

**RECONCILIATION IN POST-GENOCIDE RWANDA: THE  
TRANSITIONAL JUSTICE PARADOX**

by

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## **ABSTRACT**

This paper addresses the issue of transitional justice using Rwanda as a case study. It attempts to describe how exactly countries such as Rwanda go about trying to reconcile past atrocities while attempting to create a more democratic future. In that regard, it analyzes the instruments of transitional justice that the country has used including the International Criminal Tribunal for Rwanda, national courts, and *Gacaca*. More specifically, the paper argues that the current Rwandan government, under the leadership of President Paul Kagame, is hindering the effectiveness of these mechanisms of transitional justice. This is because the government is pro-Tutsi and highly authoritarian. Consequently, Kagame's undemocratic policies jeopardize successful efforts in trying to reconcile the nation, as many Hutus feel threatened and suppressed by his regime. Finally, until Kagame is willing to truly move Rwanda towards more liberal democracy, the country's ambitious endeavor in transitional justice will not be successful.

**Keywords: Rwanda; Gacaca; International Criminal Tribunal for Rwanda; Transitional justice; Victor's justice**

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## GLOSSARY

<b>Electoral Democracy</b>	According to Freedom House, there are five components that make up electoral democracy including “a competitive, multiparty political system,” “universal adult suffrage,” “regularly contested elections,” and “significant public access of major political parties to the electorate.”
<b>Gacaca</b>	Pronounced ga-cha-cha. This is the traditional court system in Rwanda that takes place at the local level. By 2002, the Gacaca system had been revamped and used to charge those accused of committing lower-level crimes during the genocide.
<b>International Criminal Tribunal for Rwanda</b>	This is an ad hoc tribunal set up in Arusha, Tanzania by the United Nations to try some of the worst offenders of the Rwandan genocide.
<b>Liberal Democracy</b>	A liberal democracy is composed of the elements that make up an electoral democracy, but Freedom House specifies that liberal democracies must also allow for varying degrees of civil freedoms.
<b>Reconciliation</b>	This is one of the most important components of restorative justice that involves attempting to establish peaceful relations amongst formerly hostile groups.
<b>Retributive Justice</b>	This is a model of transitional justice that focuses on accountability and examining past atrocities in order to punish those responsible for the crimes that occurred.
<b>Transitional Justice</b>	This refers to how transitioning governments go about dealing with past atrocities while trying to pave the way towards a more peaceful future.
<b>Transition Paradigm</b>	A theory that states that countries moving away from authoritarianism will automatically move towards democracy in a linear progression.

## CHAPTER 1: INTRODUCTION

The fall of the Berlin wall and the end of the bipolar world order between the United States and the Soviet Union opened a period of “political transition” for numerous countries.<sup>1</sup> However, in many cases the process of transition did not bring about peace and stability but rather severe hostilities and atrocities. Indeed, “the contemporary post-Cold war period has become associated with pervasive conflicts comprised of small-scale civil wars.”<sup>2</sup> Since the end of WWII, it is estimated that approximately eighty percent of war casualties during these conflicts were non-combatants.<sup>3</sup> Rwanda is one country that has experienced such internal difficulties. In 1994, one of the worst human rights violations since the Holocaust occurred in the nation when in only 100 days a government-sponsored genocide resulted in the deaths of approximately 800,000 Tutsis and moderate Hutus.<sup>4</sup>

When the genocide was finally over, Rwanda was an extremely brutalized and damaged country in which “of the seven million inhabitants before the genocide, about three quarters had been killed, displaced, or fled.”<sup>5</sup> Moreover,

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<sup>1</sup> Ruti G. Teitel, “Transitional Justice in a New Era,” Fordham International Law Journal 26 (2003): 895.

<sup>2</sup> Ibid.

<sup>3</sup> Rama Mani, “Balancing Peace with Justice in the Aftermath of Violent Conflict,” Development 48 (2005): 25.

<sup>4</sup> Susanne Buckley-Zistel, Between Past and Future. An Assessment of the Transition from Conflict to Peace in Rwanda, (Germany: Deutsche Stiftung Friedensforschung, 2008), 11.

<sup>5</sup> Maya Goldstein-Bolocan, “Rwandan Gacaca: An Experiment in Transitional Justice,” Journal of Dispute Resolution, 355 (2003): 369.



the country's institutions were almost nonexistent, which meant that President Paul Kagame and his transitional government had a very difficult task ahead in trying to restore some semblance of order. One aspect of this enormous undertaking in transitional justice faced by the Rwandan government relates to justice building.

The concept of transitional justice refers to the way nations "transitioning from repressive rule or armed conflict deal with past atrocities, how they overcome social divisions or seek 'reconciliation,' and how they create justice systems so as to prevent future human rights atrocities."<sup>6</sup> These particular countries have a number of choices as to what approach of transitional justice to utilize. For example, some governments might choose to use a retributive justice approach to try to punish all those responsible for past human rights violations. On the other hand, governments might prefer a restorative justice method that goes beyond simply prosecuting individuals and focuses on restoring the broken bonds in society that had occurred as a result of the conflict. Some nations might also choose to use a mixture of both models to overcome the past. Nevertheless, regardless of what direction is chosen, one of the main outcomes of transitional justice should be to consolidate democracy in countries that have previously experienced severe human rights abuses by former authoritarian governments.<sup>7</sup>

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<sup>6</sup> Charles T. Call, "Is Transitional Justice Really Just?" Brown Journal of World Affairs XI (2004): 101.

<sup>7</sup> Aneta Wierzyńska, "Consolidating Democracy Through Transitional Justice: Rwanda's Gacaca Courts," New York University Law Review 79 (2004): 1939.

Rwanda has embarked on an extremely ambitious experiment in transitional justice. Jennie Burnet highlights this point by stating how “in a radical departure from precedents in other post-conflict countries...Rwanda decided to put ‘most of the nation on trial.’”<sup>8</sup> Consequently, the country has used a range of different retributive methods including international tribunals, and national courts in order to try to effectively punish everyone involved in the genocide.<sup>9</sup> In 2002, the government also began to use local grassroots courts known as *Gacaca* (defined as “Rwanda’s traditional, community-based restorative justice institution”<sup>10</sup>) to relieve some of the stress placed on the country’s overburdened justice system. Many scholars and human rights organizations were optimistic about this decision because they believed that *Gacaca* would help the country to transition its focus from solely retributive justice towards an emphasis on restorative justice as well. The reason why *Gacaca* involves elements of restorative justice is “because it focuses on the healing of victims and perpetrators, confessions, plea-bargains and reintegration.”<sup>11</sup>

*Gacaca* trials have continued to be held in Rwanda from 2002 onwards, however, the optimism that *Gacaca* initially sparked has

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<sup>8</sup> Jennie E. Burnet, “The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda,” *Genocide Studies and Prevention* 3 (2008): 173.

<sup>9</sup> *Ibid.*, 174.

<sup>10</sup> Aneta Wierzynska, “Consolidating Democracy,” 1934.

<sup>11</sup> Alana Erin Tiemessen, “After Arusha: *Gacaca* Justice in Post-Genocide Rwanda,” *African Studies Quarterly* 8 (2004): 58.

dwindled. This is because there are a series of concerns associated with the courts. One of the most critical issues relates to “victor’s justice,” and the belief that *Gacaca* is yet another tool for Kagame and his pro-Tutsi regime to instill its power and authority over the nation. The key indicator that the courts practiced “victor’s justice” is that the current government has refused to allow any dialogue about possible crimes committed by the predominantly Tutsi Rwandan Patriotic Front (RPF) to be discussed during *Gacaca* hearings.<sup>12</sup> Instead, only Hutu crimes that took place before, during and after the genocide are talked about. Consequently, this has caused many critics to question the legitimacy of the *Gacaca* system.

President Kagame and his regime have also been accused of providing Tutsis with more top positions in the government even though the Hutus represent approximately ninety percent of the population.<sup>13</sup> Furthermore, critics have claimed that Kagame has used the genocide to his advantage by arresting some significant opposition leaders on charges of “divisionism.”<sup>14</sup> As a result, Kagame’s undemocratic policies jeopardize successful efforts in trying to reconcile the nation, as many Hutus feel threatened and suppressed by his regime. Finally, until Kagame is willing

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<sup>12</sup> Alana Erin Tiemessen, “After Arusha,” 69.

<sup>13</sup> Sebastian Silva-Leander, “On the Danger and Necessity of Democratisation: trade-offs between short-term stability and long-term peace in post-genocide Rwanda,” *Third World Quarterly* (2008): 1610.

<sup>14</sup> *Ibid.* 1613.

to truly move Rwanda towards more liberal democracy, the country's ambitious endeavor in transitional justice will not be successful.

### **Major Research Problem:**

This project will focus on transitional justice in post-genocide Rwanda, and how the international community, but more importantly the Rwandan government has attempted to bring about peace and justice in Rwandan society. There are two main questions that will be addressed in this paper:

1. How have countries faced with issues similar to those in Rwanda gone about trying to reconcile past atrocities, and what strategies of transitional justice has Rwanda used?
2. How has the Rwandan government influenced these strategies, and are they helping the country move towards more liberal democracy?

In order to analyze Rwanda's strategies in the area of transitional justice this paper will examine the three systems of justice. Therefore, it will investigate the International Criminal Tribunal for Rwanda (ICTR), the national courts in Rwanda, and *Gacaca* all of which have been used as devices for transitional justice in the country. This project will examine the retributive and restorative elements of these systems of justice, as well as the pros and cons associated with these methods, especially focusing on the ICTR and *Gacaca*. More specifically, this paper will investigate the influence of the Rwandan government on these judicial institutions, and focus on the government's refusal to acknowledge crimes committed by the RPF against the Hutus. It will argue that fifteen years after the Rwandan genocide, the RPF government continues

to rule Rwanda in an authoritarian manner, which risks seriously undermining any effective efforts for transitional justice to bring about democratic development in the country.

## **Research Outline**

The second chapter of this project will provide a brief overview of the history of Rwanda. It is necessary to have an understanding of Rwanda's past in order to fully comprehend how the 1994 genocide occurred, and the actions that were taken by the government to deal with the aftermath of the conflict. Therefore, this chapter will first outline how ethnic tensions between Tutsis and Hutus were exacerbated under colonial rule, and were further aggravated after Rwanda gained independence in the 1960s. Next, it will examine how Rwanda was not ready to embark on its initial transition to democracy in the early 1990s with the signing of the Arusha Accords, which was one of the reasons that led to the 1994 genocide. Following a brief overview of the genocide, this chapter will conclude with an assessment of the aftermath of the genocide in order to gain an understanding of the obstacles facing the new government in their efforts of transitional justice.

Chapter three will provide an overview of how the theory of transitional justice has evolved since the Nuremberg trials after WWII. It will outline the various components associated with transitional justice, especially focusing on the dichotomy between retributive and restorative justice. The chapter will conclude with an analysis of the link between transitional justice and democracy.

The chapter will also examine Thomas Carother's view that it is incorrect to assume that nations "moving *away* from dictatorial rule" can automatically be considered as countries "in transition *toward* democracy."<sup>15</sup> This is important because it relates to Rwanda, a country that has yet to transition into a democratic regime. Therefore, the question that can be asked in this section is whether or not transitional justice can help semi-authoritarian countries move towards democracy?

Chapter four will provide an assessment of the three systems of transitional justice used in Rwanda including the ICTR, the national courts and *Gacaca*. Moreover, this chapter will try to emphasize how some of the flaws within these systems of justice can be linked to the undemocratic nature of the current Rwandan government. In addition, it will be argued that these problems may compromise any efforts made in justice and reconciliation, and therefore it is unlikely that these mechanisms of transitional justice can help the country transition toward becoming more democratic.

The fifth chapter will consist of an overview of how Rwanda is functioning fifteen years after the genocide took place. It will examine some of the policies of the current government, paying special attention to the authoritarian style of leadership that Paul Kagame appears to have embraced. Finally, it will conclude by arguing that until President Kagame is willing to relinquish his heavy-handed role and provide some leeway for more democratic reform, the experiment in transitional justice in the country will not be successful.

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<sup>15</sup> Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13 (2002): 6.

## CHAPTER 2: THE RWANDAN GENOCIDE

### Historical Background of Rwanda

The Rwandan genocide of 1994 was not the first time that the tiny country had experienced ethnic violence. Indeed, since Rwanda gained independence in the early 1960s there have been waves of sporadic violent acts against the Tutsi minority including the period between 1959 until 1964, 1973, and during the civil war in 1990 to 1993.<sup>16</sup> One of the reasons behind this violence was the notion that the Tutsis were foreigners who had come to Rwanda from far off lands.<sup>17</sup> This idea was based on the “Hamitic hypothesis,” which was created in 1863 by a British explorer named John Hanning Speke.<sup>18</sup> This “Hamitic hypothesis” was premised on the conviction that there was a “superior race of men who were as unlike as they could be from the common order of other natives” because of their “fine oval faces, large eyes, and high noses denoting the best blood of Abyssinia (Ethiopia).”<sup>19</sup> It was during colonial rule, especially when Belgium controlled Rwanda after the German defeat in WWI that the “Hamitic hypothesis” became influential in the country. Unfortunately, this hypothesis would have lasting consequences.

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<sup>16</sup> Lars Waldorf, “Rwanda’s failing experiment in restorative justice,” in Handbook of Restorative Justice, ed. D. Sullivan and L. Tiff, (New York: Routledge, 2006), 425.

<sup>17</sup> Timothy Longman and Téoneste Rutagengwa, “Memory, Identity and Community in Rwanda,” In My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity, ed. E. Stover and H.M. Weinstein. (Cambridge: Cambridge University Press, 2004), 168.

<sup>18</sup> Philip Gourevitch, We Wish to Inform You to inform you that tomorrow we will be killed with our families, (New York: Picador, 1998), 50.

<sup>19</sup> *Ibid.*, 52.

Prior to colonialism, Rwanda was believed to consist of three different groups of people including the Hutus (84%), Tutsis (15%), and Twa (1%).<sup>20</sup> However, there was little that distinguished one group from the other, as they spoke the same language, practiced similar religions, and shared the land together.<sup>21</sup> One of the only ways to tell them apart was through “socioeconomic status, with Hutus the cultivators who worked in the service of the Tutsi pastoral aristocracy.”<sup>22</sup> Nevertheless, there were opportunities for Hutus to become Tutsi, usually by acquiring cattle, and intermarriage between the two groups was quite common.<sup>23</sup> This would change dramatically, however, during the colonial era.

## **The Colonial Legacy**

A major conference was held in Berlin in 1885 where delegates from powerful European countries gathered together to discuss how to divide up Africa amongst the nations.<sup>24</sup> It was decided at this conference that Rwanda would become a colony of German East Africa, and in 1897 Germany sent over agents to administer control over the nation.<sup>25</sup> After the German defeat during WWI, however, the League of Nations designated the Belgians as the new rulers of

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<sup>20</sup> Alison Des Forges, “Leave none to tell the story:” Genocide in Rwanda, (New York: Human Rights Watch, 1999), 35.

<sup>21</sup> Barbara Oomen, “Justice Mechanisms and the Question of Legitimacy: The Example of Rwanda’s Multi-layered Justice Mechanisms,” in Building a Future on Peace and Justice: Studies in Transitional Justice, Peace and Development, ed. K. Ambos, J. Large and M. Wierda, (United Kingdom: Springer-Verlag Berlin Heidelberg, 2009), 186.

<sup>22</sup> Phil Clark, “When the Killers Go Home,” Dissent 52 (Summer 2005): 14 – 21

<sup>23</sup> Helen Hintjens, “Explaining the 1994 genocide in Rwanda,” The Journal of Modern African Studies 37 (1999): 272.

<sup>24</sup> Philip Gourevitch, We Wish, 54.

<sup>25</sup> Ibid., 53.



Rwanda.<sup>26</sup> Unfortunately, when the Belgians arrived they brought their discriminatory practices into the region by favouring the Tutsis whom they regarded as belonging to the “black master race.”<sup>27</sup> Indeed, they based these views on the “Hamitic hypothesis,” and as a result of this favouritism the Tutsis were offered better working opportunities and chances for higher education over the Hutus. The Belgians also hired scientists to examine various physical characteristics including skull size, weight, height, and nose length to help distinguish the ethnicity of every Rwandan.<sup>28</sup> They then proceeded to hand out identity cards, which documented everyone’s ethnicity, thus making it impossible for Rwandans to escape the realities of their ethnic differences.<sup>29</sup>

## Rwandan Independence

After WWII, the Hutus started to gain more power in the Rwandan government, as a result of pressure placed on Belgium by the United Nations.<sup>30</sup> According to Scott Straus, during this time “some Catholic missionaries also took up the cause of the oppressed Hutu masses, and a new Hutu political class emerged.”<sup>31</sup> The Hutu Revolution transpired in 1959 in which a large number of

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<sup>26</sup> Philip Gourevitch, *We Wish*, 54.

<sup>27</sup> Trudy Govier, *Taking Wrongs Seriously: Acknowledgement, Reconciliation, and the Politics of Sustainable Peace*, (New York: Humanity Books, 2006), 260.

<sup>28</sup> Philip Gourevitch, *We Wish*, 54.

<sup>29</sup> Phil Clark, “Killers Go Home,” 17. Up until the RPF take over of Rwanda in 1994, all Rwandans assumed their father’s ethnicity. See *Ibid*.

<sup>30</sup> Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, (Ithaca and London: Cornell University Press, 2006), 23.

<sup>31</sup> *Ibid*. There is an interesting assessment of the new generation of Belgians who were in Rwanda just before independence. Many of these people were Flemish and were inclined to support the Hutu ‘underdogs’ over the Tutsi elite “whom they may have equated with the Walloon elite in Belgium, perceived as snobbish and effete.” This explanation could be one reason why the tables started to turn in the favour of the Hutu during the late 1950s. See Philip Reyntjens, “Post-1994 Politics in Rwanda,” 254.

Hutus demanded freedom from colonial rule, as well as from the more privileged Tutsi minority.<sup>32</sup> Three years later, the Hutus would be victorious after Rwanda gained its independence, and a Hutu man named Gregoire Kayibanda took control of the country.<sup>33</sup> At the same time, approximately 200,000 Tutsis escaped from Rwanda to live in exile in neighbouring countries including Uganda, the Democratic Republic of the Congo, Tanzania, and Burundi.<sup>34</sup> Life for the Tutsis who remained in Rwanda was difficult as Kayibanda kept the discriminatory identity card system, which was used against the Tutsis in retribution for the harsh treatment that the Hutus endured under colonialism.<sup>35</sup> In addition, there were also a number of pogroms directed against the Tutsis while Kayibanda was in power, which caused thousands of Tutsis to lose their lives.<sup>36</sup>

Juvenal Habyarimana replaced Kayibanda through a military coup in 1973.<sup>37</sup> Life became more secure for the Tutsis in Rwanda under Habyarimana's leadership.<sup>38</sup> Indeed, Habyarimana vowed to put a halt to the violence that had been plaguing the country since independence, and there was even some acknowledgement within the government about recognizing minority groups including the Tutsis.<sup>39</sup> Nonetheless, despite these measures most Tutsis still experienced discrimination, as they were unable to hold positions within the

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<sup>32</sup> Trudy Govier, Taking Wrongs Seriously, 260.

<sup>33</sup> Scott Straus, The Order of Genocide, 23.

<sup>34</sup> Wendy Lamborne, "Justice and Reconciliation: Postconflict Peacebuilding in Cambodia and Rwanda," in Reconciliation, Justice, and Coexistence, ed. M. Abu-Nimber, (New York: Lexington Books, 2001), 322.

<sup>35</sup> Ibid.

<sup>36</sup> Scott Straus, The Order of Genocide, 23.

<sup>37</sup> Ibid., 191.

<sup>38</sup> Lars Waldorf, "Failing Experiment," 423.

<sup>39</sup> Trudy Govier, Taking Wrongs Seriously, 261.

military and had limited opportunity in government.<sup>40</sup> Yet, the country experienced significant economic development and relative stability between 1973 until the end of the 1980s.<sup>41</sup>

During the early 1990s, the international community began to place pressure on the Habyarimana government to enter the democratic path by allowing the creation of other political parties.<sup>42</sup> However, at that same time the country's economy was suffering a downturn as a result of a dramatic decrease in the price of coffee and tea.<sup>43</sup> From 1987 to 1988, the profits of coffee exports had been reduced from 15 billion to 5 billion Rwandan francs.<sup>44</sup> As a result, the country experienced a series of troubles including high rates of unemployment, inflation, and shortages of land.<sup>45</sup> This was especially problematic for young people, particularly men who were having difficulties finding employment and subsequent income to meet their needs.<sup>46</sup>

In October 1990, further sentiments of insecurity developed after the Rwandan Patriotic Front (RPF) waged war against Rwanda.<sup>47</sup> The RPF consisted mainly of English-speaking Tutsi exiles that had fled to Uganda after

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<sup>40</sup> Trudy Govier, Taking Wrongs Seriously, 261. Habyarimana had very tight control over Rwanda during most of his leadership. For example, every week all Rwandans would be forced to participate in '*imuganda*' or 'collective work' periods in their local communities where people would dance, and express their support for the government. See Helen M. Hintjens, "Explaining," 269.

<sup>41</sup> Scott Straus, The Order of Genocide, 192.

<sup>42</sup> Lars Waldorf, "Failing Experiment," 423.

<sup>43</sup> Barbara Oomen, "Justice Mechanisms," 186.

<sup>44</sup> Helen Hintjens, "Explaining," 256.

<sup>45</sup> Trudy Govier, Taking Wrongs Seriously, 261.

<sup>46</sup> *Ibid.*

<sup>47</sup> Barbara Oomen, "Justice Mechanisms," 186.

the Hutu Revolution in 1959.<sup>48</sup> Many of these exiles had experienced harsh living conditions in Uganda, as they had few privileges and limited opportunity.<sup>49</sup> Moreover, during the 1980s, Uganda had tried to send the exiles back to Rwanda, but Habyarimana had told them that they would not be able to enter into the country because it was already too crowded.<sup>50</sup> Eventually the RPF “decided to go home on its own terms” with the vow to put an end to Habyarimana’s power.<sup>51</sup>

Following the RPF attacks, civil war broke out and lasted until 1993 after the government agreed to negotiate a peace deal with the RPF.<sup>52</sup> The creation of the Arusha Peace Accords was the end result of these negotiations, which marked the termination of the internal strife, and sketched out a plan of transition towards democratic development within the country.<sup>53</sup> The Arusha Accords involved the creation of a transitional government that would be in power until elections could be held. Moreover, the Mouvement Révolutionnaire National pour le Développement (MRND) party that had been in control of Rwanda was requested to relinquish its stronghold by only having access to one third of the positions within the new government.<sup>54</sup> Finally, the Arusha Accords required that the fighting between the Tutsi rebels and the government immediately come to an end, and that an international peacekeeping force be deployed to Rwanda in

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<sup>48</sup> Lars Waldorf, “Failing Experiment,” 423.

<sup>49</sup> Alison Des Forges, “Leave none to tell the story,” 42. According to Des Forges, the exile population had grown to roughly 600,000 people during the end of the 1980s. See *ibid*.

<sup>50</sup> *Ibid*.

<sup>51</sup> *Ibid*.

<sup>52</sup> Scott Straus, The Order of Genocide, 24.

<sup>53</sup> Jennie E. Burnet, “Gender Balance and Meaning of Women in Governance,” African Affairs 107 (2008): 364.

<sup>54</sup> *Ibid*.

order to ensure that the stipulations outlined by the agreement were being met.<sup>55</sup>

Unfortunately, the Arusha Accords further aggravated existing tensions within the country. Moreover, a “hard core” group of Hutu political elite situated within the military and government had begun to orchestrate the genocide that would take place in 1994.<sup>56</sup> This group is commonly known as *akazu* or ‘little house,’ and included many close contacts of President Habyarimana.<sup>57</sup> According to Scott Straus, it was these “powerful architects - the hardliners who between 1990 and 1994 radicalized and prepared to do what was necessary to keep power.”<sup>58</sup>

Part of their plan involved creating a large-scale propaganda campaign against the Tutsis through newspapers and the radio. The propaganda portrayed all Tutsis as untrustworthy. It also used Hamitic imagery to paint the Tutsis as foreigners instilling a sense of fear into the Hutu population that the Tutsis were coming back to Rwanda to steal their land. At the same time, between 1992 and 1993, the *akazu* started to train groups of young men on military tactics. This group would eventually form the notorious *interahamwe* that carried out much of the killing during the genocide.<sup>59</sup> Furthermore, between January 1993 and the beginning of 1994, the *akazu* had approximately “581,000 machetes or one for every third adult Hutu male in Rwanda” shipped into the country.<sup>60</sup> It was these

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<sup>55</sup> Scott Straus, The Order of Genocide, 25.

<sup>56</sup> Helen Hintjens, “Explaining,” 249.

<sup>57</sup> Scott Straus, The Order of Genocide, 32.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, 27.

<sup>60</sup> Alison Des Forges, Leave none to tell the story, 97.

circumstances that helped pave the way for the “fastest, most efficient killing spree in the twentieth century” to occur in 1994.<sup>61</sup>

## **The Rwandan Genocide**

On April 6, 1994, Juvénal Habyarimana, the President of Rwanda was killed after his plane was shot down by rocket fire.<sup>62</sup> This was a defining moment for the country because directly following the plane crash, the Hutu hardliners took control of the government and initiated the genocide against the Tutsis and Hutu moderates.<sup>63</sup> From April 7th until the start of July, roughly 800,000 people, or approximately ten percent of the Rwandan population, were killed in a campaign of genocide.<sup>64</sup> Around 500,000 of those murdered were Tutsis, while the remaining deceased were Hutu moderates.<sup>65</sup> Scott Straus described how the violence that occurred in nearly 100 days in Rwanda was “remarkable not just for its horror and speed, but also for the extent of participation it engendered.”<sup>66</sup> According to some Rwandan government officials, up to three million Hutus took part in the genocide; however, a more realistic assertion is that there were fewer than one million participants.<sup>67</sup> Regardless of the actual number of Hutu perpetrators, it is known that people from every walk of life including teachers, priests, neighbours, women, and children engaged in the killing. Moreover, there

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<sup>61</sup> Samantha Power, A Problem From Hell: America and the Age of Genocide (New York: Harper Perennial, 2002), 334.

<sup>62</sup> *Ibid.*, 329.

<sup>63</sup> Jennie E. Burnet, “Governance,” 364.

<sup>64</sup> Susanne Buckley-Zistel, Between Past and Future, 4.

<sup>65</sup> Scott Straus, The Order of Genocide, 123.

<sup>66</sup> Scott Straus, “How Many Perpetrators were there in the Rwandan Genocide?” Journal of Genocide Research 6 (2004): 95

<sup>67</sup> *Ibid.* This claim is far fetched because that would have meant that the entire Hutu population had participated in the genocide. See *ibid.*, 96.

were horrendous stories of how people were killed, mutilated and raped. Consequently, when the violence finally came to a halt, an extremely scarred and traumatized society was left in its wake.

## **The Aftermath**

The genocide came to an end after Paul Kagame and his RPF took control of the country in the beginning of July.<sup>68</sup> At that time, the RPF went to work to create a new transitional government, which was called the Government of National Unity (GNU).<sup>69</sup> The government pledged to follow the power sharing agreements outlined by the Arusha Accords and announced that it would be in control of the country for five years, until proper elections could be held.<sup>70</sup> Faustin Twagiramungu, the Hutu leader belonging to the Mouvement Démocratique Républicain (MDR) was assigned the role of Prime Minister of the country.<sup>71</sup> One of the first policy decisions of the new government of Rwanda was to embark in “an ideological programme called ‘national unity and reconciliation’ to build a ‘New Rwanda,’ a nation of one people who refused the genocidal ideology’ of the past.”<sup>72</sup> To establish this “New Rwanda” the government immediately abolished the deadly identity cards that had spelt death for so many Tutsis during the genocide.<sup>73</sup>

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<sup>68</sup> Alison Des Forges, “Leave none to tell the story,” 550.

<sup>69</sup> Jennie E. Burnet, “Governance,” 365.

<sup>70</sup> Ibid.

<sup>71</sup> Filip Reyntjens, “Post-1994 Politics in Rwanda” 1105.

<sup>72</sup> Ibid.

<sup>73</sup> Trudy Govier, Taking Wrongs Seriously, 264.

Nevertheless, there were also many difficulties associated with creating this “New Rwanda,” as there were various challenges with rebuilding a country that had literally just fallen apart. Maya Goldstein-Bolocan described the situation that the new government faced:

In the aftermath of the genocide, Rwanda was a wrecked country with no functioning institutions or infrastructure. Of the seven million inhabitants before the genocide, about three quarters had been killed, displaced, or fled. The rest were like a walking dead, left to grasp with a bewildering reality.<sup>74</sup>

To make matters even more difficult, after the RPF gained control of Rwanda, the former government and army led a large-scale withdrawal of nearly two million Hutu into various regions in northern Rwanda and neighbouring countries including the Democratic Republic of the Congo (DRC) and Tanzania.<sup>75</sup> Consequently, refugee camps were created in these areas to support the mass influx of people. However, it was from these locations that Hutu extremists continued to wreak havoc on the nation by engaging in guerrilla warfare tactics including bombing roads, and assaulting survivors of the genocide.<sup>76</sup>

The Rwandan government decided to solve the problem by taking matters into its own hands. Consequently, it tried to disarm the *interahamwe* and the former Rwandan army by shutting down these refugee camps. Unfortunately, the task was difficult and many people lost their lives as a result of the RPF activity. In one such instance in 1995, the RPF was blamed for killing roughly 8,000

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<sup>74</sup> Maya Goldstein-Bolocan, “Rwandan Gacaca: An Experiment in Transitional Justice,” Journal of Dispute Resolution, 355 (2003): 369.

<sup>75</sup> Lars Waldorf, “Failing Experiment,” 424.

<sup>76</sup> Philip Gourevitch, We Wish, 267.



Hutus in the Kibeho refugee camp located in Northern Rwanda.<sup>77</sup> Two years later an additional 6,000 people lost their lives during various RPF military campaigns against Hutu extremists in northern Rwanda. In 1997, the United Nations High Commission for Refugees also warned that approximately 200,000 displaced people were presumed dead as a result of fighting, hunger, and raids on refugee camps by the RPF in the DRC.<sup>78</sup> This RPF activity has caused some scholars to question whether or not a “double genocide” occurred in retaliation for the 1994 slaughter.<sup>79</sup> However, according to Sebastian Silva-Leander, “as serious as these human rights violations are, they do not appear to have responded to a logic of extermination, as was the case for the crimes committed by the *interahamwe*.”<sup>80</sup> Although the RPF might not have intentionally tried to seek out Hutus to exterminate them, it is important to remember that both sides committed serious human rights violations during the 1990s in Rwanda and the surrounding area. This point will be explored in more detail later on in the paper.

The security situation in Rwanda began to stabilize in 1998, and civilians were no longer dying as a result of fighting between the RPF and *interahamwe* forces. This relative stability allowed the government to redirect its focus on transitional justice “in order to pave the way towards a future of reasonable tolerance and coexistence, a future in which the ‘again and again’ massacres of the past could be replaced by a concerted ‘never again.’”<sup>81</sup> Therefore, the next

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<sup>77</sup> Sebastian Silva-Leander, “On the Danger,” 1607.

<sup>78</sup> Ibid.

<sup>79</sup> Susanne Buckley-Zistel, Between Past and Future, 26.

<sup>80</sup> Ibid.

<sup>81</sup> Jannie Malan, “Understanding transitional justice in Africa,” in Peace & Conflict in Africa, ed. D. Francis, (London: Zed Books Ltd, 2008), 135.

chapter will provide a brief analysis of the theory of transitional justice in order to have a proper understanding of what efforts the Rwandan government ended up taking to bring about justice and reconciliation.

## CHAPTER 3: TRANSITIONAL JUSTICE

In the wake of mass atrocity, the question of how to deal with the past is always a difficult one. This was especially true in the Rwandan context, where such a large portion of society was influenced by the genocide. In the latter half of the twentieth century and the beginning of the twenty-first century, the field of transitional justice emerged in response to dealing with such complex issues. According to Dr. Susanne Buckley-Zistel, the “aim of transitional justice is to uncover the truth of human rights crimes, to publicly acknowledge the suffering of victims, to identify and punish the responsible individuals and groups, to establish the rule of law, and to contribute to reconciliation.”<sup>82</sup> In a broader sense, transitional justice involves transitioning from a period of conflict and violence to one that is peaceful and more democratic.<sup>83</sup> In addition, scholars such as Wendy Lambourne have argued that transitional justice should not be thought of as a temporary process that the word ‘transition’ insinuates. Instead, Lambourne believes that the model of transitional justice should be regarded “in terms of ‘transformation,’ which implies long-term, sustainable processes embedded in society and adoption of psychosocial, political and economic, as well as legal, perspectives on justice.”<sup>84</sup>

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<sup>82</sup> Susanne Buckley-Zistel, Between Past and Future, 23.

<sup>83</sup> Aneta Wierzynska, “Consolidating Democracy through Transitional Justice,” 1944.

<sup>84</sup> Wendy Lambourne, “Transitional Justice and Peacebuilding after Mass Violence,” The International Journal of Transitional Justice 3 (2009): 30.

The idea of using justice to deal with the aftermath of conflict has been around for hundreds of years. For example, war tribunals can be traced as far back as the fourteenth century.<sup>85</sup> More recently, however, discussions about transitional justice began to arise by the international community after World War Two and how to deal with the horrors that had occurred in Nazi Germany. Indeed, the subsequent Nuremburg trials marked the first stage of transitional justice and the “triumph of transitional justice within the scheme of international law.”<sup>86</sup> Since the end of the Cold War, transitional justice has become even more popularized, as many nations throughout the world have moved away from dictatorial systems of government towards democracy.<sup>87</sup> As countries in Latin America, Eastern Europe, and Africa have undergone various democratic transitions, transitional justice has quickly “become the new mantra of domestic and international politics.”<sup>88</sup>

The international criminal tribunals that were created for Yugoslavia and Rwanda, as well as truth commissions, and “hybrid” courts are just a few examples of the great strides that have been made in transitional justice over the past couple of decades.<sup>89</sup> More recently, the International Criminal Court (ICC) was established as a permanent mechanism to try people charged with grave

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<sup>85</sup> Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice, ed. N. Roht-Arriaza and J. Mariezcurrena, (Cambridge: Cambridge University Press, 2006), 2.

<sup>86</sup> Ruti G. Teitel, “Transitional Justice Genealogy,” Harvard Human Rights Journal 16 (2003): 70.

<sup>87</sup> Naomi Roht-Arriaza, “The New Landscape,” 1.

<sup>88</sup> Pierre Hazan, Measuring the Impact of Punishment and forgiveness: a framework for evaluating transitional justice, International Review of the Red Cross 88 (2006): 19.

<sup>89</sup> Charles T. Call, “Is Transitional Justice Really Just,” 101.

human rights abuses.<sup>90</sup> According to Ruti G. Teitel, the ICC's creation is significant because "international humanitarian law, as applied by the ICC, allows a form of regime accountability, even where it may be elided within the State."<sup>91</sup> All of these mechanisms of transitional justice are useful for countries such as Rwanda that are attempting to deal with past human rights abuses while at the same time trying to create a more peaceful future. Moreover, there are two models of transitional justice that countries can use to aid this process. The first is retributive justice, which is analyzed below.

## **Retributive Justice**

The retributive justice model has been at the centre of the justice paradigm since the end of WWII when the Nuremburg military tribunal was established to try Nazis that committed gross human rights violations against the Jews and various other minority groups.<sup>92</sup> This model is based upon the "western, liberal tradition of accountability for crimes," and has been commonly employed by the international community through the use of international criminal tribunals and courts.<sup>93</sup> Moreover, retributive justice has been thought of as mostly a backward-looking approach as it focuses on examining past atrocities in order to punish the responsible parties.<sup>94</sup> Supporters of this model believe that

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<sup>90</sup> Ruti G. Teitel, "Theoretical and International Framework: Transitional Justice in a New Era," Fordham International Law Journal 26 (2003): 902.

<sup>91</sup> *Ibid.*, 903.

<sup>92</sup> Maya Goldstein-Bolocan, "Rwandan Gacaca," 357.

<sup>93</sup> Wendy Lambourne, "Transitional Justice and Peacebuilding after Mass Violence," The International Journal of Transitional Justice 3 (2009): 30.

<sup>94</sup> Aneta Wierzynska, "Consolidating Democracy Through Transitional Justice," 1946. Wierzynska also points out that although the retributive justice approach deals mostly with the past, there are forward-looking elements including its influence on deterrence. See *ibid.*

prosecuting perpetrators for their offenses is necessary to avoid a culture of impunity.<sup>95</sup> Professor Luc Huyse outlines two reasons why countries would choose to prosecute criminals using this model:

First, punishing the perpetrators of the old regime advances the cause of building or reconstructing a morally just order. The second reason has to do with establishing and upholding the young democracy that succeeds the authoritarian system.<sup>96</sup>

Therefore, proponents of prosecution believe that punishing those who committed severe wrongdoings in past regimes is necessary to help victims heal, as it can provide them with a sense of security and relief that justice is finally being carried out.<sup>97</sup> Moreover, punishing individuals responsible for past crimes can create sentiments of trust in the populace towards the new government, which in turn can help to foster democratic ideals.<sup>98</sup>

Nevertheless, there are some concerns associated with only using prosecution as an instrument of transitional justice. One such dilemma is the potential for corruption to arise in the judiciary. In Rwanda, for example, there are simply too many people to be tried using the national court system. Therefore, lay judges have been chosen for this task. However, there is uneasiness that these judges do not have adequate training, which “makes lapses from important legal norms almost unavoidable.”<sup>99</sup>

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<sup>95</sup> Maya Goldstein-Bolocan, “Rwandan Gacaca,” 357.

<sup>96</sup> Luc Huyse, “Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past,” Law and Social Inquiry 20 (1995): 54.

<sup>97</sup> Maya Goldstein-Bolocan, “Rwandan Gacaca,” 358.

<sup>98</sup> Luc Huyse, “Justice after Transition,” 57.

<sup>99</sup> *Ibid.*, 58.

Another concern is that prosecuting individuals may undermine democratic development, especially if the public views the trials as being conducted in a manner that is not fair and just. Luc Huyse outlines how this can create a double standard that makes the new government appear illegitimate: “dealing with the past...may force the successor elites to violate the codes of the Rechtsstaat today while judging the undemocratic behaviour of yesterday.”<sup>100</sup> Some governments, therefore, have used the restorative justice approach because they do not want to be faced with the difficulties associated with prosecuting perpetrators.

## **Restorative Justice**

Restorative justice is another model of transitional justice, which gained popularity in Canada and the United States during the 1970s when dramatic changes started to take place in the justice system.<sup>101</sup> It was at this time that proponents of restorative justice argued that the current system was draconian and ineffective in trying to prevent crime and reintegrate perpetrators back into society.<sup>102</sup> Therefore, restorative justice was purposed as a way of going beyond simply prosecuting individuals for the crimes that they committed by focusing on human relations and the need to repair the broken relationships that the conflict had caused.<sup>103</sup>

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<sup>100</sup>Luc Huyse, “Justice after Transition,” 57.

<sup>101</sup>Paul McCold, “The Recent History of Restorative Justice: Mediation, Circles, and Conferencing,” in Handbook of Restorative Justice, ed. D. Sullivan and Larry Tiff, (New York: Routledge, 2006), 23.

<sup>102</sup>Carrie Menkel-Meadow, “Restorative Justice: What Is It and Does It Work?” Annual Review of Law and Society 3 (2007): 163.

<sup>103</sup>Maya Goldstein-Bolocan, “Rwandan Gacaca,” 361.

Restorative justice is premised around trying to reintegrate criminals back into communities through a number of measures including apologies, reparation payments, or acknowledging the truth about the crimes committed in order to try and help the victims overcome their misconduct.<sup>104</sup> It is through these actions that reconciliation, “a fundamental principle of restorative justice,” can take place.<sup>105</sup> In this sense, reconciliation can be defined as an attempt to establish a placatory arrangement amongst formerly hostile groups.<sup>106</sup> It is important to remember, however, that just because the violence has come to an end does not mean that reconciliation has occurred. Phil Clark emphasizes this point when he states how “peace is therefore just a prerequisite to reconciliation. If violence continues, it is nearly impossible for individuals and groups to consider rebuilding their relationships.”<sup>107</sup> Moreover, according to Clark, reconciliation will only take place once the relationships between the victims and the accused are strengthened to ensure a more stable future.<sup>108</sup>

In the past couple of decades, restorative justice has become widely associated with truth commissions such as the South African Truth and Reconciliation Commission (TRC).<sup>109</sup> The TRC was established in 1995 in order to uncover the truth about the gross human rights violations that occurred under

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<sup>104</sup>Carrie Menkel-Meadow, “Restorative Justice,” 162.

<sup>105</sup>Chris Cunneen, “Exploring the relationship between reparations, the gross violation of human rights, and restorative justice,” in Handbook of Restorative Justice, ed. D. Sullivan and L. Tifft, (New York: Taylor & Francis Books, 2006), 367.

<sup>106</sup>Tuamos Forsberg, “The Philosophy and Practice of Dealing with the Past: Some Conceptual and Normative Issues,” in Burying the Past: Making Peace and Doing Justice after Civil Conflict, ed. N. Biggar, (Washington, D.C: Georgetown University Press, 2001), 63.

<sup>107</sup>Phil Clark, “Hybridity, Holism, and “Traditional” Justice,” 771

<sup>108</sup>*Ibid.*, 770.

<sup>109</sup>Alexander Betts, “Should Approaches to Post-conflict Justice and Reconciliation be Determined Globally, Nationally or Locally?” The European Journal of Development Research 17 (2005): 744.



apartheid.<sup>110</sup> The TRC was premised around the notion of awarding amnesties to those willing to openly admit to their crimes. The idea was that granting amnesties would provide a comfortable environment for allowing people to open up to reveal the truth about their misconduct.<sup>111</sup> Charles T. Call outlines a number of reasons why countries choose to use truth commissions. The motives include the ability to properly document the various human rights abuses that occurred during the conflict, to acknowledge how the aforementioned abuses were carried out and who was responsible for them, and finally to bring about healing and reconciliation in order to come to terms with the past and focus on the future.<sup>112</sup>

Although the retributive model of justice is centred on rebuilding bonds between people, there are also some apprehensions with using this approach. First, there are concerns that victims will be retraumatized after having to listen to their horrific experiences over again.<sup>113</sup> In addition, some critics of restorative justice have found fault with truth commissions for allowing offenders to get away with their crimes, thus “denying justice to victims.”<sup>114</sup> There are other fears that restorative justice is only a ploy by figures in positions of authority to impose their religious, conservative, or other views upon the population.<sup>115</sup> In addition, there is unease that restorative justice techniques could deny the accused some

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<sup>110</sup>Maya Goldstein-Bolocan, “Rwandan Gacaca,” 363.

<sup>111</sup>Lyn Graybill, “To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission,” Human Rights Review 2 (2001): 3.

<sup>112</sup>Charles T. Call, “Transitional Justice Just,” 103.

<sup>113</sup>Carrie Menkel-Meadow, “Restorative Justice,” 172.

<sup>114</sup>Maya Goldstein-Bolocan, “Rwandan Gacaca,” 365.

<sup>115</sup>Ibid.

important civil liberties including rights to fair trials, or to appeal their cases.<sup>116</sup> Lastly, in order for restorative justice techniques to be effective the participants are usually required to dedicate a significant amount of their time to the cause.<sup>117</sup> This can be difficult when trying to work around people's daily routines, especially in developing countries like Rwanda where many people rely on subsistence farming for survival. Despite these drawbacks, restorative justice is important because it focuses on trying to "reintegrate both perpetrators and victims into a unified society."<sup>118</sup> Moreover, restorative justice can provide mechanisms in which the public can gather together to demand accountability for past wrongdoings, thus empowering individuals and helping to foster democratic development.<sup>119</sup> The next section will discuss this link between transitional justice and democratic development in further detail.

## **Retributive Justice, Restorative Justice and Democracy**

There is a common understanding among many scholars that new governments trying to acknowledge past abuses, while also attempting to create a more peaceful future should implement a mixture of both forms of justice in order to achieve the most successful results. According to Alexander Betts, "if the ultimate goal of transitional justice is to promote stability and social harmony, the two cannot be seen as dichotomised."<sup>120</sup> Indeed, retributive justice is important because it provides the opportunity to deal with the misconducts of the former

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<sup>116</sup>Carrie Menkel-Meadow, "Restorative Justice," 172.

<sup>117</sup>Ibid.

<sup>118</sup>Anita Wierzynska, "Consolidating Democracy Through Transitional Justice," 1946.

<sup>119</sup>Ibid., 1960.

<sup>120</sup>Alexander Betts, "Approaches to Post-Conflict Justice," 744.

regime, while restorative justice can help to repair broken bonds within society to pave the way for a more peaceful and democratic future.

One of the main aims that transitional justice is supposed to achieve is democratic development. This is because “every instance of mass murder by a state against its own people has happened under authoritarian rule.”<sup>121</sup> Consequently, if the final result of transitional justice is to ensure that past wrongdoings by former authoritarian regimes never occur again then promoting democratic development must be a priority. To that end, it is important to have an understanding of what it is meant by the term democracy.

Democracy can be defined as a system of government that “is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”<sup>122</sup> Moreover, it is important to distinguish between two types of democracy, which are *electoral democracy* and *liberal democracy*. According to Freedom House, there are five components that make up *electoral democracies* including “A competitive, multiparty political system,” “universal adult suffrage,” “regularly contested elections,” and “significant public access of major political parties to the electorate.”<sup>123</sup> Freedom House also defines *Liberal democracies* as *electoral democracies*; however, these democracies also contain “the presence of a

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<sup>121</sup>Aneta Wierzyńska, *Consolidating Democracy Through Transitional Justice*, 1948. This is actually a quote by Rudolph Rummel.

<sup>122</sup>Jack Donnelly, “Human Rights, Democracy, and Development,” *Human Rights Quarterly* 21 (1999): 615.

<sup>123</sup>Freedom House, *Methodology*, New York: Freedom House, 2005.

substantial array of civil liberties.”<sup>124</sup> Moreover, many countries throughout the world that are deemed “free” by the organization are both *liberal* and *electoral democracies*. On the other hand, nations classified as “partly free” are only considered to be *electoral democracies*.<sup>125</sup> Therefore, according to these definitions transitional justice should help regimes develop into liberal democracies rather than simply electoral democracies, as it is liberal democracies that actually protect civil liberties.

When examining the link between transitional justice and democracy it is important to realize that all regimes that undergo a transition away from dictatorship are not going to automatically transform into budding democracies.<sup>126</sup> This idea is contrary to the “transition paradigm,” which is the theory that states that transitioning governments distancing themselves from authoritarianism will move towards democracy in a linear progression.<sup>127</sup> In 2002, Thomas Carothers refuted this claim in his article *The End of the Transition Paradigm*. It was in this article that Carothers described the findings of his study that found that out of the 100 nations that were “transitioning” from authoritarianism at that time, “only a relatively small number – probably fewer than 20 – are clearly en route to becoming successful, well-functioning democracies or least have made some democratic progress and still enjoy a positive dynamic of democratization.”<sup>128</sup> Carothers goes onto note that many of

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<sup>124</sup>Freedom House, *Methodology*, New York: Freedom House, 2005.

<sup>125</sup>*Ibid.*

<sup>126</sup>Thomas Carothers, “Transition Paradigm,” 6.

<sup>127</sup>*Ibid.*

<sup>128</sup>*Ibid.*, 9.

these countries seem to be somewhere in the middle in which they follow certain democratic ideals, but also lack other attributes necessary for liberal democracy.<sup>129</sup> He describes these countries as “entering a political gray zone.”<sup>130</sup>

Rwanda is a perfect example of this type of “gray zone” country, as will be discussed in the next couple of chapters. When going back to analyze how this relates to transitional justice, however, one can hypothesize that the retributive justice mechanisms (International Criminal Tribunal for Rwanda, and the national courts) and the restorative justice mechanisms (*Gacaca*) that the country has used should help it to move past this “gray zone” towards becoming a liberal democracy. Therefore, the next chapter will assess these different mechanisms of transitional justice used in Rwanda to see whether or not this is the case.

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<sup>129</sup>Thomas Carothers, “Transition Paradigm,” 9.

<sup>130</sup>*Ibid.*

## **CHAPTER 4: TRANSITIONAL JUSTICE IN THE RWANDAN CONTEXT**

Unlike many other post-conflict nations that have tended to use “amnesties, truth commissions, (and) selective prosecutions” as methods of transitional justice, Rwanda has embarked in an ambitious scheme of trying to punish everyone who took part in the genocide.<sup>131</sup> This is an extremely complex task considering that there were hundreds of thousands of participants in the genocide. Consequently, the government of the country has used a number of legal mechanisms at the international, national and local stage to try the accused including the International Criminal Tribunal for Rwanda (ICTR), national courts, and *Gacaca*.<sup>132</sup> This next section will examine all three of these judicial institutions and assess some of the positive and negative attributes that are affiliated with each of these devices paying special attention to the ICTR and *Gacaca*.

### **The International Criminal Tribunal for Rwanda**

A year before the Rwandan genocide in 1993, the International Criminal Tribunal for Yugoslavia was created by the United Nations in order to try perpetrators that committed severe human rights violations in the former

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<sup>131</sup>Jennie E. Burnet, “The Injustice of Local Justice,” 173.

<sup>132</sup>Alexander Betts, “Approaches to Post-Conflict Justice,” 737.

Yugoslavia.<sup>133</sup> A year later, it only seemed logical that the international community should launch a similar tribunal for Rwanda to ensure that those who committed serious crimes were brought to justice. Moreover, Alison des Forges and Timothy Longman have argued that the atrocities that occurred in Rwanda were much more “grievous and large in scale than those committed in the former Yugoslavia,” and therefore “failure to create a mechanism comparable to the ICTY would almost certainly have led to accusations of racism.”<sup>134</sup> In addition, the Rwandan government had personally requested that the United Nation’s Security Council create a tribunal to help try those convicted of crimes of genocide.<sup>135</sup> Consequently, a Commission of Experts was hired to investigate grave crimes against human rights perpetrated by the Hutu. By October 1994, the Commission came to the conclusion “that there was undeniable and overwhelming evidence that the actions taken against the Tutsis constituted genocide and that a tribunal should be established.”<sup>136</sup>

In November 1994, UN Resolution 955 was sanctioned approving the establishment of the International Criminal Tribunal for Rwanda (ICTR).<sup>137</sup> The following year, the ICTR was established in Arusha Tanzania for “the sole

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<sup>133</sup>Lilian A. Barria and Steven D. Roper, “How Effective are International Criminal Tribunals?” The International Journal of Human Rights 9 (2005): 349.

<sup>134</sup>Alison des Forges and Timothy Longman, “Legal responses,” 52. Peter Uvin and Charles Mironko also highlight that one of the main reasons why the ICRT was created was for ‘symbolic politics,’ and to relieve some of the feelings of guilt about how the international community neglected Rwanda during the genocide. Therefore, the tribunal could be used as a way to show Rwandans that the international community was actually ‘doing something’ to support the country’s cause. See Peter Uvin and Charles Mironko, “Western and Local Approaches to Justice in Rwanda,” Global Governance 9 (2003): 220.

<sup>135</sup>Barbara Oomen, “Justice Mechanisms,” 189.

<sup>136</sup>Lilian A. Barria and Steven D. Roper, “How Effective are International Criminal Tribunals,” 354.

<sup>137</sup>Ibid.

purpose of prosecuting persons responsible of genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible of genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994.”<sup>138</sup> The first hearing that took place in the tribunal was in January 1997 for Jean-Paul Akayesu who had been the mayor of the Taba commune during the genocide.<sup>139</sup> His trial lasted until October 1998 when Akayesu was charged with committing “nine counts of genocide and crimes against humanity, including the use of rape as a weapon of genocide.”<sup>140</sup> He received a sentence of life imprisonment for his actions.

When the ICTR was first created many human rights organizations heralded it as “marking a watershed in the project of holding accountable perpetrators of genocide, crimes against humanity, and war crimes: the most heinous acts of the modern age.”<sup>141</sup> To that end, the tribunal has tried to reduce impunity by showing world leaders that gross human rights violations will not be tolerated, and everyone must work together to prevent such crimes from

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<sup>138</sup>Helena Cobban, “Healing Rwanda: Can the international court deliver justice?” The Boston Review 28 (2004) <<http://bostonreview.net/BR28.6/cobban.html>>. The fact that the ICTR was only given approval to investigate gross human rights violations committed in Rwanda and surrounding countries from January to December 1994 was a ‘political compromise’ according to Dieter Magsam. Magsam claimed that the RPF government felt that the ICTR should only investigate crimes that had occurred from the time the RPF invaded Rwanda in October 1990 until the end of the genocide in July 1994. However, opponents of the RPF as well as some members of the international community wanted the ICTR to investigate possible retaliatory crimes by the RPF in the months and years immediately following the genocide. See Dieter Magsam, “Coming to Terms with Genocide in Rwanda: The Role of International and National Justice,” in International Prosecution of Human Rights Crimes, ed. W. Kaleck, M. Ratner, T. Singelstein and P. Weiss, (New York: Springer-Verlag Berlin Heidelberg, 2007), 160.

<sup>139</sup> Jennie E. Burnet, “Injustice of Local Justice,” 174.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.



occurring in the future. There have been some very positive elements associated with the tribunal during its fifteen years of existence. First, “Arusha has judged more genocide-related defendants than any other international tribunal since World War II.”<sup>142</sup> In addition, the tribunal has also set some important standards in international law by acknowledging for the first time that rape can be considered a “crime of genocide.”<sup>143</sup> The tribunal has also been able to provide a great deal of information about who was responsible for planning and orchestrating the genocide.<sup>144</sup>

Despite some of these accomplishments, the wave of hope and excitement that the tribunal first aroused in scholars and international human rights groups quickly dwindled. According to Philip Gourevitch, even in the tribunals first few years of existence there were a series of problems as “it was understaffed and systematically mismanaged, and its prosecutorial strategy appeared directionless and opportunistic.”<sup>145</sup> Moreover, there were concerns over the fact that the tribunal was actually not situated in Rwanda but in Arusha, Tanzania. The Rwandan government felt that this was a problem because perpetrators would not be deterred from repeating their crimes if the trials were located so far away from the crime scene.<sup>146</sup> In addition, when the tribunal first started running, many Rwandans were not aware of what was occurring at the ICTR. For example, a survey conducted in 2002 showed that approximately fifty-

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<sup>142</sup>Jennie E. Burnet, “Injustice of Local Justice,” 174.

<sup>143</sup>Barbara Oomen, *Justice Mechanisms*, 189.

<sup>144</sup>Dieter Magsam, “Coming to Terms,” 161.

<sup>145</sup>Philip Gourevitch, *We Wish*, 253.

<sup>146</sup>Lilian A. Barria and Steven D. Roper, “How Effective are International Criminal Tribunals,” 355.

six percent of those interviewed felt as though they did not receive enough information about the tribunal.<sup>147</sup> As a result, information programs through the radio, newspaper and Internet were created to help remedy this problem.<sup>148</sup> Despite these efforts, many Rwandans have continued to express their discontent towards the ICTR citing the slow pace of trials and the use of large amounts of resources as just two examples of their objections toward the tribunal.<sup>149</sup> Indeed, the problem with “justice delayed is justice denied” is a legitimate concern, as the ICTR has been accused of taking too long to bring some of the worst offenders to justice.<sup>150</sup> The ICTR has currently completed forty-three cases, however, seven of those are pending appeal.<sup>151</sup> Furthermore, the ICTR has also required a vast amount of money to keep running. By the end of 2007, it was estimated that approximately one billion dollars had already been spent on only thirty-five cases that had come to completion at that point.<sup>152</sup>

The Rwandan government is one of the largest critics of the tribunal despite its original request for its establishment. The hostility between the ICTR and the Rwandan government has existed since the tribunal’s inception in 1994. To that end, the Rwandan government was the only country on the Security

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<sup>147</sup>Barbara Oomen, “Justice Mechanisms,” 189.

<sup>148</sup>Jennie E. Burnet, “The Injustice of Local Justice,” 175.

<sup>149</sup>Ibid.

<sup>150</sup>Stef Vandeginste, “Rwanda: Dealing with Genocide and Crimes against Humanity in the Context of Armed Conflict and Failed Political Transition,” in Burying the Past: Making Peace and Doing Justice after Civil Conflict, ed. N. Biggar, (Washington, D.C: Georgetown University Press, 2001), 231.

<sup>151</sup>International Criminal Tribunal for Rwanda, “Status of Cases,” United Nations <<http://www.ict.rw/default.htm>> (accessed June 25, 2009)

<sup>152</sup>Phil Clark and Zachary D. Kaufman, “After Genocide,” in After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond, ed. P. Clark and Z. Kaufman, (London: Columbia University Press & C. Hurst & Co., 2009), 12.

Council in 1994 that voted in opposition to the United Nation's Resolution 955.<sup>153</sup> As mentioned above, the government was against the idea of the court being located outside of the country. However, it also had other reservations with the ICTR including the fact that the tribunal would not hand out the death penalty but only life imprisonments to some of the worst orchestrators and offenders of the genocide.<sup>154</sup> The Rwandan government has also been disturbed that the accused that are held in custody by the tribunal are actually treated better than some of the inmates living in deplorable prison conditions in Rwanda.<sup>155</sup> As one RPF representative interviewed by Philip Gourevitch proclaimed, "It doesn't fit our definition of justice to think of the authors of the Rwandan genocide sitting in a full-service Swedish prison with a television."<sup>156</sup>

Critics of the ICTR have also expressed concern that it is not helping with the process of reconciliation, which is one of the mandates that the tribunal was supposed to achieve. This is partly because many Rwandans feel very disconnected with the court as mentioned above. Moreover, many do not agree with the western judicial approach that the court uses, as supposed to the more traditional practices that are common in the country.<sup>157</sup> The tense relationship between the government and the ICTR further hinders the image of the tribunal

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<sup>153</sup>Helena Cobban, "Healing Rwanda," <<http://bostonreview.net/BR28.6/cobban.html>>.

<sup>154</sup>Ibid. The death penalty was actually abolished in 2007 in Rwanda making the nation the 90<sup>th</sup> country to embark in such an act. Nevertheless, concerns have been raised over the government's claim that criminals that have committed grave crimes could experience the rest of their sentences in solitary confinement. See Audrey Bector, "The Abolition of the Death Penalty in Rwanda," Human Rights Review 10 (2009): 99 – 118, and Sarah Wells, et al., Law and Reality: Progress in Judicial Reform in Rwanda, (New York: Human Rights Watch, 2008),

<sup>155</sup>Philip Gourevitch, We wish to inform you that tomorrow we will be killed with our families, 255.

<sup>156</sup>Ibid.

<sup>157</sup>Alison Des Forges and Timothy Longman, "Legal Responses," 56.

in Rwanda. Consequently, “although the majority of the population is not hostile to the ICTR, people tend to see it as an activity of the international community primarily for its own benefit, with little relevance to processes of reconciliation in Rwanda.”<sup>158</sup>

Perhaps one of the biggest stumbling blocks associated with the ICTR is that the Rwandan government has forbidden the court to assess possible crimes that occurred by the RPF around the time of the genocide.<sup>159</sup> In 2003, Carla del Ponte, the former Chief Prosecutor of the tribunal, lost her position. Scholars have speculated that this was likely because she announced that her team would also be preparing “special examinations” into possible atrocities carried out by the RPF in 1994.<sup>160</sup> Consequently, this has delegitimized the court in the eyes of many people who feel that it is only offering a form of “victor’s justice” for the Tutsis. The tribunal has even received the nickname “TPIH” in France, which stands for “le Tribunal Penal International pour les Hutus.”<sup>161</sup> Belgian scholar, Phillip Reyntjens, who had provided testimony for the ICTR, expressed his discontent with this issue by refusing to continue his collaboration with the tribunal.<sup>162</sup> All of these structural problems associated with the ICTR undermine any effort for the tribunal to contribute to democratic change in Rwanda, as it appears to only represent one side of the population and does not promote involvement at the local level.

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<sup>158</sup> Alison Des Forges and Timothy Longman, “Legal Responses,” 56.

<sup>159</sup> Eugenia Zorbas, “Reconciliation in Post-Genocide Rwanda,” African Journal of Legal Studies 1 (2004): 34.

<sup>160</sup> Luc Reyndams, “The ICTR Ten Years On: Back to the Nuremburg Paradigm?” Journal of International Criminal Justice 3 (2005): 979.

<sup>161</sup> Ibid.

<sup>162</sup> Dieter Magsam, “Coming to Terms,” 161.

The ICTR had planned on winding down its work in 2008, and officially closing in 2010.<sup>163</sup> However, there are ten new cases this year alone, therefore, the ICTR will most likely be in existence for a little while longer.<sup>164</sup> Nevertheless, it is likely that many of the cases that were supposed to be tried in the ICTR will have to be sent to Rwanda instead.<sup>165</sup> Therefore, this next section of this chapter will move away from the international scene in order to examine Rwanda's approach towards transitional justice at the national and local level.

## **National Courts of Rwanda**

In 1996, the Rwandan Parliament ratified the Organic Law on the *Organization of Prosecutions for the Crime of Genocide or Crimes Against Humanity committed between October 1, 1990 and December 31, 1994*.<sup>166</sup> According to the Organic Law, crimes committed during the genocide were divided among four different categories.<sup>167</sup> The first category involved the most serious crimes including people who took part in planning and instigating the genocide, as well as others who murdered a significant number of people or tortured victims.<sup>168</sup> The second category included those who killed individuals,

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<sup>163</sup>Dennis Byron, "Report on the Completion Strategy of the International Criminal Tribunal for Rwanda," 19. May, 2009. United Nations <<http://www.ictt.org/default.htm>>

<sup>164</sup> Ibid.

<sup>165</sup> Audrey Doctor, "The Abolition of the Death Penalty," Human Rights Review 10 (2009): 99.

<sup>166</sup> Eugenia Zorbas, "Reconciliation in Post-Genocide Rwanda," African Journal of Legal Studies (2004): 35.

<sup>167</sup> Timothy Longman. "Justice at the Grassroots? Gacaca Trials in Rwanda," in Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice, ed. N. Roht-Arriaza and J. Mariezcurrena, (Cambridge: Cambridge University Press, 2006), 211.

<sup>168</sup> Barbara Oomen, "Rwanda's Gacaca: Objectives, Merits and Their Relation to Supranational Criminal Law," 11.

while the third category was reserved for people who assaulted other persons.<sup>169</sup> Finally, the fourth category was designated for perpetrators that vandalized other people's property.<sup>170</sup>

In order to try genocide cases more effectively, the government established a specific branch of the Supreme Court to be responsible for coordinating and overseeing the efforts of the national courts.<sup>171</sup> Moreover, the government also made provisions for handing out reduced sentences to the accused willing to apologize for their actions, and incriminate other individuals that took part in the genocide.<sup>172</sup>

Nevertheless, the national courts were facing serious obstacles because they did not have the available resources to try all of these people, as many judges, lawyers, and other professionals working in the legal system were killed or fled during the genocide. Indeed, scholar Ariel Meyerstein outlined how "prior to the genocide, Rwanda, a country of 6 million people, had 758 judges, 70 prosecutors, and 631 support staff," however, "following the genocide, these ranks were reduced to 244 judges, 12 prosecutors, and 137 support staff."<sup>173</sup> Consequently, a great deal of time was required to train new personnel to run the courts effectively. As a result, many foreign lawyers came to Rwanda during the first few years following the genocide in order to assist with this task.<sup>174</sup>

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<sup>169</sup>Aneta Wierzynska, "Consolidating Democracy Through Transitional Justice," 1955.

<sup>170</sup>Ibid.

<sup>171</sup>Dieter Magsam, "Coming to Terms," 162.

<sup>172</sup>Ibid.

<sup>173</sup>Ariel Meyerstein, "Between Law and Culture: Rwanda's Gacaca and Postcolonial Legacy," *Law & Society Journal* 32 (2007): 47

<sup>174</sup>Barbara Oomen, "Justice Mechanisms," 192.

Eventually their efforts paid off, as the courts were able to provide judgements for approximately 1,000 genocide cases on an annual basis.<sup>175</sup> Moreover, as time passed many more judges and lawyers received proper legal training: “while it was estimated that only 5% of the Rwandan legal personnel actually had legal training in 1995, this had risen to 95% in 2006.”<sup>176</sup>

Despite the progress made in developing the national court system, Rwanda would still have to come up with another way to deal with suspected perpetrators. By 2001, the government had already arrested 120,000 people accused of committing various atrocities during the genocide.<sup>177</sup> Moreover, these inmates were placing huge strains on the Rwandan legal system, and it was estimated that it would take over a decade to put everyone on trial. By 1999, there were only about 1,100 people that had received court verdicts, while 400 of those had been handed the death penalty.<sup>178</sup> Five years later, only 9,700 genocide suspects had been tried in a court of law.<sup>179</sup> Philip Gourevitch described the difficult situation when he stated, “Western legal experts liked to say that even the lawyer-crowded United States could not have handled Rwanda’s caseload fairly and expeditiously.”<sup>180</sup>

Human rights organizations were especially concerned that many of these people had been imprisoned for up to seven years without receiving a court

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<sup>175</sup>Barbara Oomen, “Justice Mechanisms,” 192.

<sup>176</sup>Ibid.

<sup>177</sup>Lars Waldorf, “Failing Experiment,” 425.

<sup>178</sup>René Lemarchand, “The 1994 Rwanda Genocide,” *A Century of Genocide: Critical Essays and Eyewitness Accounts*, S. Totten and W. Parsons, (New York: Routledge, 2004), 396.

<sup>179</sup>Lars Waldorf, “Failing Experiment,” 425.

<sup>180</sup>Philip Gourevitch, *We Wish*, 249.

hearing.<sup>181</sup> Furthermore, prisoners were crammed into jails that were only designed to sustain 15,000 individuals, and they lived in deplorable conditions in which they lacked proper nutrition, water, and shelter.<sup>182</sup> As a result, roughly 11,000 inmates lost their lives in the first five years after the genocide while awaiting trial in prison.<sup>183</sup> The Rwandan government was aware of these issues, which was why in 1999 it proposed initiating *Gacaca*, which is based on a traditional system that had been used in the country for centuries as a tool for conflict resolution.<sup>184</sup>

## **A Brief History of *Gacaca***

The term “*Gacaca*” in Kinyarwanda translates to “the lawn,” and refers to how familial and local community disputes would be solved by group gatherings on a lawn.<sup>185</sup> A judge referred to as *inyangamugayo* or “those who detest disgrace” would be in charge of the hearings, and this person was usually a highly admired member of the community.<sup>186</sup> A wide range of problems could be handled using *Gacaca* including “disputes about land, pastoral conflicts,

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<sup>181</sup>Jeremy Sarkin, “The Tensions Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the *Gacaca* Courts in Dealing with Genocide,” Journal of African Law 2 (2001): 144.

<sup>182</sup>Ariel Meyerstein, “Between Law and Culture,” 473.

<sup>183</sup>Susanne Buckley-Zistel, Between Past and Future, 23.

<sup>184</sup>Maya Goldstein-Bolocan, “Rwandan *Gacaca*,” 375.

<sup>185</sup>William Schabas, “Genocide Trials and *Gacaca* Courts,” Journal of International Criminal Justice 3 (2005): 891.

<sup>186</sup>Ariel Meyerstein, “Between Law and Culture: Rwanda’s *Gacaca* and Postcolonial Legacy,” Law & Social Inquiry (2007): 472. This judge would have to be a man, as women were not usually permitted to participate in the hearings unless they were providing some form of evidence relating to the conflict. See Phil Clark, “Hybridity, Holism, and ‘Traditional’ Justice: The Case of the *Gacaca* in Post-Genocide Rwanda,” George Washington International Law Review 39 (2007): 778.



household and family quarrels, and badly honoured contracts.<sup>187</sup> However, the main focus of *Gacaca* was on reconciliation and to restore broken bonds between the family and community.<sup>188</sup> Conflicts that were resolved using *Gacaca*, therefore, involved punishments that were not retributive in nature.<sup>189</sup> Instead, those accused would be expected to provide some sort of compensation to the victims for the harm that they had inflicted.<sup>190</sup> This was usually in the form of payment for property that one had pilfered or vandalized.<sup>191</sup> Furthermore, it was not only the accused that was supposed to acknowledge guilt for their actions, but also all of the other members of their family.<sup>192</sup>

During the colonial era, *Gacaca* became less influential as the Belgians created their own institutions to manage disputes. The Belgians established “tribal courts” that were headed by chiefs responsible for dealing with conflict within the local community.<sup>193</sup> Moreover, contemporary courts were also erected to handle legal conflicts among the “foreign (mostly white) population.”<sup>194</sup> After Rwanda gained independence, *Gacaca* started to become more influential

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<sup>187</sup> Susanne Buckley-Zistel, *Between Past and Future*, 24.

<sup>188</sup> Phil Clark, “Hybridity, Holism, and ‘Traditional’ Justice,” 778.

<sup>189</sup> Lars Waldorf, “Failing Experiment,” 425.

<sup>190</sup> Stef Vandeginste, “Rwanda: Dealing with Genocide and Crimes against Humanity in the Context of Armed Conflict and Failed Political Transition,” 239.

<sup>191</sup> Ariel Meyerstein, “Between Law and Culture,” 472.

<sup>192</sup> *Ibid.*

<sup>193</sup> Jennie E. Burnet, “The Injustice of Local Justice: Truth Reconciliation and Revenge in Rwanda,” 175.

<sup>194</sup> *Ibid.*

among certain communities within the country that wanted to solve local disputes without having to use the contemporary legal system.<sup>195</sup>

## **Post-Genocide *Gacaca***

It was after the genocide that *Gacaca* would enter its “most radical evolution.”<sup>196</sup> One year following the genocide, discussions occurred about using *Gacaca* to try genocide suspects. The government originally turned down this idea because it believed that the system would be contradictory to Rwandan legal practices in which grave crimes such as murder were to be tried using formal prosecution procedures.<sup>197</sup> Nevertheless, talks about using *Gacaca* reemerged in 1998 during a series of gatherings by top officials discussing the future of Rwanda.<sup>198</sup> It was at these meetings that the limitations of the Rwandan justice system were acknowledged. In addition, it was decided that something else was needed to bring about justice and reconciliation in order to ensure that genocide never occurred again in the country. Consequently, on October 12, 2000, the Transitional National Assembly (TNA) agreed to an enactment that allowed for the creation of *Gacaca* tribunals “to try all but the most serious crimes related to the genocide.”<sup>199</sup>

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<sup>195</sup>Jennie E. Burnet, “The Injustice of Local Justice: Truth Reconciliation and Revenge in Rwanda,” 175.

<sup>196</sup>Phil Clark, “Hybridity, Holism, and ‘Traditional’ Justice,” 780.

<sup>197</sup>*Ibid.*, 781.

<sup>198</sup>Urusaro Alice Karekezi, Alphonse Nshimiyimana, and Beth Mutamba, “Localizing justice: *gacaca* courts in post-genocide Rwanda,” in *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. E. Stover and H. Weinstein, (Cambridge: Cambridge University Press, 2004), 71.

<sup>199</sup>Urusaro Alice Karekezi, Alphonse Nshimiyimana, and Beth Mutamba, “Localizing justice,” 71.

The government outlined five main goals that it hoped to achieve by using *Gacaca*: to divulge the truth about what really occurred during the genocide, to speed up genocide cases, to abolish sentiments of impunity, to bring about reconciliation so that Rwandans could join together, and to show the international community that the country had the capability to resolve their own disputes through their own traditional mechanisms.<sup>200</sup> The government also wanted the modern *Gacaca* tribunals to be used as a “middle path somewhere between the rigours of full-blown criminal prosecution and the moderate truth commission approach employed in many countries.”<sup>201</sup> Consequently, many supporters believed that *Gacaca* would be beneficial because it diverted from the path of retributive justice that the government had followed since it took power in 1994.<sup>202</sup>

The idea behind *Gacaca* would be to use the courts to try suspects of lower level crimes including those represented in categories two, three and four listed under the 1996 Organic Law.<sup>203</sup> In 2001, it was decided that rape would also be included in category one, and therefore those cases would not be heard using *Gacaca* but rather the national court system.<sup>204</sup> Therefore, the perpetrators that were allowed to attend *Gacaca* courts would receive reduced sentences if

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<sup>200</sup> Ariel Meyerstein, “Between Law and Culture,” 473.

<sup>201</sup> William Schabas, War Crimes and Human Rights: Essays on the Death Penalty, Justice, and Accountability, (London: Cameron May, 2008), 560.

<sup>202</sup> William Schabas, “Genocide Trials and *Gacaca* Courts,” 881.

<sup>203</sup> William Schabas, War Crimes, 574. “All category 1 perpetrators would continue to be tried under the national courts in the country. See *Ibid*.”

<sup>204</sup> *Ibid*.

they admitted their crimes, were willing to state the names of anyone else involved, and provide a public apology for their actions.<sup>205</sup>

Some elements of the new *Gacaca* system would remain the same as it had in the past including the participation of community members to present claims and evidence against possible perpetrators.<sup>206</sup> However, one important difference with the modern *Gacaca* system compared to the traditional one was that the entire community would be expected to participate in *Gacaca* hearings, whereas in the past only individual members involved in the dispute would take part in the hearings.<sup>207</sup> Another significant contrast was that contemporary *Gacaca* “departed from the restorative nature of traditional *Gacaca* by granting the elders who serve as judges the power to sentence defendants to punishments ranging up to lifetime imprisonment.”<sup>208</sup> Finally, the current *Gacaca* system was based on perpetrators providing testimony for their actions, whereas in the past the plaintiff made claims against suspects while witnesses also provided testimony to ensure that the truth was told.<sup>209</sup>

## **Making Post-Genocide *Gacaca* Functional**

There were a number of steps involved in making this contemporary *Gacaca* system operational. First, an education campaign was created to inform community members about *Gacaca* and how it would be used in the context of

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<sup>205</sup> Susanne Buckley-Zistel, “Between Past and Future,” 24.

<sup>206</sup> Aneta Wierzynska, “Consolidating Democracy through Transitional Justice: Rwanda’s *Gacaca* Courts,” 1956.

<sup>207</sup> Jennie E Burnet, “The Injustice of Local Justice,” 176.

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*

genocide. The government tried to achieve this through the use of media such as newspapers, film and radio.<sup>210</sup> The second stage was to elect judges to lead the hearings, which took place on October 4, 2001. According to the leader of the National Electoral Commission, the voter turn out was extremely high at roughly ninety percent.<sup>211</sup> In the end, approximately 250,000 people were chosen to work in the *Gacaca* tribunals.<sup>212</sup> The following year, the judges underwent a training period that consisted of two days of class time with roughly ninety other elected judges. At these sessions the judges were taught about such topics as law, ethics, and techniques in conflict resolution.<sup>213</sup>

There were originally four different types of courts set up to handle caseloads including *Gacaca* courts of the cell, sector, district, and province.<sup>214</sup> The *Gacaca* courts of the cell were the lowest level courts, which were composed of nineteen lay judges. Moreover, “the cell-level panels of judges appointed representatives to the next level, the sector, the sector panel selected members for the district panel, and the district selected members for the province.”<sup>215</sup> On June 19, 2002, the first *Gacaca* hearings began on a trial basis, thus defining the beginning of “the most ambitious experiment in transitional

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<sup>210</sup>Rosilyne M. Borland, “The *Gacaca* Tribunals and Rwanda after Genocide,” 3.

<sup>211</sup>*Ibid.*

<sup>212</sup>*Ibid.*

<sup>213</sup>*Ibid.*

<sup>214</sup>*Ibid.* The way *gacaca* was set up was based on the organized system of government that the Belgian colonizers had created when they controlled the country. William Schabas describes cells as being “grouped within the country’s 1,500 sectors, and then these are organized into districts.” See Schabas, *War Crimes*, 574.

<sup>215</sup>*Ibid.*

justice ever attempted: mass justice for mass atrocity.”<sup>216</sup> *Gacaca* was first used in twelve districts located in every sector in Rwanda as well as the capital Kigali.<sup>217</sup> Five months later, *Gacaca* courts were established in 106 different sectors, which meant that roughly ten percent of Rwandans were participating in the trial project.<sup>218</sup>

After the first pilot phase ended in 2004, the government made some amendments to the *Gacaca* system. This included abolishing the *Gacaca* courts of the province and district, as well as creating *Gacaca* appeals courts to allow the accused to appeal verdicts made in the sector-level courts. Each of these courts is composed of “three organs, namely a general assembly, a panel of judges and a coordinating committee.”<sup>219</sup> Today, there are roughly 9,013 *Gacaca* courts at the cell level, 1,545 sector-level *Gacaca* courts, and 1,545 appeal-level courts.<sup>220</sup> Another amendment that the government initiated was to reduce the number of judges for each court from nineteen to nine along with five substitutes. The main reason for this change was because of the lack of turnout by the judges during the pilot phase.<sup>221</sup> The government also made it illegal for anyone over the age of eighteen to not attend the hearings.<sup>222</sup> Finally, the government amended category one crimes to include “crimes of torture, indignity to a dead

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<sup>216</sup>Lars, Waldorf, “Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice,” 4.

<sup>217</sup>Gerald Gahima, “Alternatives to Prosecution,” 162.

<sup>218</sup>Karen Lahiri, “Rwanda’s *Gacaca* Courts A Possible model for local Justice in International Crime?” *International Criminal Law Review* 9 (2009): 325.

<sup>219</sup>Gerald Gahima, “Alternatives to prosecution,” 162.

<sup>220</sup>Ariel Meyerstein, “Between Law and Culture,” 475.

<sup>221</sup>*Ibid.*. This change resulted in the total number of judges for *gacaca* being reduced from 260,000 to 110,619. See *ibid.*

<sup>222</sup>William Schabas, *War Crimes*, 575.

body, and a somewhat broader range of crimes of sexual violence.”<sup>223</sup> In addition, crimes listed under categories three and four were combined into one category. Therefore, under the current system those accused of committing crimes against property would be sent to the cell-level *Gacaca* courts dealing with category three crimes.<sup>224</sup> On the other hand, suspects implemented in category two and three crimes would be sent to sector-level *Gacaca* courts.<sup>225</sup>

On January 15, 2005, it was announced that the courts would officially be used throughout the country.<sup>226</sup> Today, there are three different stages in which *Gacaca* hearings take place. The first stage involves a general assembly consisting of all adults eighteen and older in the community who are in charge of analyzing events that occurred during the genocide and figuring out who was involved.<sup>227</sup> This “pre-trial phase” happens at the cell level of *Gacaca*.<sup>228</sup> Furthermore, these people are supposed to come together once a week, and are responsible for writing down the names of the people that they believe committed crimes during that period. The second stage involves judges that come together in private to assess the lists and place each of the accused into the proper category that corresponds to their crimes.<sup>229</sup> Once the judges complete this task, their lists are sent to the *Gacaca* courts that are designed to handle the cases. It

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<sup>223</sup>William Schabas, *War Crimes*, 575.

<sup>224</sup>Stef Vandeginste, “Rwanda: Dealing with Genocide and Crimes against Humanity in the Context of Armed Conflict and Failed Political Transition,” 241.

<sup>225</sup>*Ibid.*

<sup>226</sup>Stef Vandeginste, “Rwanda: Dealing with Genocide and Crimes against Humanity in the Context of Armed Conflict and Failed Political Transition,” 241.

<sup>227</sup>Urusaro Alice Karekezi, Alphonse Nshimiyimana, and Beth Mutamba, “Localizing justice,” 72.

<sup>228</sup>Lars Waldorf, “Failing Experiment,” 426.

<sup>229</sup>Ariel Meyerstein, “Between Law and Culture,” 477.

is within these courts that the accused are tried in public hearings and in front of a group of selected judges.<sup>230</sup>

One of the most important elements of *Gacaca* is the confession of the accused. The idea is that as soon as the accused confesses to their crimes the public will learn the truth about what really took place throughout the genocide.<sup>231</sup> Once the accused confesses, it is up to the bench to determine whether or not the accused is telling the truth, and if they are genuinely regretful about their conduct during the genocide.<sup>232</sup> If the confession passes the bench then the accused will be granted a prison sentence that is half the length, while the accused is expected to perform various community service duties for the other half of their sentence.<sup>233</sup>

The following section will provide a brief assessment of some of the pros and cons that are commonly addressed in the literature about *Gacaca*.

### **Positive and Negative Aspects of *Gacaca***

One promising feature of *Gacaca* is the ability of the courts to speed up trials that otherwise would have taken years in the regular court system. Even during the trial phase of *Gacaca*, when only 750 *Gacaca* courts existed throughout Rwanda, there were over 2,000 people who were found guilty for their crimes.<sup>234</sup> Another 6,000 people were sentenced in the opening nine months

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<sup>230</sup> Timothy Longman, "Justice at the Grassroots," 211.

<sup>231</sup> Ariel Meyerstein, "Between Law and Culture," 477.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> Christopher J. Le Mon, "Rwanda's Troubled *Gacaca* Courts," Human Rights Brief 14 (2007): 17.



after 2005 when Gacaca was used countrywide. On the other hand, only 7000 people had received convictions from the national courts in a six-year period from 1996 until 2002.<sup>235</sup>

Another positive feature of Gacaca is the opportunity that it provides for community involvement. Indeed, the local population seems to feel much more connected with Gacaca than the ICTR. For example, in one study conducted in 2002 by John Hopkins University, researchers found that 96% of the interviewees were aware of Gacaca while 82% of these people were optimistic that gacaca would have promising results.<sup>236</sup> Gacaca also provides the potential opportunity for the community to heal as they learn the truth about what occurred during the genocide. Moreover, unlike some truth commissions, the accused still receive some form of punishment for their crimes even though sentences are usually reduced.

Despite some of the positive elements associated with Gacaca, many scholars and human rights organizations tend to focus on the more problematic features of the court system. The government of Rwanda has alluded to the fact that “many of these problems are unavoidable if Gacaca is to serve its pragmatic purpose of putting tens of thousands of prisoners on trial.”<sup>237</sup> Although there is a great deal of truth to this statement, this essay argues that some of these concerns, especially with “victor’s justice” are avoidable. This will be discussed later in the chapter.

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<sup>235</sup> Christopher J. Le Mon, “Rwanda’s Troubled gacaca,” 17.

<sup>236</sup> Barbara Oomen, “Justice Mechanisms,” 194.

<sup>237</sup> Alana Erin Tiemessen “After Arusha,” 64.

The first difficulty of Gacaca pertains to the issue of participation. When Gacaca was initially utilized, many members of the community did not want to take part in the courts for a number of reasons. First, a large portion of the Rwandan community relies on farming to meet their daily food intake, and consequently these people preferred to work in the fields than have to attend the hearings. Furthermore, Rwandan communities already required their members to dedicate one day a week for state sponsored activities, which made it even more difficult to devote yet another day to the Gacaca trials.<sup>238</sup> The second reason for the lack of participation had to do with some Hutus who were very reluctant to attend Gacaca trials because they were afraid that they would somehow be implicated in the genocide.<sup>239</sup> Consequently, 10,000 Hutus escaped the country before the Gacaca trials even began.<sup>240</sup> It was for these reasons that after 2004 the Rwandan government made it compulsory for people to take part in weekly Gacaca hearings.<sup>241</sup>

Human rights organizations also have some significant concerns with *Gacaca*, especially since the judges have little training in dealing with hearings. Amnesty International believes this lack of training is “grossly inadequate to the task at hand, given the range, character and complexity of crimes [committed] during the genocide.”<sup>242</sup> Moreover, the judges do not receive any compensation

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<sup>238</sup> Lars Waldorf, “Rwanda’s Failing Experiment,” 429.

<sup>239</sup> Ibid.

<sup>240</sup> Christopher J. Le Mon, “Rwanda’s Troubled Gacaca,” 17.

<sup>241</sup> Barbara Oomen, “Justice Mechanisms,” 104.

<sup>242</sup> Ariel Meyerstein quoting Amnesty International, “Between Law and Culture,” 479.

for their duties.<sup>243</sup> Therefore, it is hardly surprising that the courts have been plagued with allegations of corruption since their inception. For example, it is not uncommon for the accused to bribe the judges into listing their crimes as category two or three instead of category one in order to avoid the national courts that tend to hand out punishments that are much more severe in nature.<sup>244</sup> Christopher J. Le Mon argues that these corruption charges are creating a “public perception of wrongdoing,” which causes people to become discouraged and enhances the notion that *Gacaca* is simply a waste of time.<sup>245</sup>

Other concerns that have arisen over *Gacaca* include the problem with the manipulation of the truth. In some instances, the accused have admitted to crimes that they actually did not perpetrate in order to feel a sense of freedom from the accusations against them.<sup>246</sup> There have been other occasions where suspected perpetrators have worked with others in the community to ensure “a code of silence” so that the truth is never revealed.<sup>247</sup> Another concern is that the accused will falsely denounce other people in order to receive reduced sentence. During the pilot phase for instance, it was established that almost 1,000,000 people would have to be tried using the *Gacaca* system.<sup>248</sup> William Schabas highlighted this issue when he proclaimed, “rather than resolve the outstanding

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<sup>243</sup>Christopher J. Le Mon, “Rwanda’s Troubled *gacaca*,” 17.

<sup>244</sup>*Ibid.*

<sup>245</sup>*Ibid.*

<sup>246</sup>Jennie E. Burnet, “The Injustice of Local Justice,” 179.

<sup>247</sup>*Ibid.*

<sup>248</sup>William Schabas, *War Crimes*, 561.

cases, and end the blight of mass detentions under appalling conditions, the initial *Gacaca* hearings appear to have opened a Pandora's box."<sup>249</sup>

Finally, another disconcerting element associated with bringing out the truth using *Gacaca* is the safety of the survivors and those testifying against other members of the community. Indeed, there have been some abuses committed against survivors who were going to testify in *Gacaca*, and some have even been killed. In 2003, for example, three Tutsi survivors were murdered in Kaduha right before testifying in *Gacaca*.<sup>250</sup> In July 2008, the primary organization for genocide survivors in Rwanda, IBUKA, declared that 167 survivors had been killed since 1995.<sup>251</sup> Moreover, it is not only survivors that have been victimized but also *Gacaca* judges and witnesses.<sup>252</sup> This statistic highlights that there are still some serious hostilities within Rwandan communities that must be addressed for the nation to finally heal. However, reconciliation will become even more difficult if many Rwandans view *Gacaca* as a form of "victor's justice."

### ***Gacaca* and Victor's Justice**

As with the International Criminal Tribunal for Rwanda, another problem associated with *gacaca* is that some critics see it to be administering a form of "victor's justice." This is because the government has specified that only crimes committed during the genocide are to be tried using *Gacaca*. Consequently, the

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<sup>249</sup>William Schabas, "Genocide Trials and *Gacaca* Courts," 881.

<sup>250</sup>Susanne Buckley-Zistel, "Between Past and Future," 26.

<sup>251</sup>Hirondelle News Agency, "Rwanda: 167 Genocide Survivors Murdered since 1995," July 16, 2008.

<sup>252</sup>*Ibid.*

government claims that the crimes perpetrated by the RPF in Rwanda and in the Democratic Republic of the Congo are war crimes that are not suitable to be tried using the *Gacaca* system.<sup>253</sup> Nevertheless, the RPF did commit human rights abuses against civilians while trying to destroy the *interahamwe*. In some instances the RPF would go into camps and attempt to separate the non-combatants from the *interahamwe*, and once people were separated the RPF would proceed to execute the latter group.<sup>254</sup> Lars Waldorf outlines that “if the Rwandan government is serious about ending impunity and achieving long-term peaceful coexistence in Rwanda, it should provide some accountability for the RPF killings.”<sup>255</sup>

This section concludes with a quote by Karen Lahiri who states that the main problem with *Gacaca* is that “at the end of the day, the courts remain institutions deriving legitimacy from an authoritarian and partisan government.”<sup>256</sup> Consequently, the government’s constant involvement in *Gacaca* and its refusal to acknowledge past crimes committed by the RPF has undermined the legitimacy of *Gacaca*, and is consequently hampering possible efforts to reconcile the nation and move the country towards liberal democratic development. Moreover, this perception of “victor’s justice” can pose significant problems for the stability of Rwanda because both the perpetrators and the victims are forced to live together in communities throughout the country.<sup>257</sup>

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<sup>253</sup>William Schabas, “Genocide Trials and Gacaca Courts,” 881.

<sup>254</sup>Jennie E. Burnet, “The Injustice of Local Justice,” 179.

<sup>255</sup>Lars Waldorf, “Rwanda’s Failing Experiment,” 431.

<sup>256</sup>Karen Lahiri, “Possible Model,” 331.

<sup>257</sup>Alana Erin Tiemessen, “After Arusha: Gacaca Justice in Post-Genocide Rwanda,” 65.

Consequently, if there is a belief among Rwandans that the reconciliation process is one sided then the country is put at greater risk for further tension and violence. This next chapter, therefore, will discuss this issue by analyzing the current political environment in Rwanda and how this could possibly hamper justice and reconciliation efforts in the country.

## **CHAPTER 5: TRANSITIONAL JUSTICE AND AUTHORITARIAN GOVERNMENT**

In the fifteen years following the Rwandan genocide the government's efforts to bring about justice and reconciliation were directly influenced by the political climate in the country. As mentioned above, one of the key aspects of transitional justice is the formation of a liberal democracy in which the rule of law is followed and differing groups are equally represented. This task has been a very difficult one in the Rwandan context. As Mahmood Mamdani outlined: "where there is an uneasy coexistence between guilty majorities and fearful minorities, the possibility of a democratic transition is likely to appear more as a threat than a promise to the minorities concerned."<sup>258</sup> It is in this context that the actions of the Tutsi dominated government must be understood.

### **The RPF Takes Control**

After the military victory in 1994, the RPF wasted no time in trying to ensure that they had full control of the country. The RPF pledged to follow some stipulations made under the Arusha Accords in 1993, and it was agreed that the new government would remain in power for five years until proper elections could be held.<sup>259</sup> Consequently, the Government of National Unity (GNU) was created

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<sup>258</sup>Mahmood Mamdani, When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda, (Princeton: Princeton University Press, 2001), 280.

<sup>259</sup>Jennie E. Burnet, "Governance," 365.

that consisted of the “pro-Arusha wings of the opposition political parties.”<sup>260</sup> Faustin Twagiramungu, a Hutu belonging to the Mouvement Démocratique Républicain. (MDR), became Prime Minister of the new government.<sup>261</sup> Despite these reforms, the RPF did not follow all of the conditions that had originally been laid out in the Arusha Accord. This is because the RPF insisted that they have the most influence on the government. According to Philip Reyntjens, this change to the Arusha Accords was “in effect, a subtle piece of constitutional engineering, which attempted to mask the RPF’s hold on political power.”<sup>262</sup>

From 1994 until 2003, the new government emphasized its tight control over the country when it forbade any political undertakings to occur outside the capital.<sup>263</sup> During this time the government was mostly controlled by Paul Kagame, who had been the leader of the RPF forces, as well as a number of influential men that had worked in the RPF.<sup>264</sup> Another indication of the government’s authoritarian nature occurred between 1995 until 2000, when a number of important Hutu political figures left the government claiming that it was becoming too difficult to work with the RPF.<sup>265</sup> Prime Minister Faustin

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<sup>260</sup> Marina Rafti, *A Perilous Path to Democracy: Political Transition and Authoritarian Consolidation in Rwanda*, (Antwerp: Institute of Development Policy and Management, 2007), 20. The parties that were not allowed to participate in the new government were the *Mouvement Républicain National pour la Démocratie et le Développement*, (MRND), as well as the *Coalition pour la Défense de la République* (CDR). They were unable to participate because of their leading roles in the genocide. See Reyntjens, “Post-1994 Politics,” 1105.

<sup>261</sup> Philip Reyntjens, “Post-1994 Politics,” 1105.

<sup>262</sup> Ibid.

<sup>263</sup> Marina Rafti, “Perilous Path,” 21.

<sup>264</sup> Ibid., 22.

<sup>265</sup> Phil Clark and Zachary D. Kaufman, “After Genocide,” 13.



Twagiramungu and President Pasteur Bizimungu were examples of two influential politicians who quit their jobs because of these problems.<sup>266</sup>

In 1998, the RPF declared that it would stretch the period of transition for another five years in order to “ensure the country’s security and peaceful democratization process.”<sup>267</sup> Moreover, the government justified their decision by emphasizing what had occurred prior to the genocide when Rwanda was pushed into multi-party democratic transition too soon.<sup>268</sup> In 2001, elections at the district-level took place and finally in 2003 the end of Rwanda’s “post-genocide transition period” came to a halt after national elections were held.<sup>269</sup>

### **The Transition to Democracy or Dictatorship?**

Paul Kagame won the 2003 elections by a landslide victory, as he received approximately 95% of the votes. However, according to Freedom House this was hardly surprising:

The RPF’s preeminent position in Rwanda political life, combined with a short campaign period, the material advantages of incumbency, and the continuing effects of the genocide, which inhibit free expression of political will, ensured Kagame’s victory and that of the RPF and its allies.<sup>270</sup>

Although the election was deemed to be “free and fair” by observers from the European Union, there was evidence against this claim.<sup>271</sup> For example, the MRD, the largest opposing party, was forced to step down from its run for office

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<sup>266</sup>Phil Clark and Zachary D. Kaufman, “After Genocide,” 13.

<sup>267</sup>Jennie E. Burnet, “Governance,” 365.

<sup>268</sup>Ibid.

<sup>269</sup>Susanne Buckley-Zistel, Between Past and Future, 33.

<sup>270</sup>Freedom House, Rwanda, New York: Freedom House, 2008.

<sup>271</sup>Susanne Buckley-Zistel, Between Past and Future, 33.

because it was accused of “divisionism” by the Rwandan parliament.<sup>272</sup> The term divisionism “was defined as being in opposition to or even simply expressing disagreement with government policies.”<sup>273</sup>

There were other concerns in Rwanda after 2005, as the press enjoyed very little freedom. Many newspapers have been shut down while employees have been subject to abuse and intimidation.<sup>274</sup> Moreover, in 2004 a parliamentary report was released about “divisionism,” and recommended that a series of non-governmental organizations, religious establishments, and schools be dissolved because of the crime.<sup>275</sup> The charges were brought about by a commission that was hired to look into the murders of three genocide survivors who were killed in the Gikongoro province in 2003.<sup>276</sup> However, according to Amnesty International, although the commission “concluded that ‘genocidal ideology’ was widespread...the evidence for this appears to be based more on alleged or potential opposition to the government than it does the propagation of genocide.”<sup>277</sup> To that end, the charges were extremely troublesome because of the risks that they placed on civil society, which was now practically “controlled by the regime.”<sup>278</sup> Moreover, in January 2005, the government shut down the *Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme*

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<sup>272</sup>Susanne Buckley-Zistel, *Between Past and Future*, 34.

<sup>273</sup>Filip Reyntjens, “Post-1994 Politics in Rwanda: Problematising ‘liberation’ and ‘democratisation,’” *Third World Quarterly* 27 (2006): 1107.

<sup>274</sup>Susanne Buckley-Zistel, *Between Past and Future*, 34.

<sup>275</sup>Amnesty International, *Deeper into the Abyss-Waging War on Civil Society*, London: Amnesty International, July 2004.

<sup>276</sup>*Ibid.*

<sup>277</sup>Amnesty International, *Deeper into the Abyss-Waging War on Civil Society*, London: Amnesty International, July 2004.

<sup>278</sup>Filip Reyntjens, “Post-1994 Politics,” 1107.

(LIPRODHOR), one of the most influential human rights organizations in Rwanda.<sup>279</sup>

This analysis of Rwanda's political system illustrates the validity of Thomas Carother's argument regarding countries stuck in the 'gray zone.' The very fact that multi-party elections were held in 2003 emphasize the countries commitment to the introduction of electoral democracy, although as of 2008 Freedom House has not chosen to classify Rwanda as being an electoral democracy.<sup>280</sup> On the other hand, President Kagame and his regime have exercised a very tight hold on the country, and the lack of freedom of expression and contestation is a sign that the country still does not have the necessary elements associated with liberal democracies. Indeed, Rwanda has been deemed "unfree" in the Freedom House country report that came out in 2008.<sup>281</sup> The report noted that perhaps the government was relinquishing some of its stronghold as "a ban on political party offices at the local level, which had resulted in a de facto limitation on party activities, was lifted in June."<sup>282</sup> Nevertheless, the report also outlined that freedom of the press continues to be lacking and some journalists have even been harassed and imprisoned.<sup>283</sup> This is troublesome, as it has created an environment of secrecy and tension in which people fear reprisals for expressing their own views. In addition, the government has tended to be dominated by the minority Tutsi group who have provided little room for any kind of opposition. This has created even more intrinsic hostility, as

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<sup>279</sup>Phil Clark and Zachary D. Kaufman, "After Genocide," 14.

<sup>280</sup>Freedom House, Rwanda, New York: Freedom House, 2008.

<sup>281</sup>Ibid.

<sup>282</sup>Ibid.

<sup>283</sup>Ibid.

many members of the majority Hutu population feel as though they are being excluded from valuable resources. Consequently, the experiment in transitional justice in Rwanda does not seem to have brought about liberal democratic transition, which is one of its main goals that it is supposed to achieve.

## **Conclusion**

Even fifteen years after the Rwandan genocide the memories of atrocity have remained fresh in the minds of many people living in the country. It cannot be denied that by 2009 the government had brought about some positive changes in a country that was left totally destroyed after the genocide. This is evident by the relative stability that has existed in the nation in recent years, especially for the Tutsis (despite a few abuses occurring over *Gacaca*) who had been badly discriminated against ever since Rwanda gained independence in 1962. This is impressive, as the transitional government inherited a huge task of trying to reconcile the country so that it could finally endure a more prosperous future.

Rwanda provides an extremely important case regarding how transitional governments deal with the issue of justice and reconciliation because the path that the government took was one of the largest experiments in transitional justice that has ever taken place. To that end, the new government made the decision to follow a retributive model of justice by putting literally everyone who participated in the genocide on trial. This proved to be a great challenge considering that the genocide had completely destroyed a justice system that was exceptionally weak before the genocide even began. The international

community attempted to help Rwanda by creating the ICTR where some of the main orchestrators and perpetrators would be tried in Arusha, Tanzania. However, the ICTR was plagued by a series of problems including structural issues and pressure from the Rwandan government not to examine any possible crimes conducted by the RPF against the Hutus.

On a national level, legal personnel were sent from all over the world to help provide legal training for Rwandans. Nevertheless, President Kagame and his government knew that another instrument would have to be used, as over a hundred thousand people were literally rotting in deplorable jail conditions waiting for their trials. Therefore, it was decided to use an amended version of the local *Gacaca* courts to try those accused of committing lower level crimes. Many human rights organizations and scholars were optimistic by this decision because they thought that it would help the country to not only focus its reconciliation efforts on retribution but also on restoration, and trying to repair the broken bonds within communities. Furthermore, many saw it as a chance for Rwandans to finally engage in civic culture, thus paving the way towards democratic development.

Unfortunately, the Rwandan government's authoritarian nature hampered the ability for *Gacaca* to bring about justice and reconciliation, as the government only allowed crimes that occurred by Hutus against Tutsis to be discussed. This bias isolated the Hutu majority population, and increased hostility and violence within the country. Moreover, it hindered the ability for *Gacaca* to help bring about democratic change, which is one of the main aims of transitional justice.

Therefore, this essay has argued that until the government relinquishes its stronghold on society, efforts in transitional justice will not be successful.

To conclude, the issue of how to go about restoring a country that has suffered severe conflict is extremely relevant in the world today. The atrocities that are currently going on in Sudan and the Democratic Republic of the Congo are just two examples of countries that will eventually meet the same struggles of transition that Rwanda has undergone during the past decade. That is why it is necessary for scholars to continue to study transitional justice in order to help find better ways for nations to move beyond their past, and to allow future generations to feel safe and secure. Rwanda provides some important insights into the development of transitional justice. However, it is important to realize that even if the country has not been as successful as one would hope, it has faced enormous strains as a developing country in which a majority of its population lives below the poverty line. Moreover, the ethnic tensions that existed in the country prior to the genocide cannot simply be erased overnight. Nevertheless, it is extremely important for the government to truly move away from the past by becoming more inclusive and promote freedom of expression in order to ensure that the country will never again face such savage atrocity.

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