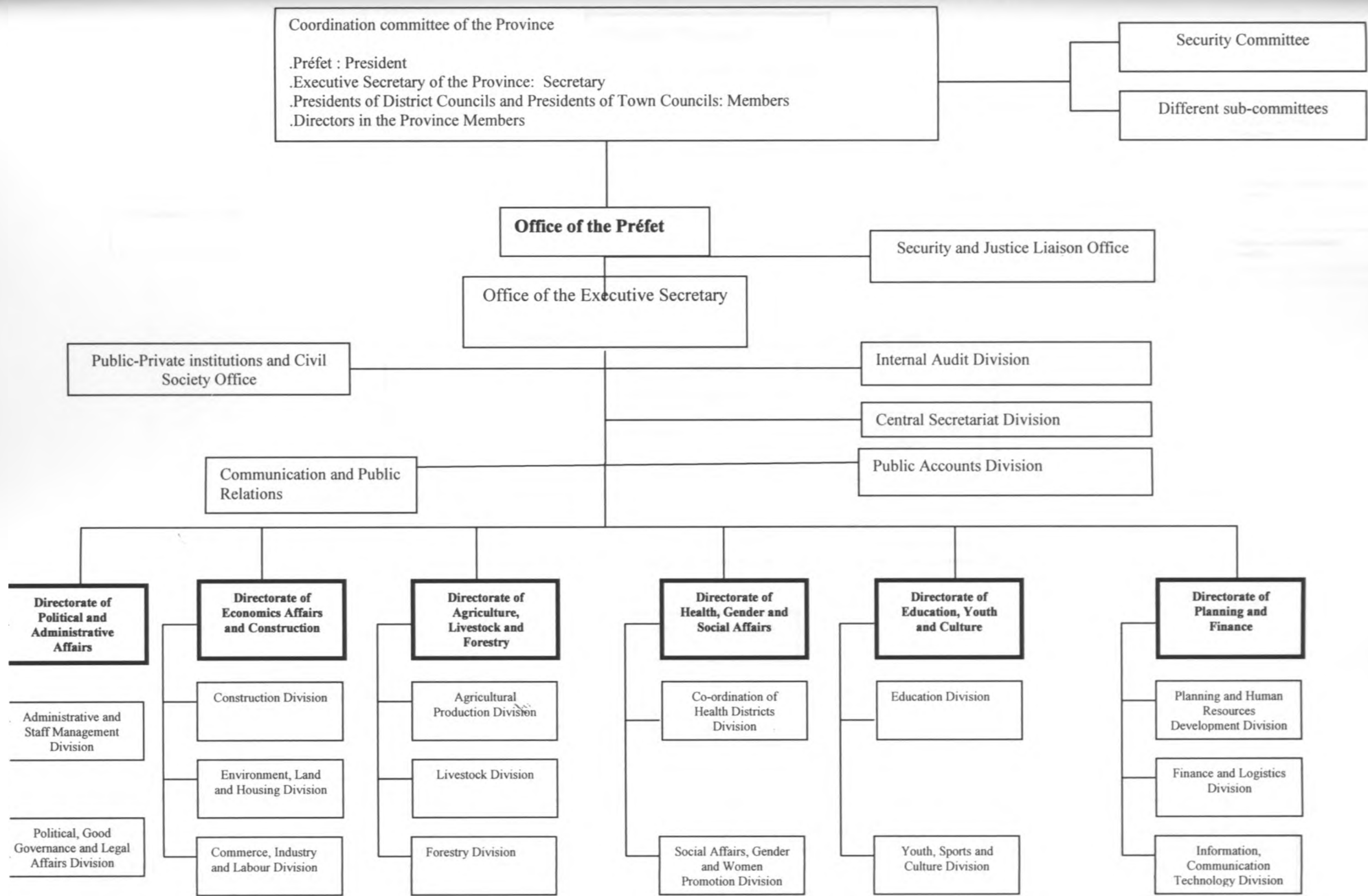
It is clear, however, that by excluding Hutu from political power, the Belgian colonial administration and the Roman Catholic had created, and institutionalised a latent conflict that they would exploit at the end of colonialism. This is the irony, as at the time of agitation for independence by the late 1950s, the Belgian colonial administration turned around and unloaded all its political errors onto the Tutsi because they were the first to agitate for the country's independence. The Hutu, on the other hand, were made to believe that it was the Tutsi who were their oppressors, and therefore agitated for emancipation from the Tutsi other than demanding for national independence. The Belgian

colonial administration and the Catholic Church henceforth adopted a policy of sustained support for the Hutu against the Tutsi.

Instigated by the 1957 Bahutu Manifesto, the situation exploded in the 1959 Hutu Revolution that saw tens of thousands of Tutsi massacred and more than a one hundred thousand exiled. This marked the flagging off of the Tutsi pogroms in the long process that would culminate in the events leading to the 1994 genocide. Thereafter, the Hutu took over and Tutsi chiefs were deposed by Governor Logiest, with the other massacres targeting the entire Tutsi group taking place in 1960-61, and again in 1963. There were other mass killings of Tutsi in 1967, 1973, 1990, and 1992 eventually leading to the 1994 genocide.

The Rwandan genocide can be demonstrated by the eight stages enumerated by Dr Gregory Stanton. According to him, there are eight stages of the conflict process leading to genocide, namely, Classification, Symbolization, Dehumanization, Organization, Polarization, Preparation, Extermination and Denial.

## **ANNEX**



**District Council**

Tender committee  
Recruitment Committee

Board of the committees chairpersons  
Economic and Technical Committee  
Administrative, political and legal committee  
Culture and social welfare's committee

**Executive**

**Committee**

**Mayor**

Deputy Mayor Incharge of Finances, Economy and Development

Deputy Mayor Incharge of Youth, Culture, Sports

Deputy Mayor Incharge of Women Promotion

Deputy Mayor Incharge of Social Welfare

Community Development Committee

Political and Administration Committee

**Executive Secretariat**

**Public Relations and internal Ressources Management Department**  
- Secretariat and Logistics  
- Procurement

**Political and Territorial Administration Unit**  
- Territorial Administration  
- Mediation and Gacaca  
- Community Works  
- Public Records

**Economic Development Department, Land and Environment Unit**  
- Agriculture  
- Animal resources  
- Trade, Tourism and Associative movements-Infrastructure

**Finances Unit**  
- Taxes  
- Treasury  
- Accountancy

**Social Development Unit**  
- Education  
- Health  
- Social Affairs  
Administration of FARG

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