

**TRANSITIONAL JUSTICE FAILING? A GENDERED
EVALUATION OF THE TRANSITIONAL JUSTICE
PROGRAM IN POST-GENOCIDE RWANDA**

by

Simone Jacqueline Purdon
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APPROVAL

Name: Simone Purdon
Degree: Master of Arts, Department of Political Science
Title of Thesis: Transitional Justice Failing? A Gendered Evaluation of the Transitional Justice Program in Post-Genocide Rwanda
Examining Committee:
Chair: Dr. Lynda Erickson, Professor
Department of Political Science, Simon Fraser University

Dr. Sandra MacLean, Associate Professor
Department of Political Science, Simon Fraser University
Senior Supervisor

Dr. Maureen Covell, Professor
Department of Political Science, Simon Fraser University
Supervisor

Dr. Wendy Chan, Associate Professor
Department of Sociology, Simon Fraser University
External Examiner

Date Defended/Approved:

September 25th, 2008



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ABSTRACT

This thesis explores the experiences of women in the transitional justice process that has followed the war in Rwanda. Transitional justice is a specific justice instituted in politically transitioning societies, often recovering from conflict and/or human rights abuses conducted by the former regime. Transitional justice is implemented to satisfy the state's need to regain legitimacy in the eyes of its citizens by entrenching the rule of law and building capacity in justice institutions. In Rwanda, women have experienced lasting effects from the trauma of the genocide, and in order to heal, they have sought to participate in the country's transitional justice program. Through a gender analysis of the conflict and subsequent transitional justice program, it is evident that the government of Rwanda is not adequately addressing gender-based violence crimes and gender specific sensitivities with regard to the retributive justice process. Drawing upon the lessons learned from a gender analysis of the Rwandan conflict and a gender evaluation of Rwanda's transitional justice program, recommendations are made regarding a more gender sensitive framework for justice in Rwanda.

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INTRODUCTION

“Massacres kill the body. Rape kills the soul.” – *Major Brent Beardsley*¹

Striking a balance between the societal need for justice and the political need for reconciliation is a significant challenge for the victims of genocide. The challenge to obtain justice for women traumatized by war is especially problematic due to the gender imbalance that exists in transitional justice programming. Women continually face extreme peril during times of conflict; they are the victims of horrible sexual crimes, slavery, torture, rape, disease, and murder. In the Rwandan genocide, the direct targeting of women was part of the government’s strategic framework for Tutsi annihilation. The systematic rape and humiliation of Tutsi women not only left them with the mental and physical trauma of the criminal acts, but the post-conflict realities of children born of rape, physical and psychological injury, and abandonment by their families and communities. Gendered experiences during conflict must be recognized in order to achieve justice for all members of society, and to ensure that women’s needs are not marginalized in the transitioning Rwanda.

¹ Major Brent Beardsley, Operations Manager, UNAMIR (ICTR 2004b) – as Qtd. in Binaifer Nowrojee, “Your Justice is too Slow:” *Will the ICTR Fail Rwanda’s Rape Victims?* *Occasional Paper No. 10* United Nations Research Institute for Social Research (2005): 1. [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/56FE32D5C0F6DCE9C125710F0045D89F/\\$file/OP10%20Web.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/56FE32D5C0F6DCE9C125710F0045D89F/$file/OP10%20Web.pdf). (accessed October 14, 2006).

This thesis explores the experience of women during the Rwandan genocide, the lasting effects of the trauma experienced during the genocide, and the attempts of women to seek access to the justice mechanisms that have followed the war. A gender analysis provides a clearer understanding of women's varied roles during the conflict and assists in explaining why the reconciliation possibilities of the state-instituted transitional justice are limited. Transitional justice is examined in relation to its theoretical roots, its political necessity, its capability for achieving long-term reconciliation and, ultimately, its incapability to address gender-based violence crimes, particularly in the context of Rwanda. Rwanda's traditional Gacaca process, known as 'justice on the grass,'² is examined as a means to provide justice under the guise of restoration;³ however, I show that this system falls short of providing women with their desired justice.

Transitional justice is a specific justice instituted in politically transitioning societies, often recovering from conflict and/or human rights abuses conducted by the former regime. Transitional justice is defined as "...the conception of

² Gacaca is the primary means of transitional justice in Rwanda today. Based upon a traditional dispute resolution mechanism of the same name, Gacaca translates to 'justice on the grass,' as the proceedings take place in local community environments, quite literally on the grass. Gacaca was instituted to relieve pressures upon the national court system and jail overcrowding and is comprised of three fundamental principles: decentralization of justice, plea bargaining, and offence categorization. It is important to note that Gacaca is a retributive justice with judges and punishments for crimes; however, it is widely promoted by the Government of Rwanda as a reconciliatory form of justice that will unite all Rwandans. *Further details of the Gacaca process, and an evaluation of its strengths and weaknesses, from a gender perspective, will be discussed in Chapter III of the Thesis.

³ The goal of reconciliation and restoration declared by the Rwandan government is questioned as no members of the RPF, accused of crimes during the genocide and after, will be prosecuted. The Gacaca process has been criticized as being a victor's justice. Further see: Alana Tiemessen, "After Arusha: Gacaca Justice in Post-Genocide Rwanda," *African Studies Quarterly*, 8, no.1 (Fall 2004). <http://www.africa.ufl.edu/asq/v8/v8ila4.htm>. (accessed November 12, 2005).

justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.”⁴ Transitional justice is unique in its framework as it may utilize several mechanisms for achieving justice simultaneously, such as, “prosecutions, truth-seeking initiatives, reparations measures, and institutional reform.”⁵ Ultimately, states seek to regain legitimacy through transitional justice mechanisms by entrenching the rule of law and building capacity in justice institutions.

Rwanda has sought three forms of transitional justice to reconcile with the 1994 genocide: the International Criminal Tribunal for Rwanda (ICTR), the national criminal justice system, and a hybrid form of communal justice in Gacaca tribunals. The first two forms of justice are examples of retributive justice, with the Gacaca tribunals being a hybrid of retributive judicial measures in combination with strong communal involvement indicative of a restorative justice approach. All three justice mechanisms have strengths and weaknesses for achieving justice for Rwanda’s women.⁶

Often in post-conflict and transitioning society contexts, justice and reconciliation are emphasized as imperative to reaching the final goal of a lasting peace and a functioning society; however, the terms are not equal and cannot

⁴ Ruti G. Teitel, “Transitional Justice Genealogy,” *Harvard Human Rights Journal* 16 (2003): 69.

⁵ See footnote 2 in: Lydiah Bosire, “Overpromised, Underdelivered: Transitional Justice in Sub-Saharan Africa,” *Occasional Paper Series, International Center for Transitional Justice*. (July 2006): 1. www.ictj.org/static/Africa/Subsahara/AfricaTJ3.pdf. (accessed June 26, 2007).

⁶ To be discussed at length in Chapter’s I and III. Some examples of strengths are that sexual violence crimes are to be addressed at the national and international level of prosecution, with rape being declared an act of genocide at the ICTR. Weaknesses of the programs include: lack of witness protection, lack of education on the part of prosecution and judges concerning crimes against women and sexual violence crimes in general, the threat of re-victimization in testimony, lack of protection from reintegrating offenders to the community, lack of psychological preparation for repatriation of offenders, to name a sampling.

necessarily be expected to be achieved through the same processes. Simply, justice sought through trials and witness testimony does not necessarily produce reconciliation, although many people believe that reconciliation cannot be achieved without the truth about the past's atrocities being acknowledged.⁷ Reconciliation has no singular definition, but is a process that takes place on three broad levels: interpersonal reconciliation, community-level or social reconciliation, and national reconciliation where relationships on a political level may be mended.⁸ For the purposes of this thesis, reconciliation will be defined as the consolidation of peace through political power sharing, resulting in a prevention of renewed conflict, ultimately leading to peaceful coexistence amongst communities, as well as the reestablishment of previously held interpersonal relationships. From a political standpoint, justice and reconciliation can often stand at odds with one another in a transitional context as they may have "competing objectives in the process of building peace."⁹ It is important to reiterate that reconciliation in post-conflict environments is a long process that may begin with the implementation of justice institutions, but is not achieved through them. This thesis is primarily concerned with the transitional justice

⁷ David Bloomfield, Teresa Barnes and Luc Huyse, eds. *Reconciliation after Violent Conflict: A Handbook* (Stromsburg: International IDEA, 2003), 14.

⁸ Franklin Oduro, "What Do We Understand by 'Reconciliation?': Emerging Definitions of Reconciliation in the Context of Transitional Justice." *Evaluating Experiences in Transitional Justice and Reconciliation: Challenges and Opportunities for Advancing the Field*, The International Development Research Centre website (March 2007): 4.
[http://www.idrc.ca/uploads/userS/11776890581A_Review_of_the_Lit._on_Reconciliation\(final_draft\).doc](http://www.idrc.ca/uploads/userS/11776890581A_Review_of_the_Lit._on_Reconciliation(final_draft).doc). (accessed April 28, 2008).

⁹ Wendy Lambourne, "Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation." *Peace, Conflict and Development* 4 (April 2004): 5.
<http://www.peacestudiesjournal.org.uk/docs/PostConflictPeacebuilding.PDF>. (accessed February 10, 2006).

process, while recognizing that reconciliation is a related process that is affected by the success or failure of the justice program.

This study seeks to examine the extent to which justice and reconciliation can be achieved in Rwanda through the current transitional justice programming in place, with particular reference being made to the justice and eventual reconciliation possibilities for women in Rwanda. Specifically, in analyzing how gender relations affected the genocide in Rwanda, the thesis provides a lens to view women's roles in conflict as both perpetrators and victims. With this knowledge of gender relations, I examine the specific mechanisms of transitional justice currently in place to bring justice to the victims of Rwanda's genocide from a gendered perspective. Drawing upon the lessons learned from the above analysis, I make recommendations regarding a gendered framework for justice in Rwanda.

This research represents a qualitative study based on information provided by a variety of scholarly works, especially from feminist transitional justice literature, restorative and reconciliation literature, and gender analysis of conflict literature. I also draw on news publications, government, international and non-governmental organization reports. Through the analysis of interviews with victims conducted by other authors and the analysis of perpetrator and witness testimonies, I assess the extent to which the specific needs of women in Rwanda are not being met through the current transitional justice program in Rwanda.

In order to assess women's wants and needs for justice and eventual reconciliation, and how they have been limited in receiving these, a textual analysis of published victim's statements in the form of interviews, both in print and from visual media, are assessed. The following research questions are asked: How were gender relations affected by the genocide? How did pre-existing gender relations contribute to the forms of injustice perpetrated against women during the genocide? How do women perceive the transitional justice program and progress? Do Rwandan women feel that the current state of transitional justice will provide them with the promised justice and reconciliation? Ultimately, this study concludes that the answer is negative, so then I ask what would a gendered transitional justice look like in Rwanda? This thesis seeks to discover whether the transitional justice mechanisms currently engaged are capable of providing justice to the citizens of Rwanda, with particular focus paid to the women of Rwanda who now comprise the majority of the population.

Chapter I provides context for the evaluation of the transitional justice program in Rwanda. Transitional justice as an element of the international justice regime is defined and its theoretical basis and legal mechanisms are discussed. The different types of justice: restorative, retributive, and restitutive are explained, along with a brief explanation and discussion of the related reconciliation process. As explained above, reconciliation is a long-term goal of peacebuilding and post-conflict justice initiatives. Through justice and sustained peace, it is hoped that reconciliation will be achieved; however, justice as a process will be the primary focus of this thesis. Chapter I is also concerned with

highlighting some of the gender barriers facing women who seek justice in Rwanda.

Chapter II provides a gender analysis of the Rwandan conflict, beginning with an historical analysis of Hutu and Tutsi ethnic relations from a gendered perspective. This foundational analysis provides insight into the gendered relations of Rwanda's ethnic conflict, providing some reasoning for the ferocity of gender-based offences committed. This conflict analysis, which extends through the four phases of conflict (pre-conflict, conflict, peace process and post-conflict), results in an analysis of the transitional justice program in the final conflict phase. The gendered conflict analysis provides the reader with a greater understanding, not only of the conflict, but also of the importance of gender in Rwanda's rebuilding.

Chapter III provides an evaluation of Rwanda's transitional justice program. The chapter begins with an explanation of specific justice mechanisms chosen by the Government of Rwanda (GoR), and the political reasoning for those choices. Rwanda's national judicial system, the International Criminal Tribunal for Rwanda (ICTR), and the gacaca justice system (as a culturally relative form of hybrid justice) are evaluated for their inclusion of gendered crimes and their sensitivities, or lack thereof, concerning the involvement of women within the process of achieving justice. This chapter concludes that women's needs are not being met by the current transitional justice mechanisms in place.

Chapter IV suggests how transitional justice in Rwanda can be improved to provide a “gendered” justice. This gendered justice will be reflective of transitional justice principles and mechanisms; however, it will emphasise the necessity for an increasingly restorative approach as opposed to the retributive justice currently engaged in Rwanda. The impact of the transitional justice program upon the long-term capability of reconciliation from a gender perspective will be addressed. The closing comments of the chapter will provide recommendations for further research to be conducted.

CHAPTER I: TRANSITIONAL JUSTICE

Overview

Transitional Justice is the primary framework, (in conjunction with formal peace treaties) for post-conflict resolution in the post-cold war era.¹⁰ Based in the liberal tradition of the predominance of the rule of law, transitional justice can broadly be defined as a “framework for confronting past abuse as a component of a major political transformation.”¹¹ It is thought that through the confrontation of past human rights violations, by way of judicial (national and international criminal prosecutions) and non-judicial mechanisms (truth and restorative forums), fractured societies can achieve reconciliation, while preventing future conflicts and human rights violations.¹² Transitional justice is implemented to satisfy the needs of the state by entrenching the rule of law and building capacity in justice institutions, which assists in re-establishing confidence in the stability and legitimacy of political leadership. Transitional justice is defined as “... the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor

¹⁰ Eilish Rooney, “Engendering Transitional Justice: Questions of Absence and Silence,” *International Journal of Law in Context* 3, no.2, (Cambridge: Cambridge University Press, 2007): 173.

¹¹ Louis Bickford, “Transitional Justice,” *The Encyclopaedia of Genocide and Crimes Against Humanity* 3 (MacMillan Reference USA, 2004), 1045.
<http://www.ictj.org/static/TJApproaches/WhatisTJ/macmillan.TJ.eng.pdf>
Reproduced on the International Center for Transitional Justice Website, ICTJ.org. Posted February 2006. (accessed December 10, 2006).

¹² *Ibid.*, 1045.

regimes.”¹³ Transitional justice may include several mechanisms for achieving justice simultaneously, such as, “prosecutions, truth-seeking initiatives, reparations measures, and institutional reform.”¹⁴

The field of transitional justice arose out of the Second World War with the subsequent war crimes tribunals and widespread reparations programs. The political transitions of the 1980s in Latin America through to the collapse of communist regimes in Eastern Europe and the subsequent surge of intrastate conflicts in Africa during the 1990s led to the development of a new approach to justice, one which incorporates various forms and mechanisms to achieve a smooth transition to democracy. As Mark Freeman highlights, there is no one type of transition, however, every transition is marred by two characteristics: widespread violence and repression.¹⁵ The field of transitional justice, with its various mechanisms and approaches to justice, was necessary in order to address the multitude of issues that arise out of such repression and violence.

Forms of Justice

Retributive Justice

Retributive or prosecutorial justice is punitive and is characterized by its adversarial nature of prosecution (the people, the state, or the international community versus the defendant or accused). Retributive justice is the cornerstone of criminal law and is seen as an important tool to discourage future

¹³ Teitel, *Transitional Justice Genealogy*, 69.

¹⁴ See footnote 2 in: Bosire, *Overpromised, Underdelivered*, 1.

¹⁵ Mark Freeman, “Truth Commissions,” *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press: 2006), 5.

violations and to maintain balance and order in society under the rule of law. Prosecutorial justice is, by its very nature, response-oriented and backward looking in that it is concerned with righting a wrong or imbalance that has occurred in the past. Retributive justice individualizes a crime, identifying victim and offender, within a specific timeline of when the criminal event took place. The judicial process is offender-focussed in its framework, with the emphasis of the trial being placed on whether the accused is innocent or guilty, through the retelling and examining of his/her actions during a given moment in time. The victim is present to bear witness; however, there is no attempt at healing of the victim or reconciliation of the actors. The resulting punishment for crimes “removes the undeserved benefit¹⁶ by imposing a penalty that in some sense balances the harm inflicted by the offense.”¹⁷ Success is determined in a retributive justice environment by “the fairness of the process and the quality and proportionality of the sanctions.”¹⁸ Once an impartial judge and/or jury have determined guilt or innocence, and the necessary retribution has been handed down, both victim and offender have been re-balanced in society, hence the image of the balanced scales of justice.

Retributive justice in cases of crimes against humanity and genocide are instituted in order to ensure that impunity for the leadership will not prevail. Retributive justice mechanisms in these transitional justice contexts has/have taken the form of *ad hoc* international criminal tribunals (Rwanda and the Former

¹⁶ *which is the benefit resultant in committing the crime.

¹⁷ Wesley Cragg, *The Practice of Punishment: Towards a Theory of Restorative Justice* (New York: Routledge, 1992), 15.

¹⁸ Tiemessen, *After Arusha*, 65.

Yugoslavia), nationally pursued criminal trials, and hybrid trial/truth telling tribunals as found in Sierra Leone. Persistent criticism exists concerning retributive justice projects; primarily, they are described as being too slow and ineffective at providing the victim community with a sense of inclusion. It has been determined that the lack of societal involvement in the retributive process leaves the victim group unsatisfied and disaffected by the process.¹⁹

Despite this, there has been a historical reliance upon retributive justice as the most effective way of addressing violence against women. International criminal tribunals and national courts can facilitate the advancement of women's rights by the following means: educating the public and media to women's concerns; educating and sensitizing public representatives; providing an opportunity to document human rights abuses and keep them on historical record; highlighting the failure of existing human rights record; providing a forum for public accountability; and providing a basis for lobbying to change legislation and public funding for women's issues.²⁰ However, downsides to the retributive justice process also exist for women: the offender-focussed nature of the trial process (where offenders' needs for proving guilt or innocence are paramount to the sensitivities of the victim); the lack of investigative preparation by tribunal representatives concerning gender issues and crimes;²¹ the lack of national recognition of gender-based violence crimes in a culturally patriarchal society as

¹⁹ Ibid.

²⁰ Center for Women's Global Leadership. "Introduction," *Women Testify: A Planning Guide for Popular Tribunals & Hearings*, (2005). <http://www.cwgl.rutgers.edu/globalcenter/womentestify/overview.htm> (accessed September 28, 2007): 11-13.

²¹ Numerous examples can be found in Elizabeth Neuffer, *The Key to My Neighbor's House: Seeking Justice in Bosnia and Rwanda*, (New York: Picador, 2002).

reflected in the justice system;²² and the lack of reparations sorely needed by women after conflict as they are the lowest socio-economic group in most developing societies. Additionally, women who testify face potential stigmatization in their community; few provisions are provided for loss of work or childcare while away; and limited psychological counselling is available to assist with the re-victimization that may result from the trauma of reliving the criminal event in court. In the end, there will be positive and negative effects for all parties to any justice process. The ability to mitigate such effects and achieve the best justice possible may require the combination of justice forms, a supplementing of retributive justice with restorative and restitutive measures.

Restorative Justice

While retributive justice is punitive, restorative justice pursues the healing and repairing of the society by “restoring offenders to a healthy relationship within the community.”²³ The distinctive feature of restorative justice is “its focus on re-integrative shaming over guilt.”²⁴ The guilt felt by perpetrators is their punishment, and their subsequent admission of guilt expressed to the community allows for their reintegration into society. Restorative justice is being touted as a viable alternative to the international justice proscribed in recent decades by the

²² “Double marginalization: the marginalization of victims within the framework of the larger debates that take place in transitional and post-conflict societies, and within it, the marginalization of women.” Ruth Rubio-Marin, “Introduction: The Gender of Reparations: Setting the Agenda,” in Ruth Rubio Marin, ed. *What Happened to the Women? Gender and Reparations for Human Rights Violations* (International Center for Transitional Justice, 2006), 22. <http://press.ssrc.org/RubioMarin/rightsViolations>. (accessed November 15, 2006).

²³ Bloomfield David, et al, *Reconciliation after Violent Conflict*, 14.

²⁴ Ibid.

global community, and may be a more effective way to embark upon a reconciliation process. Two salient features of restorative justice account for this: it is more accessible to those who live in rural communities; and reconciliation and restoration are emphasized (which is of importance to communities that must rebuild quickly for societal and economic reasons).²⁵ Restorative justice is a highly participatory and victim-centred format, where the lack of incarceration as punishment reduces the financial burden upon the community often experienced with retributive mechanisms due to dislocation of offenders from family and economic responsibilities.²⁶ Restorative justice can take the form of traditional ceremonies that require the blessing of community leaders to ensure the reintegration of offenders.²⁷ Additionally, restoration can take place through truth telling commissions where victims are encouraged to describe crimes endured, and offenders are encouraged to confess to crimes committed.²⁸ Restorative justice mechanisms may include reparations programs in the way of financial assistance, or replacement of damaged or lost property as a means of reconciling the community and balancing justice.

²⁵ Ibid.

²⁶ Ibid., 112.

²⁷ The traditional Acholi justice is currently taking place in three internally displaced peoples (IDPs) camps (northern Uganda), and has several forms: family courts, clan courts, inter-clan courts, inter-tribal courts. Acholi justice is restorative in nature and bound by the principles of trust, truth, compensation and restoration. The Acholi people are highly spiritual, and their justice reflects this with sacrifices and rituals performed for the God's. Further information see: Liu Institute for Global Issues, *Roco Wat I Acoli: Restoring Traditions in Acholi-land: Traditional Approaches to Reintegration and Justice* (September 2005), 1. www.ligi.ubc.ca/admin/Information/543/Roco%20Wat%20I%20Acoli-2005.pdf. (accessed October 20, 2006).

²⁸ The TRC's Amnesty Committee had the power to grant amnesty to those who confessed, and in circumstances of serious offences, these confession took place in the public hearing. The guilty party did not have to express sorrow or regret in order to receive the amnesty. For further information see: Freeman, *Truth Commissions*, 26.

Restorative justice has gender advocates, as it is an approach that is victim-centric and is less stigmatizing and punitive than a retributive forum.²⁹ Potential benefits for women in the use of restorative justice include: expression of victimization (without the coaching and direct questioning of legal counsel) of the crimes committed against them and how such events have affected their lives; participation in the decision-making process concerning penalty; and relationship repair as once the violence of the past has been addressed, victim and offender can discuss whether their relationship (if there was one previously established) can be repaired.³⁰

Potential harms for women participating in a restorative justice program are often related to victim safety, particularly when the crime is of a domestic or sexual nature.³¹ Additional concerns include: manipulation of the process by the offender; pressure placed upon the victims (to forgive or reconcile); the ambiguous role of the community, as community norms may be of a patriarchal nature; and symbolic implications as the offender may feel that the restorative justice approach is an easy escape for the crimes committed.³² Despite the apparent deficits of restorative justice in a gender analysis, the supplementing of such a form of justice with retributive justice (or vice versa), particularly in cases that do not include domestic violence, could provide the victim with a greater sense of justice as they are directly involved in the process and outcome.

²⁹ Kathleen Daly and Julie Stubbs, "Feminist Engagement with Restorative Justice," *Theoretical Criminology* 10, no.1 (2006): 17.

³⁰ *Ibid.*, 17.

³¹ *Ibid.*

³² *Ibid.*

Restitutive Justice

Restitutive justice is an underlying principle of the legal paradigm, with close links to the restorative justice approach. Restitutive justice assigns a value to the crimes committed or the material losses that were incurred during the crime. Restitution is often prescribed in cases concerning the loss of property and material goods as opposed to more serious crimes such as assault or murder; however, restitution in the form of reparations for material damages has been called for by victim groups and has been included in some transitional justice programs.³³ Restitution can assist in the healing of victims by allowing them to move forward with their lives through the establishment of socio-economic programs, or financial assistance to jump start employment and housing projects. The financial punishment of an offender is not as 'punitive' as the loss of freedom or life, which retributive justice may impose, and therefore not seen as a strong deterrent to serious crimes.

Reconciliation

Reconciliation is a theme with deep psychological, sociological, theological, philosophical, and profound human roots – and nobody knows how to successfully achieve it.³⁴ – *Johan Galtung*

³³ Hiedy Rombouts, "Women and Reparations in Rwanda: A Long Path to Travel," in Ruth Rubio-Marín, ed. *What Happened to the Women? Gender and Reparations for Human Rights Violations* (International Center for Transitional Justice, 2006), 199. <http://press.ssrc.org/RubioMarin/rightsViolations>. ICTJ. (accessed November 15, 2006). Restitution has been promised in the form of reparations in Rwanda, but the law determining settlements FIND (indemnification fund) has yet to be finalized. Rwanda and reparations pressures will be discussed at length in Chapter III of this thesis.

³⁴ As qtd. in David Bloomfield, "On Good Terms: Clarifying Reconciliations," *Berghof Report*

Although reconciliation has no singular definition, in general terms, it may be considered achieved, in a post-conflict context, when previously warring communities learn to coexist peacefully, and begin re-engaging in political power sharing and common community activities. As such, it is a process that takes place on three broad levels: interpersonal reconciliation, community-level or social reconciliation, and national reconciliation where relationships on a political level may be mended.³⁵ Each of these levels incorporates the following identified concepts for reconciliation to be achieved: “forgiveness, peaceful relationships, tolerance, coexistence, truth, and justice.”³⁶ It is not clear exactly in which combination or to what extent the various fundamentals must be achieved in order to reach reconciliation; however, it is assumed that this process varies in community, circumstance, and individuality based upon cultural, social, political and environmental impacts.

Definitional confusion concerning reconciliation is further exacerbated by the contradiction of the concept being described as a process whilst also an outcome. Reconciliation literature has described reconciliation as a ‘process’ particularly in policy-oriented works, as in the international IDEA Handbook publication, *Reconciliation after Violent Conflict*.³⁷ John Paul Lederbach describes reconciliation as a “dynamic, adaptive processes aimed at building and healing,” and a “process of change and redefinition of relationships.” Wendy Lambourne states that relationships built on the foundations of respect and trust

No. 14 (October 2006): 4. www.berghof-center.org/uploads/download/br14e.pdf. (accessed May 3, 2008).

³⁵ Oduro, *What Do We Understand by 'Reconciliation'?*, 4.

³⁶ Ibid.

³⁷ Bloomfield, et al, *Reconciliation after Violent Conflict*.

are “essential to the reconciliation process.”³⁸ Reconciliation as a process seems more pragmatic than reconciliation as an end goal as it would seem impossible to achieve an end state of harmony in any society, let alone one that has endured extreme trauma. Nevertheless, reconciliation as a goal or outcome is expressed routinely in transitional justice literature and by those designing national transitional justice projects. According to David Bloomfield, it is victim groups that oppose the process/outcome definitional structures, mostly because they are suspicious of any process or goal, or process leading to the goal, of reconciling to a situation that they do not desire.³⁹ As Bloomfield explains, such victims:

...may be forced to make compromises and, in particular, to ‘forgive’ perpetrators without having first gained sufficient justice for their suffering. These objections relate to the idea of this end-state being one where all is harmony, where all are equals, and in particular, where all is forgiven. It is to this last element that most resistance is mustered.⁴⁰

Reconciliation in the transitional justice context, ideally, should prevent renewed conflict by “consolidating peace, the establishment of a civilized political dialogue and an adequate sharing of power.”⁴¹ Liberal notions of justice claim that reconciliation is associated with a prosecutorial form of justice. This notion is evident in the statute for the Rwanda criminal tribunal, which explicitly states “...that through criminal trials the court “would contribute to the process of

³⁸ Lambourne, *Post-Conflict Peacebuilding*, 8.

³⁹ Bloomfield, *On Good Terms*, 7.

⁴⁰ Ibid.

⁴¹ Ibid., 19.

national reconciliation.”⁴² Reconciliation in this thesis will be discussed as a related process to justice that will undoubtedly be affected by the success or failure of the transitional justice program. It is important to reiterate at this point however, that transitional justice as it concerns women in Rwanda is the process that will be analysed exclusively in this thesis.

Transitional Justice Mechanisms

Transitional justice mechanisms are often grouped into four categories: criminal trials; truth telling or fact-finding investigations; reparations programs; and justice reform initiatives such as constitutional reforms.⁴³ Each of these mechanisms for justice is required as an obligation under international law and corresponds to an individual right upheld under the “Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity”⁴⁴:

The obligation to investigate, prosecute, and punish serious human rights violations corresponds to the right to justice (or the right to an effective remedy); the obligation to investigate and identify victims and perpetrators of serious human rights violations corresponds to the right to truth (or the right to know); the obligation to provide restitution and compensation for serious human rights violations corresponds to the right to reparation; and the obligation to prevent serious human rights violations corresponds to the right to guarantees of nonrepetition.⁴⁵

⁴² Laurel E. Fletcher and Harvey M Weinstein, “Violence and Social Repair,” *Human Rights Quarterly* 24 (2002): 579.

⁴³ Freeman, *Truth Commissions*, 5-6.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 6.

Transitional justice in Rwanda faces a myriad of obstacles in an attempt to meet the requirements of the above obligations to human rights. One of these is the sheer number of victims and perpetrators involved. Another is the extent of victimization that occurred in the society-wide case of ethnic cleansing and genocide. Also, often the successor regime continues to hold political authority and/or influence in some manner (this concern is not directly relevant to the Rwandan context as the current regime is the victorious Rwandan Patriotic Front, without influence from previous Hutu political authorities).⁴⁶ Post-conflict societies are marred by unemployment and resource shortages, sometimes more severe than prior to the conflict. Political institutions are destroyed or debilitated, and in the case of Rwanda, the legal institutions were decimated with the killing of judicial officers and legal support staff.⁴⁷ In this context, the integration of several mechanisms of transitional justice must be instituted in order to achieve some modicum of justice.

Criminal Prosecution

The first justice mechanism invariably established in a transitioning context is one of retribution in the form of a criminal prosecution. Trials can be conducted through international or national means, with some countries opting for both forms of prosecution. Since the end of the Cold War, the world has seen the development of various forms of criminal trials to deal with the onslaught of transitioning contexts: *ad hoc* international criminal tribunals in the Former

⁴⁶ Ibid.

⁴⁷ Timothy Longman, "Justice at the Grassroots? Gacaca Trials in Rwanda," *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (Cambridge: Cambridge University Press, 2006), 208.

Yugoslavia and Rwanda; hybrid criminal tribunals in Kosovo, Sierra Leone, Timor-Leste, Bosnia-Herzegovina, and Cambodia; and the development of the International Criminal Court (ICC) in The Hague. Criminal prosecutions are the cornerstone of transitional justice projects, “No other mechanism is perceived to have a greater impact on specific and general deterrence, public confidence in the state’s ability and willingness to enforce law, and the victim’s sense of justice.”⁴⁸ However, criminal prosecutions are not without their weaknesses, particularly their slow pace, high cost, and limited victim participation as retributive justice mechanisms are offender-centric.⁴⁹

Truth Commissions

Truth Commissions have become an alternative or complimentary mechanism for seeking justice in transitional contexts. Truth Commissions are fact-finding mechanisms that seek out the truth to the events of the past in hopes of reconciling the community for a peaceful future. Such commissions are also invaluable at creating an historical record to preserve the ‘truth’ concerning the past, and in a sense, creating a memorialisation of the past. Defined in the UN Secretary-General’s Report on “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” “Truth Commissions are official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years.”⁵⁰ Truth

⁴⁸ Freeman, *Truth Commissions*, 10.

⁴⁹ Nowrojee, *Your Justice is Too Slow*, 3-4 &9.

⁵⁰ Report of the Secretary-General, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” 23 August 2004, <http://www.ipu.org/splz-e/unga07/law.pdf> (accessed July 25, 2008).

Commissions seek to provide truth and validation to the victim; however, whose truth is being told really?⁵¹ Is 'truth' a reflection of political desires of those that currently hold power or is truth the individual story of the victim as he/she remembers it? It is likely that elements of both truths are present; but for justice and reconciliation of the community, victim's truths must be actively expressed. Those that volunteer the truth of their crimes are often provided amnesty as in the case of South Africa's Truth and Reconciliation Commission. Rwanda's Gacaca process, although not a truth-telling mechanism, rewards admissions to crimes for the telling of truths, with a reduction of sentencing or community service.

Reparations

Under international law, states are obligated to provide reparations to victims of international human rights violations proportionate to the suffering endured.⁵² Reparations, as outlined by the United Nations, can consist of restoration of freedom, identity, residence, property and employment;⁵³ compensation for "any quantifiable physical, mental, and material damage, legal and medical fees, and lost reputation and opportunities;"⁵⁴ and rehabilitation required in the form of

⁵¹ Bosire, *Overpromised, Underdelivered*, 16.

⁵² Office of the High Commissioner for Human Rights. "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," April 19, 2005, <http://www2.ohchr.org/english/law/remedy.htm> (accessed July 25, 2008).

⁵³ Bosire, 16.

⁵⁴ *Ibid.*

medical or psychological services.⁵⁵ The three primary aims of reparations are: “to recognize victims as citizens who are owed specific rights, communicating a message that a violation of such rights deserves action from the state; to contribute to the establishment of civic trust among citizens and between citizens and state institutions; and to build social solidarity where the society empathizes with the victims.”⁵⁶ Rubio-Marin suggests that the legitimizing of rights and the rule of law by the state can instil mutually beneficial trust between civil society and the government, furthering the process of democratization and assisting the process of reconciliation. Although reparations are enshrined in international law, it is unclear exactly how to ensure reparations as part of the transitional justice framework in national accounts of human rights abuses.⁵⁷

Justice Reform Initiatives

Justice reform initiatives comprise of legal and constitutional reforms and the vetting and legitimizing of public positions and office. Vetting is defined as a “formal process for the identification and removal of individuals responsible for abuses from public office,”⁵⁸ and in a wider context, incorporates institutional reform strategies that can include, “turning formerly repressive and abusive

⁵⁵ Ibid, 16

⁵⁶ Rubio-Marin, *Introduction*, 26.

⁵⁷ Bosire, *Overpromised, Underdelivered*, 18.

⁵⁸ Leila Chirayath, Caroline Sage and Michael Woolcock, “Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems,” World Bank.org (July 2005), 2. http://siteresources.worldbank.org/INTWDR2006/Resources/4773831118673432908/Customary_Law_and_Policy_Reform.pdf. (accessed July 15, 2008).

institutions into institutions that respect the rule of law and treat citizens with dignity, and reviewing repressive legislation.”⁵⁹ Ideally, the vetting and reform process should include institutional assessments concerning the capacity of judiciary and security organs; additionally, ensuring appropriately trained personnel for important positions, as it is the security and judicial sectors of government most often implicated in state-sanctioned human rights abuses. Transition is often a protracted and incomplete process for a period of time, where the overhauling of the public administration may seem of a lesser priority than the other transitional justice mechanisms. However, the vetting of public institutions is assumed to renew confidence in the government’s will to renew the public’s trust, a necessity for future reconciliation.

Traditional or Informal Justice

In recent years, international and national criminal tribunals have been compromised because of slow and limited results. In response, several countries coping with past human rights crises are turning to culturally relative forms of justice, or traditional approaches to justice. Some organizations such as the World Bank and the United Nations Development Programme (UNDP) describe these forms of justice as informal systems. The World Bank provides a necessarily broad definition for such systems: “an informal system of justice can be understood as a system operating outside the formal state criminal justice systems, which is rule generating and works to provide justice within a

⁵⁹ Ibid.

community.”⁶⁰ Such informal systems usually include customary authority such as district chiefs, community organizations, and the use of alternative dispute resolution systems. It is important to note, therefore, that many of these forms of justice are not informal *per se* as they exist be written as forms of customary law in some countries.⁶¹ The, the titling of indigenous forms of justice as informal can lead to questions of legitimacy. Simply put, it is not necessary for all forms of justice approaches to be codified in law to be legitimate and formal in the eyes of a people. In addition, the inclusive community-centric structure of these approaches may increase the speed and possibility of reconciliation as the victims play a stronger role in these typically restorative approaches.

These alternative forms of justice, based on customary justice practices of local communities, have received mixed reviews from the international human rights and donor communities. There is a desire amongst international donors to avoid justice interventions being seen as ‘colonialist’ with the justice mechanisms deployed being of foreign importance and understanding. Complaints concerning traditional/cultural forms of justice are often cited by human rights groups, who express concerns over the lack of protection for the accused and victim, lack of representation, and a lack of criminal justice for serious crimes. The concern for gender equality in these proceedings has also been expressed, as these traditional forms of justice, often reflect the patriarchal conditions of the

⁶⁰ Ewa Wojkowska, “Characteristics of Informal Justice Systems,” *Doing Justice: How Informal Justice Systems Can Contribute*, United Nations Development Programme (December 2006), 20. <http://www.undp.org/oslocentre/docs07/DoingJusticeEwaWojkowska130307.pdf> (accessed July 15, 2008).

⁶¹ See footnote 2, *Ibid.*, 2.

community historically, and lack participation of women or concern for gender-based crimes.⁶²

Gender Perspective of Transitional Justice

Gender has been a missing part of transitional justice analysis. According to Ni Aolain and Turner, this is because: 1) “The justice discourse takes for granted that accountability for past wrongs is a morally legitimate starting point for assessing the moral, and hence political, standing of a new regime;”⁶³ 2) justice is individually focused, with an absence of accountability for group harms;⁶⁴ 3) within this framework, the outcomes of accountability and punishment are assumed.⁶⁵ Such a narrow framework cannot easily address gendered crimes committed during conflict and aims to provide an idealized vision of justice that is not attainable in a transitional context. Susan McKay identifies common gender-based violence crimes, which do not fit the framework for justice commonly applied in transitional contexts: sexual violence and torture, domestic slavery, enforced removals, loss of home and property, domestic violence, forced prostitution, and the arbitrary deprivation of private or public freedoms.⁶⁶ Women in conflict “experience violence explicitly because they are women and may additionally experience harms as a result of their religious, ethnic, or other identifications,” and may continue to suffer such harms in the post-conflict

⁶² Fionnuala Ni Aolain and Catherine Turner, “Gender, Truth and Transition,” *UCLA Women’s Law Journal* 16 (Winter/Spring 2007): 231. <http://www.LexisNexis.org/>. * “wrongs” are always gendered.

⁶³ *Ibid.*, 231-232.

⁶⁴ *Ibid.*

⁶⁵ Susan McKay, “Gender Justice and Reconciliation,” *Women’s Studies International Forum* 23, no.5 (2000): 564.

⁶⁶ Ni Aolain & Turner, *Gender, Truth and Transition*, 245.

period.⁶⁷ Until recently, analysis of transitional justice has been predominantly focused on whether or not such a form of justice was in fact 'just,' and which mechanisms of transitional justice are best suited certain conflict contexts. Missing from the literary spectrum on transitional justice was a feminist analysis, and I emphasize that there remains a lack of enquiry concerning gender and transitional justice. However, a foundational base of literature has emerged in the past several years, with scholars such as Susan McKay, Fionnuala Ni Aolain, Catherine Turner, Katherine M. Franke, Christine Bell, Catherine O'Rourke, Naimh Rielly, and Colm Campbell addressing the lack of feminist critique in the transitional justice field and asserting that there is a "gendered bias" in dominant transitional justice discourse.⁶⁸

This gendered bias begins with the lack of gender discourse throughout the process of transition, from the peace process and negotiation, to the implementation of justice mechanisms.⁶⁹ Bell, et al., assert that the male-dominated peace processes will naturally leave out issues important to women from the settlement process because of their male conceptions of conflict, which "revolve around allocation of power and territory, and stopping certain forms of violence."⁷⁰ As a result, many women are 'ambivalent' (as they are uninvolved in

⁶⁷ Ibid.

⁶⁸ Feminist authors on transitional justice. Sourced throughout thesis for foundational research on gendered analysis of transitional justice.

⁶⁹ Christine Bell, Colm Campbell and Fionnuala Ni Aolain, "Justice Discourses in Transition," *Social and Legal Studies* 13, no. 3 (2004): 321.

⁷⁰ Ibid.

the development of the transitional justice process) to the effect, transitional justice will have in providing them with the justice they seek.⁷¹

In this analysis, I will be applying a liberal feminist theoretical approach that is qualified by the postmodern influence of context and the particular. Founded on Liberalism, Liberal Feminism is an historical tradition that can be identified by its specified importance of “individual rights, the rule of law and other supportive institutional mechanisms.”⁷² Particular political commitments that liberal feminism is identified with are: equality of opportunity (through the redistribution and re-organization of wealth); the fundamental belief that the value of women is equal to that of men; the equality of legal rights for women; a demand to the end of ‘de facto’ discrimination based on sex; and equal education.⁷³ In the west these commitments have resulted in women having the opportunity to be treated equally to men, in terms of the same access to education, wealth, and legal freedoms and protections. Of course, there are qualifications to this statement as many women still experience sexism in the workplace and in the public realm in general. Additionally, there are many women that still suffer in the private sphere, as victims of domestic abuse for instance. However, great advances have been achieved for women through the re-education of western society; it is now accepted that women are not lesser

⁷¹ Ibid.

⁷² Julie Mertus, “Teaching Gender in International Relations,” *International Studies Perspective*, 8 (2007): 323.

⁷³ Susan Wendell, “A (Qualified) Defense of Liberal Feminism,” *Hypatia* 2, no 2 (summer 1987): 66.

people than their male counterparts, and therefore deserve and require equality under the law.

Liberal Feminism has faced strong criticism for being overly concerned with “abstract individualism, certain kinds of individualistic approaches to morality and society, valuing the mental/rational over the physical/emotional, and the traditional liberal way of drawing the line between public and private.”⁷⁴ Concerning legal human rights and justice approaches, liberal feminism has been criticised for emphasizing a universal approach to human rights and women’s rights, and a universal understanding or goal of justice that does not contextualise the female experience in non-western societies that are typically more community-based than individual-centric.⁷⁵ The west’s promotion of liberal theories of justice and the supremacy of the rule of law in transitioning states has been criticised by non-western countries as being paternalistic; as Karen Van Marle states: “Any attempt to describe a feminist conception of justice could be regarded as another act of Western globalisation or imperialism.”⁷⁶ Here in lies the particular complexities with adopting western justice mechanisms that are individualistic in nature to societies that are socially-constructed, and community based.

The post-modern approach has influenced liberal feminism by bringing the concepts of “context and particular” to the analysis of women’s treatment in

⁷⁴ Ibid.

⁷⁵ Karen Van Marle, “‘The Capabilities Approach’, ‘The Imaginary Domain’, and ‘Asymmetrical Reciprocity’: Feminist Perspectives on Equality and Justice,” *Feminist Legal Studies* 11 (2003): 256.

⁷⁶ Ibid., 255-256.

society. This has particular relevance to the discussion of legal justice in a non-western context. Reconstructive postmodernism recognizes: “that all knowledge is situated in particular cultures and traditions, but that through an understanding of these operatives it is possible to arrive at a shared value structure.”⁷⁷ A legal theory and justice approach that is truly feminist needs to be developed so that it incorporates: “context, the situated subject, and the mutual interdependence of human beings in society.”⁷⁸

The importance of context is particularly relevant in the discussion of women’s barriers to seeking justice in Rwanda. On the one hand, there is a need to address the paternalistic or imperialistic criticisms of western justice regimes in non-western societies that mandate a ‘universal’ form of justice and/or justice mechanism. However, it is dangerous to rely on the overemphasis of cultural context and superiority in the construction of legal reforms and mechanisms, to the neglect of individual rights in a society that has historically devalued and marginalized women. As Megan Carpenter explains in relation to female context in post-genocide Rwanda, context is impossible to separate from justice:

Within a political, economic, and social environment in which women have suffered discrimination that is both superficial and embedded, where women have suffered precisely at the hands of their context, it is a very dangerous thing to argue for a greater contextualization of laws in the

⁷⁷ Megan M Carpenter, “Bare justice: A Feminist Theory of Justice and its Potential Application to Crimes of Sexual Violence in Post-Genocide Rwanda.” *Creighton Law Review* 41, no.4 (June 2008): 618.

⁷⁸ *Ibid.*

interest of a more holistic and inclusive form of justice. Whose context will be enshrined into law, whose context will be considered in the weighing of evidence, and if it is a context of discrimination, then where are we left?⁷⁹

Context is naturally embedded in law as it is a reflection of a society's belief system; the process of justice "must be an inclusive one, one that takes into account the situated subject."⁸⁰ Concerning community or traditional mechanisms for justice, Carpenter cautions against a blind culturally relativist approach to instituting community-centric forms of justice: "One must be careful, for example, not to allow the notion of community to be considered incontrovertible and to go unexamined. Political critique must always be built into any form of associations that have historically subordinated or excluded women."⁸¹

This paper will not prescribe to the "add women and stir" philosophy of gender mainstreaming in order to effect feminist change. Simply adding women to the discussion table does not necessarily change the discussion. Also, it often excludes many types of women from different contexts. Women should be present at all points in the transitioning and legal reform process of a post-conflict society's rebuilding, but it is important that presence is not the only expectation. This paper's analysis of justice in Rwanda, from a qualified liberal feminist perspective, hopes to add to the discussion of what is currently wrong with the justice system in Rwanda and will add to the rationale for using feminist theory to assess the effectiveness of transitional justice in post-conflict societies.

⁷⁹ Ibid., 619.

⁸⁰ Ibid.

⁸¹ Ibid., 621.

An Overview of Rwanda's Transitional Justice

Nationally run forms of retributive justice instituted by the successor regime can lack legitimacy in the international and national community for being nothing more than a form of 'victor's justice.' This is in fact a claim against the Government of Rwanda, who jailed thousands of accused prior to ever having a "genocide law" with which to prosecute them.⁸² In addition, Rwandan Patriotic Army (RPA) and Rwandan Patriotic Front (RPF – the political wing of the military) members who have been accused of human rights violations during the genocide and its aftermath will not have to face prosecution under such a genocide law, or stand trial in the community-based Gacaca courts, casting further doubt on the government's pronounced agenda of national justice and reconciliation.⁸³

The first two mechanisms of transitional justice are examples of retributive justice, with the Gacaca tribunals being a hybrid of retributive judicial measures in combination with strong communal involvement indicative of a restorative justice approach. All three justice mechanisms have strengths and weaknesses for achieving justice for Rwanda's women.⁸⁴ International justice mechanisms (international criminal tribunals) have a tendency to focus on the prosecution of the criminal leadership, namely politically connected individuals who have been accused of contributing to the development and progression of the genocide.

⁸² Longman, "Justice at the Grassroots?", 208.

⁸³ Tiemessen, *After Arusha*, 65.

⁸⁴ To be discussed at length in Chapter III. Some examples of strengths are that sexual violence crimes are to be addressed at the national and international level of prosecution, with rape being declared an act of genocide at the ICTR. Weaknesses of the programs include: lack of witness protection, lack of education on the part of prosecution and judges concerning crimes against women and sexual violence crimes in general, the threat of re-victimization in testimony, lack of protection from reintegrating offenders to the community, lack of psychological preparation for repatriation of offenders, to name a sampling.

The international criminal tribunal is seeking justice for crimes in violation of international law, and the punishment for the guilty must meet international human rights standards. Therefore, the International Criminal Tribunal for Rwanda (ICTR) is interested in prosecuting the political leadership of the genocide and their conviction will not result in the death penalty, an acceptable punishment via the crime of genocide under Rwandan law.

The Gacaca tribunals are again a national form of retributive justice; however, they differ from the national court system as they take place in small communities throughout Rwanda, are held outdoors, and require community participation in order to take place, giving them restorative justice features. The Gacaca system is retributive as it prosecutes the accused under law in front of a panel of judges. Members of the community must participate in hearing the accused's account of his or her part in the alleged crime, and the greater community is invited to comment and provide evidence. Gacaca was introduced as a way of relieving pressure upon the national judicial system, which was concerned with hearing the most serious offences under the national genocide law, but also as an attempt to bring a sense of justice to rural communities by involving them directly in the process.⁸⁵ While Rwanda's transitional justice initiatives are designed to seek justice and reconciliation for all victims of the genocide, gender issues, including gender-based violent crimes and women's access to justice mechanisms, are being routinely overlooked, limiting Rwanda's chances for national reconciliation.

⁸⁵ Longman, *Justice at the Grassroots?*, 207.

Gendered Barriers to Transitional Justice in Rwanda

In the context of the Rwandan genocide, rape was used as an institutional tool of eradication. The genocide saw the direct targeting of women as part of the government's strategic framework for Tutsi annihilation. The Tutsi woman was not seen by Hutu militiamen as an individual, but as an ethnic representative, "as the embodiment of an entire people."⁸⁶ The female body was targeted as the root of the Tutsi nation that needed to be eliminated. There was nothing individual about the sexual violence campaign against women during the genocide, and the response by the legal community needs to recognize the collective victimization of the rape and sexual violence policy when addressing justice for the crimes. The systematic rape and humiliation of Tutsi women not only left them with the mental and physical trauma of the criminal acts, but also with the post-conflict realities of children born of rape, physical and psychological injury, in addition to family and community abandonment. The women of Rwanda face limited access to justice due to their socio-economic circumstances, limited access to power, and the lack of recognition politically of the distinct gender issues associated with the Rwandan genocide and its subsequent transitional justice program.

What are the gendered issues of transitional justice? Essentially, the traditional approaches to transitional justice limit the ability of woman to achieve justice. According to Niamh Reilly, in order for women's justice needs to be met,

⁸⁶ Niamh Reilly, "Seeking Gender Justice in post-Conflict Transitions: towards a transformative women's human rights approach," *International Law in Context* 3, no.2 (2007): 155.

the following questions must be addressed with respect to implementing transitional justice mechanisms: “whose experiences matter, in what ways, under what conditions, and with what concrete effects?”⁸⁷ Further, it must be recognized that gender inequalities, which exist in the public sphere, are further impeded in the private sphere.⁸⁸ Women who are marginalized in their cultures, and are subjected to land-inheritance discriminatory laws, or the legalization of polygamy, will face a greater battle having their concerns met on the grand scale of peace, justice, and nation building.

As Martha Minow states in her seminal piece on reconciliation after mass conflict, justice at times of great transition must “replace violence with words and terror with fairness,”⁸⁹ and be able to create a path “between too much memory and too much forgetting.”⁹⁰ Transitional justice is chaotic, confused, and inevitably incomplete by someone’s standards.⁹¹ The best way to ensure the best possible implementation of such justice methods is to include the largest affected demographics within the design and institutionalisation. Susan McKay defines “Gender Justice,” as “Legal processes which are equitable, not privileged by and for men, and which distinguish the nefarious forms of injustice women

⁸⁷ Ibid., 159.

⁸⁸ Ibid.

⁸⁹ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 2.

⁹⁰ Ibid., 4.

⁹¹ Katherine M. Franke, “Gendered Subjects of Transitional Justice,” *Columbia Journal of Gender and Law* 15, no. 3 (2006): 813.

experience during and after conflict.”⁹² Through a gendered analysis of the Rwanda transitional justice system, an evaluation of the process as a means of justice for women will be established and recommendations for a gendered justice, an equal justice for Rwanda will be identified.

⁹² McKay, *Gender, Justice and Reconciliation*, 561.

CHAPTER II: GENDER ANALYSIS OF GENOCIDE IN RWANDA

Gender Analysis Framework

Gender analysis of conflict provides a lens for understanding the roles of women in conflict and in transitions of the reconstruction period that follows. Gender analyses of conflict in the past have often centred on the role of women on the 'home front' or as victims of sexual abuse, torture or abduction.⁹³ This narrow analysis of women in conflict ultimately limits the understanding of women's roles during warfare. This lack of acknowledgement of the full range of women's roles during the conflict, as victims, perpetrators, organizers, activists, providers, and so on, ultimately restricts their agency in peace negotiations, and post-conflict rebuilding and justice programming. A comprehensive gender analysis of the genocide in Rwanda (one which examines all four phases of the conflict) is a lens through which to view the conflict from the female perspective. An understanding of women's involvement in the conflict is enhanced through an analysis of pre-conflict gender power relations through to the post-conflict transitional justice process.

⁹³ This form of gender analysis was an improvement over the situation of many previous years where women did not exist in a discussion of warfare, "where women's participation was simply not identified." Caroline O.N. Moser and Fiona C. Clark, "Introduction," eds. Caroline O.N. Moser and Fiona C. Clark, *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, 2001), 3.

The following gender analysis breaks down the Rwandan conflict into four stages of conflict.⁹⁴ The first stage, pre-conflict or run-up to violence, sees tensions related to positions of power increase, particularly with ethnic conflicts.⁹⁵ The economy has usually taken a turn for the worse, a tightening or elimination of social welfare programming has taken place⁹⁶ and “the different resource claims are expressed as ethnic tensions with particular groups being repressed.”⁹⁷ This was evident in Rwanda prior to the genocide; with the implementation of International Monetary Fund (IMF) structural adjustment measures, unemployment increased and social programming was limited.⁹⁸ The increasing gap between rich and poor fuelled extremist elements within the Hutu majority, who in turn blamed the economic downturn on the Tutsi minority.⁹⁹

Cynthia Cockburn describes this period as an “uneasy peace,”¹⁰⁰ and uses Johan Galtung’s concept of ‘structural violence’¹⁰¹ to explain the

⁹⁴ “Four Stages of Conflict” as a framework for analysis has been used by Bridget Byrne, “Gender, Conflict and Development,” *BRIDGE (development – gender)* 1, no. 34 (Institute of Development Studies, University of Sussex. Revised July 1996): 8-9.; and Cynthia Cockburn, “The Gendered Dynamics of Armed Conflict,” *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, eds. Caroline O.N. Moser and Fiona C. Clark (London: Zed Books, 2001), 17-27.

⁹⁵ Cockburn, *Gendered Dynamics*, 17.

⁹⁶ *Ibid.*, 17-18.

⁹⁷ Byrne, *Gender*, 22.

⁹⁸ Erin K. Baines, “Stones, Skulls, Bones: Rwanda,” *Vulnerable Bodies: Gender, the UN and the Global Refugee Crisis*, Series: Gender in a Global/Local World (Aldershot/Burlington: Ashgate Publishing Ltd., 2004), 134.

⁹⁹ *Ibid.*

¹⁰⁰ Cockburn, *Gendered Dynamics*, 17.

¹⁰¹ Johan Galtung first introduced the concept of ‘Structural Violence,’ in 1996, maintaining that violence is legitimized through culture and reinforced in cultural structures: “Violence exists whenever the potential development of an individual or group is held back by the conditions of a relationship, and in particular by the uneven distribution of power and resources.” Cynthia Cockburn, “The Continuum of Violence: A Gender Perspective on War and Peace,” *Sites of Violence: Gender and Conflict Zones*, eds. Wenona Giles and Jennifer Hyndman, (Berkeley: University of California Press, 2004), 30.

precariousness of women in pre-conflict situations due to their position in male-dominant gender relations. Men are made vulnerable due to their lack of employment, inability to provide as breadwinners, and susceptibility to military participation. When men are vulnerable, women, due to their less privileged gender relationship in society, and therefore their greater distance from the proximity to power (and lack of accessibility to resources, land rights, employment), become exceedingly vulnerable. According to Byrne, “Many of the inequalities, legal, political or human rights which women experience in the pre-conflict situation will be exacerbated during the run-up to conflict, with women further excluded from the loci of power with the process of militarisation”¹⁰² Women may also take on a symbolic role of ethnic and gender purity, as did the Tutsi women in Rwanda prior to the genocide’s outbreak. This “symbolic importance” of women prior to conflict may be displayed in an increase of hate propaganda and obsession with feminine purity.¹⁰³ This was certainly the situation for Tutsi women prior to the genocide in Rwanda as Hutu hate propaganda that demonized the Tutsi feminine was propagated widely as an element of the Hutu nationalist movement.

Pioneers in Gender and Conflict analysis such as Cynthia Enloe and Anne Tickner have explored essentially where women were in conflict and how their

¹⁰² Byrne, *Gender*, 22.

¹⁰³ *Ibid.*, 19.

gendered roles influence conflict situations.¹⁰⁴ Further gender analyses delve into not just the gender roles of conflict, but also the role of women as gendered beings, their bodies as gendered objects upon which conflict takes place. Authors such as Erin Baines, Cynthia Cockburn, Lene Hansen, Wenona Giles and Jennifer Hyndman,¹⁰⁵ have discussed women's role in conflict related to their representation as a gendered body and how the gendered interpretation of women is reflected upon the nation. The women of a society are inextricably linked with their nation's success and longevity, as they are the reproducers of nations; therefore, this marks women as gendered targets in conflict, especially in conflicts concerning ethnic identity. The use of rape and gender-based violence in conflict is not a new phenomenon; however, such attacks against women as a means of strategic warfare in the name of 'nationhood' are now recognized because of gender analyses of conflicts.

A traditional archetype of women is that of the "Mother" of a nation; the female reproductive role in society ensures the survival of a group's identity. Ethnic conflicts focus on the purity of that identity for the protection and longevity, and therefore success, of the nation as a whole. Through the destruction of that

¹⁰⁴ Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley: University of California Press, 2000); Cynthia Enloe, *Manoeuvres: The International Politics of Militarizing Women's Lives* (Berkeley: University of California Press, 2000); Anne Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (New York: Columbia University Press, 1992).

¹⁰⁵ Erin K. Baines, "Body Politics and the Rwandan Crisis," *Third World Quarterly* 24 no.3 (2003): 479-493; Baines, *Stones, Skulls, Bones*, 131-154; Cockburn, *Gender Dynamics*, 13-51; Cockburn, *The Continuum of Violence*, 24-44; and Lene Hansen, "Gender, Nation, Rape," *International Feminist Journal of Politics* 3, no. 1 (April 2001): 55-75.

purity, the nation too can be destroyed.¹⁰⁶ As Yuval-Davis illuminates: “those who are preoccupied with purity of the race would also be preoccupied with the sexual relationships between the members of the different collectivities.”¹⁰⁷ Sexual assault, rape and torture of women during war is not isolated to ethnic conflicts and is used for additional purposes such as further humiliation of the male in warfare and the disintegration of community.

During the second phase of conflict, essentially the conflict or war period, women assume a range of various roles, from victim and perpetrator, to mother and head of household. The female side of conflict is rarely expressed or thoroughly analysed, but it includes: the gendered impact of poverty, women’s inability to flee the warzone with their children, coercion and voluntary participation in killing, their inability to produce or purchase food stuffs, their loss of healthcare, and of course sexual targeting, often leading to death.¹⁰⁸ Cynthia Cockburn states that it is in the “...brutality to the body in wars that the most marked sex difference occurs. Men and women often die different deaths and are tortured and abused in different ways, both because of physical differences between the sexes and because of the different meanings culturally ascribed to the male and female bodies.”¹⁰⁹ The Tutsi women of Rwanda were targeted for

¹⁰⁶ The actual ‘purity’ of any ethnic group is questionable. Prior to colonization, (and to a limited extent afterwards) ethnicities in Rwanda were mixed and it was the colonizing powers that instituted a racial policy in Rwanda. However, the concept of ethnic purity was promoted by the Hutu political leadership in 1994 as the ideal, with the degradation of the Tutsi population by various means including tainting purity through rape and sexual violence.

¹⁰⁷ Nira Yuval-Davis. “Women and the Biological Reproduction of The Nation,” *Women’s Studies International Forum* 19, No. 1/2 (1996): 18.

¹⁰⁸ *Ibid.*, 19-22.

¹⁰⁹ Cockburn, *Gender Dynamics*, 22.

their ethnicity, but also because they were considered to be the property of men and the weaker of the sexes in a traditionally patriarchal society.

The third phase of conflict is marked by the peace process and/or reconstruction. Women have been viewed historically in this phase as agents for peace and their identification as mothers is used as an image that can contradict violence, of course only perpetuating patriarchal stereotypes of woman and war.¹¹⁰ The recent questions and analysis around this phase of conflict are focussed upon women's role and agency in the development of peace accords and reconstruction efforts. It turns out that women are "largely excluded from this level of diplomacy and their gendered concerns are almost always entirely neglected"¹¹¹ This exclusion is explained by women's lack of influence and participation in the political process, in general, at the international and national levels of decision-making. *The United Nations Security Council Resolution 1325 on Women, Peace and Security* recognizes that women and children "account for the vast majority of those adversely affected by armed conflict,"¹¹² and it acknowledges that the lack of gender inclusion in the peacemaking process has a lasting impact on the possibility for reconciliation. The resolution strongly urged Member States to "ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms of prevention, management, and resolution of conflict."¹¹³ Without the presence

¹¹⁰ Ibid.

¹¹¹ Byrne, *Gender*, 28.

¹¹² *United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security*. 31 October 2000. The United Nations.org. <http://daccessdds.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>. (accessed June 23, 2008).

¹¹³ Ibid.

of women at the negotiating table for peace, or the policy meetings for justice, the majority of the affected population is not being given the choice to voice their needs for reconciliation. The lack of full societal participation compromises lasting peace.

The fourth and final stage of conflict is the 'post-conflict' period, often viewed as a 'transitional' political period. This transitional time includes the restructuring of institutions, political leadership and society on many levels. Justice and reconciliation movements are often set-up during this period by national governments or by the international community as a means of justice intervention. The justice and reconciliation mechanisms are offered to promote peace and healing within the community affected by war. However, violence does not necessarily end during this period and is most prevalent on the domestic home front as ex-combatants return and resources and employment are scarce. Cynthia Cockburn suggests that this period be referred to as "interbellum, a pause before fighting begins again."¹¹⁴ This is a particularly dangerous time for women in poor, war-ravaged countries like Rwanda, as their traditionally marginalised place in society is made more vulnerable as a result of the trauma and increased poverty inflicted by conflict.

Historical Perspective of Gender Relations in Rwanda

Rwanda is historically a patriarchal society, one in which women maintain inferior social and cultural positions compared with those of men. Traditionally, women's roles in Rwanda are to be in charge of the household and child rearing.

¹¹⁴ Cockburn, *Gender Dynamics*, 24.

According to Binaifer Nowrojee, women in Rwanda are most valued “for the number of children they can produce, and prior to the genocide, the average number of children per woman (6.2) was one of the highest rates in the world.”¹¹⁵ The majority of women were dependent upon their male relatives and husbands as women were legally discriminated against under Rwandan customary law and prohibited from land-ownership and inheritance rights.¹¹⁶ Women’s inability to own land in an agricultural economy ultimately inhibited their ability to obtain employment and access credit.¹¹⁷ Women’s marginalization in society was further marked by their inferior status in personal, primarily domestic relationships. The Rwandan government reported in 1995 that an estimated one-fifth of Rwandan woman were victims of domestic violence.¹¹⁸ Sadly, there is a Rwandan proverb that reflects this point, stating that “a woman who is not yet battered is not a real woman.”¹¹⁹

Since the genocide, the government has seized the opportunity to address gender disparities in education, health, politics and employment, starting with the discriminatory inheritance laws (Law No.22/99).¹²⁰ After the 2003 elections, Rwanda’s Parliament achieved the highest level of female representation in the world, with women holding 48.8% of the Lower House and 34.6% of the Upper

¹¹⁵ Binaifer Nowrojee, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, Human Rights Watch/Africa. September 1996, 13. <http://www.hrw.org/reports/1996/Rwanda.html>. (accessed July 25, 2008).

¹¹⁶ Rombouts, *Women and Reparations in Rwanda*, 204.

¹¹⁷ *Ibid.*

¹¹⁸ Government of Rwanda, *Rapport National du Rwanda por la Quatrieme Conference Mondiale sur les Femmes (Beijing)* (September 1995): 19. Qtd. in Binaifer Nowrojee, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, Human Rights Watch/Africa. September 1996, 13. <http://www.hrw.org/reports/1996/Rwanda.html>. (accessed July 25, 2008).

¹¹⁹ Nowrojee, *Shattered Lives*, 13.

¹²⁰ Rombouts, *Women and Reparations in Rwanda*, 204.

House.¹²¹ The government has created a new women's ministry titled the Ministry of Gender and Women in Development, and the 2003 Constitution underscores a commitment to gender mainstreaming, proposing "women be granted at least 30 percent of posts in decision-making organs."¹²² Despite these efforts put forth by the current administration, there is a long road to travel in order to achieve equality for women in Rwanda, primarily due to the traditional subordinate status of women imposed by society. As of 2004, the World Bank reported that women have lower literacy rates (59.8% compared to 71.4% for men), significantly weakening women's ability to obtain diversified employment opportunities outside of agriculture and domesticity.¹²³ Hiedy Rombouts cautions that women face the same social constraints as public representatives as they have traditionally in private life, as Rwanda's patriarchal culture remains the same.¹²⁴ In addition, many of the women convinced to become members of public office have left the grassroots networks that they dominated, weakened.¹²⁵ The government's efforts to rectify gender disparities in all levels of public policy and increase the number of women as elected representatives is to be commended; however, there remains a culturally ingrained belief that women are of an inferior status to men, and that their value is based upon traditional ideals of motherhood and virtue.

¹²¹ Inter-Parliamentary Union, *Women in National Parliaments* (31 May 2008). <http://www.ipu.org/wmn-e/classif.htm>. (accessed July 26, 2008).

¹²² Commission Juridique et Constitutionnelle du Rwanda, *The Constitution of the Republic of Rwanda*. Chapter 2: Fundamental Principles, Article 9, no.4. (May 2003). www.cjcr.gov.rw/eng/constitution_eng.doc. (accessed July 26, 2008).

¹²³ The World Bank Group, "Summary Gender Profile Rwanda." Database of Gender Statistics. <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=RWA,Rwanda&hm=home>. (accessed July 26, 2008).

¹²⁴ Rombouts, *Women and Reparations in Rwanda*, 204.

¹²⁵ *Ibid.*

The Pre-Conflict Period - Identity Formation of the Tutsi Woman

The institutionalization of Rwandan ethnicities began during the colonial period, where under German (1890-1916) and then Belgian (1916-1961) rule, the Tutsi and Hutu people were identified as ethnically unique and separate peoples. The categorization was based on physical attributes, which were considered a reliable indicator of intelligence and ability. The Tutsi population was awarded priority socio-economically and politically over the Hutu people, receiving better opportunities for education and employment. By the 1930s, identity cards were introduced, further institutionalizing ethnicity in Rwanda, and creating an understanding of self only through the identity of the 'other'.¹²⁶ The ethnic division of Rwanda's people continued into the post-colonial period with the intensification of the political discourse that labelled the Tutsi as 'alien other' leading to the events of the 1994 genocide.¹²⁷ The Hutu were motivated to mobilize and attack the socially constructed 'other' (i.e. the Tutsi) due to the perceived threats of increased Tutsi privilege heightened by the socio-economic crisis created by International Monetary Fund's structural adjustment programming.¹²⁸ The ongoing neighbourhood crises of ethnic tensions and the political manipulations of the socially constructed identities created a nationalist

¹²⁶ Mahood Mamdani, *When Victims Become Killers: Colonialism, Nativism and the Genocide In Rwanda* (Princeton, NJ: Princeton University Press, 2001), 76.

¹²⁷ In 1990, the Rwandan Patriotic Front (RPF) (comprised of Tutsi refugee communities located in Uganda, Zaire, and Burundi) invaded Rwanda, initiating a conflict that led to the 1994 genocide.

¹²⁸ Baines, *Stones, Skulls, Bones*, 134.

fervour, which would result in mass support for the extremist political ideas of the Hutu political elite.¹²⁹

The ethnic identification of peoples had a strong gender component in Rwanda, prior to and during the conflict. The inherently weak structural position of women in Rwanda has had a direct impact upon the type and severity of violence women face during times of war and peace. The obsession with the feminine, and the pervasive discourse concerning Tutsi sexuality, provides a view to understand the constructed roles of women, both as Hutu and Tutsi and perpetrator and victim during and after the Rwandan conflict. Due to the elevated status given to the Tutsi's beauty and intelligence by the colonial rulers, the Tutsi woman was seen as the societal and physical elite of her gender. Yet, while Tutsi women were revered from a distance, they were also seen as "potential Mata Haris, ready to use their supposed sexual advantage to subvert the nation."¹³⁰ The threat of the Tutsi woman and her sexual powers was evident by warranting the first three of the *Hutu Power Ten Commandments*, calling upon men to protect their homes and for women to protect their men from the seduction of the Tutsi woman.¹³¹ It is clear that the Tutsi women of Rwanda were targeted not only as ethnic identities, but also as 'sexed' entities, making their gender the construction for the type of attack and terror they would later endure during the genocide. As Lene Hansen asserts, "While wartime rapes on one level 'serve as a means for destruction of a nation' (Nikolic-Ristanovic 1996:

¹²⁹ Ibid., 137-140.

¹³⁰ Adam Jones, "Gender and Genocide in Rwanda," *Gendercide and Genocide*, ed. Adam Jones (Nashville: Vanderbilt University Press, 2004), 114.

¹³¹ Baines, *Stones, Skulls, Bones: Rwanda*, 136.

202), at another level, they simultaneously inscribe the nation they aim to erase.”¹³² Gender-based acts of violence are not only attacks upon the women of a nation, but also act to “install a disempowered masculinity as constitutive of the identities of the nation’s men.”¹³³

Gender Analysis of the Genocide

On April 6, 1994, Rwandan President, Juvenal Habyarimana was returning from a regional peace summit, when his plane was shot down by two missiles, killing him and his Burundian counterpart. The attack upon his plane was immediately blamed upon the Rwandan Patriotic Front (RPF),¹³⁴ and within hours, roadblocks were set up around Kigali, armed with young militiamen. The death of President Habyarimana was the tipping point needed for the Hutu nationalists to begin their attacks against the Tutsis, with massacres beginning almost immediately. This genocide was orchestrated by the Rwandan political leadership, but was carried out by the civilian population, and is marked by its extreme crudity of family member killing family member, neighbour killing neighbour. Indeed, the Rwandan genocide was unique, not only in the speed and efficiency by which the killing occurred and the use of low-tech weaponry, but also because of the mass participation of the population.¹³⁵ Characterized by the west as a “tribal slaughter,”¹³⁶ the international community refused to intervene to stop the deaths.

¹³² Hansen, *Gender, Nation, Rape*, 60.

¹³³ *Ibid.*, 60.

¹³⁴ The Rwandan Patriotic Front (RPF) comprised of Tutsi refugee communities in Uganda, Zaire, and Burundi invaded Rwanda, initiating a conflict that led to the 1994 genocide.

¹³⁵ Lars Waldorf, “Rwanda’s failing experiment in restorative justice,” in Sullivan, Dennis and Larry Tuft, *Handbook of Restorative Justice: a global perspective* (London; New York: 2006), 423.

¹³⁶ Kingsley Chiedu Moghalu, *Rwanda’s Genocide: the Politics of Global Justice* (New

The “100 days of horror”¹³⁷ resulted in the deaths of approximately 800,000 of Rwanda’s estimated population of 8 million, with an additional 2 million fleeing their homes and becoming internally displaced peoples and refugees.¹³⁸

Campaign of Sexual Violence

As Erin Baines and other scholars have noted, the killings in Rwanda were not solely ethnically motivated. As Baines asserts, there was a “gendered pattern to the violence.”¹³⁹ Men and small boys were targeted almost exclusively for death during the first month of killing. Men were considered the largest threat as they may have been aligned with the Rwandan Patriot Front, with boys and male infants being slaughtered by the militias for the same reasoning.¹⁴⁰ Tutsi women and girls were singled out as ethnic and gendered threats to Hutu power prior to the genocidal onslaught as highlighted in the *Hutu Ten Power Commandments* (mentioned in the previous section). According to Adam James, one of the most recognizable differences of this conflict from the ethnic targeting of the minority Tutsi in the past was the overwhelming increase in the abuse and murder of women.¹⁴¹ One soldier emphasizes the uniqueness of the gender-based violence campaign of the genocide: *Panrace*: “You slaughter the woman same

York: Palgrave MacMillan, 2005), 17.

¹³⁷ Baines, *Body Politics*, 487.

¹³⁸ Radha Webley, “Introduction,” *Report on Rwanda*, War Crimes Studies Center, University of California at Berkeley (2004): 1. <http://socrates.berkeley.edu/~warcrime/Papers/webley-thesis.pdf> (accessed July 26, 2008).

¹³⁹ Baines, *Body Politics*, 487.

¹⁴⁰ Alison des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch (1999), 287.

¹⁴¹ Jones, *Gender and Genocide*, 114.

as the man. That is the difference, which changes everything.”¹⁴² *Pancrace* seems to recognize the gendered difference of this conflict, where women and children were selected as primary targets of violence, whereas in the past they may have been considered inadvertent victims.

By May of 1994, Human Rights Watch reported that an increase in female victims of the conflict was evident, marking a shift by militia and military forces to the targeting of women for death: “The number of attacks against women, all at about the same time, indicates that a decision to kill women had been made at the national level and was being implemented in local communities.”¹⁴³ In fact, the order to rape and kill women came from one of the highest-ranking women in the Hutu government. This was Pauline Nyiramasuhuko, Rwanda’s then Minister of Women and Family Affairs, who was later indicted for inciting the sexual violence campaign.¹⁴⁴ According to Baines, rape was used against women for two main reasons apart from the male Tutsi population: the further degradation of the family unit and as a reminder to women (especially previously privileged Tutsi women) of their subservience as women.¹⁴⁵

Rape has historically been an element of war, especially in patriarchal societies, for the dual effect it has on the woman and the men of her community: “Women are raped by the enemy who is fully aware of how unacceptable a raped woman is to the patriarchal community and to herself.”¹⁴⁶ Another motive for the

¹⁴² Ibid., 112.

¹⁴³ des Forges, *Leave None to Tell the Story*, 296.

¹⁴⁴ Pauline Nyiramasuhuko, Rwanda’s then Minister of Women and Family Affairs, was the first woman ever tried with genocide and with rape as a crime against humanity.

¹⁴⁵ Baines, *Body Politics*, 488-489.

¹⁴⁶ Clotilde Twagiramariya and Meredith Turshen, “Favours’ to Give and ‘Consenting’ Victims

act of rape during the genocide was the so-called “root and branch”¹⁴⁷ massacres, explained by Mamdani as “pulling out the roots of the bad weeds.”¹⁴⁸ Ultimately, the “root and branch” rationale was important in supporting the argument of rape as an act of genocide at the International Criminal Tribunal for Rwanda. The crime of genocide is marked by the intent to harm and destroy the victim as a member of a group. The act of rape, perpetrated upon the Tutsi ethnic group, with the intent of destroying the ability of women to reproduce, or to reproduce children of pure Tutsi ethnicity,¹⁴⁹ was argued with success as being an act of genocide under the Genocide Convention.¹⁵⁰

Mass rape as a weapon of war is not a new phenomenon; however, the incidents of rape reported in the Rwandan conflict are staggering. According to a report by the UN Special Commission on Human Rights, at least 250,000 and up to 500,000 women were raped during the three-month genocide.¹⁵¹ As the UN Special Rapporteur on Rwanda, Rene Degni-Segui commented, “Rape was the

The Sexual Politics of Survival in Rwanda,” *What Women Do in Wartime: Gender and Conflict in Africa* (London: Zed Books Ltd., 1998), 104.

¹⁴⁷ “Root and Branch exterminations” characterized the 2nd stage of the genocide, where women (root), children and the elderly (branch), were hunted and exterminated as threats to the continuation of the Tutsi nation. M. Mamdani, *When Victims Become Killers*; 194.

Rape has long been considered a criminal act under international, but a conviction of rape as an act of genocide had not been proven, resulting in a conviction until September 2, 1998, when the ICTR convicted Jean-Paul Akayesu of genocide, including rape with the intent to destroy a group, setting the precedent for future convictions. For further, see Human Rights Watch, “Human Rights Watch Applauds Rwanda Rape Verdict: Sets International Precedent for Punishing Sexual Violence as a War Crime,” HRW (2004). <http://hrw.org/english/docs/1998/09/02/rwanda1311.htm>. (accessed August 2, 2008).

¹⁴⁸ Ibid.

¹⁴⁹ Purity of Rwanda's ethnicities is questionable; however, the rhetoric of the conflict period emphasized the desire for a pure Hutu nation and the destruction of the Tutsi nation as other. See footnote 94.

¹⁵⁰ Rape as an act of genocide, and the International Criminal Tribunal for Rwanda will be discussed further in Chapter 3.

¹⁵¹ UN Commission on Human Rights, *Report on the Situation of Human Rights in Rwanda*, Submitted by Mr, Rene Degni-Segui, Special Rapporteur of the Commission on Human Rights, January 29, 1996, para. 16. Qtd in, Neuffer, *The Key to My Neighbor's House*, 276.

rule and absence the exception.”¹⁵² Rape was committed *en masse* by the Hutu men, and has often been reported to have been of the utmost brutality, leaving women physically disabled or unable to bear children, if they survived the assault at all. As Erin Baines asserts, “Such gender-based forms of torture, including rape, inscribed ‘Hutu-ness’ and reaffirmed Tutsi difference.”¹⁵³

In Jean Hatzfields’s book, *Machete Season*, Hutu men and women speak of their firsthand experiences of the genocide from the killer’s point of view. When asked about the involvement of women in the slaughter, one killer distinguishes between the roles and circumstances of the Hutu versus Tutsi women:

Pio -“The [Hutu] women were less deciding, they were less punishable, they were less active. They were in the second rank in that activity of genocide. But really, in the Tutsi camp it was quite the opposite. The killings were more serious for the wives than for the husbands, if in addition they were raped at the end and saw their little ones get cut before their eyes.”¹⁵⁴

After the conflict, Hutu women were reported to have expressed little protest against the rape or sexual torture of the Tutsi women. This is partly due to the nationalistic fervour the majority of Hutu had fallen into, but also due to the history of hyper-sexualization of the Tutsi woman as superior to the Hutu woman as a sexual being: *Ignace* - “I did not hear many women protesting against Tutsi being raped. They knew this work of killing fiercely heated up the men in the

¹⁵² Neuffer, *The Key to My Neighbor’s House*, 276.

¹⁵³ Baines, *Body Politics*, 489.

¹⁵⁴ Jean Hatzfield, *The Machete Season: The Killers in Rwanda Speak*, Translated from French by Linda Coverdale, (New York: Farrar, Straus and Giroux, 2005), 109. *All names used in this publication were altered from the original.

marshes. They agreed on this, except of course if the men did their dirty sex work near the houses.”¹⁵⁵ This opinion was not held by all Hutu women during the conflict of course. The support of the sexual violence campaign by Hutu women illustrates the fact that women are not solely the victims of armed conflict, but can also act as perpetrators. According to Adam Jones, “the prominence of women in perpetrating the genocide ... is historically unprecedented in terms of the scale and directness of involvement.”¹⁵⁶ However, some Hutu women did not escape the sexual violence campaign completely as there were many reports of Hutu women being mistaken for Tutsi women, or being targeted because they were moderates politically.¹⁵⁷ The various Hutu women that tried to protect Tutsi counterparts were punished by the same gendered means as their Tutsi counterparts: rape and torture.¹⁵⁸

Lasting Effects of the Genocide on Women

Social Stigma

Those women who survived the sexual violence of the genocide were left with haunting effects of the crimes. Women faced social stigmatization, ostracization, and lowered feelings of self-worth including guilt and shame over the attacks experienced. Sexual violence is a stigmatizing crime anywhere in the world, but in Rwanda, recovery from this shame has been particularly difficult due to women

¹⁵⁵ Ibid., 111.

¹⁵⁶ Jones, *Gender and Gendercide*, 65.

¹⁵⁷ Nowrojee, *Shattered Lives*, 36.

¹⁵⁸ Ibid.

being valued primarily as wives and mothers.¹⁵⁹ One rape survivor describes the plight she and others face, “It’s always sad to see a girl who survived. They have no future. Some marry without really wanting to, because they are all alone. They can’t farm their parents’ land – they need a husband to help work the fields.”¹⁶⁰ The ability to marry and be provided for is extremely important in this society, where until recently, women were not entitled to own or inherit land, and still experience very low literacy levels. The women who already were marginalized in Rwanda’s patriarchal society were further hampered by the stigma of being ‘rape victims’ who were undesirable for marriage.

Children of Rape

Those women who have children born of wartime rape have the well-founded fear of being shunned by their community, as one social worker affirms: “The women who have had children after being raped are the most marginalized.”¹⁶¹ As of 1997, between 2,000 and 5,000 children—often referred to as “little *Interahamwe*’ or ‘devil’s children” —have been born to raped Tutsi women, and they have brought suffering as reminders of the rapes not only to their mothers, but to their communities.¹⁶² Communities have reportedly banished women who have kept children of rape; as one survivor reports, “The community isn’t interested in me or her. I am alone here, and I have nothing but a child from the

¹⁵⁹ Ibid., 38.

¹⁶⁰ Human Rights Watch/FIDH interview, Birenga Commune, Kibungo Prefecture (March 31, 1996). As qtd in Ibid., 38.

¹⁶¹ Ibid.

¹⁶² Twagiramariya & Turshen, *Favours to Give*, 104.

men who killed my family.”¹⁶³ Understandably, many women were not able to accept their children born of such brutality and violence. The results have been child abandonment and attempts at self-induced abortions, as abortion by a medical professional is illegal in Rwanda. One study expresses the plight in which these women find themselves:

These pregnancies are rejected and concealed, often denied and discovered late. They are often accompanied by attempting self-induced abortions or violent fantasies against the child; indeed, even infanticide. Suicidal ideas are frequently present. Some women probably committed suicide without revealing the reason when they discovered that they had become pregnant by their rapist-tormentor.¹⁶⁴

The traumatic and stressful psychological effects of pregnancies caused by rape are clear; however, these are the stories only of the women. In Rwanda today, fourteen years after the genocide, these children are becoming young adults, and must live with the stigma of knowing that they were not only conceived in violent circumstances, but that they are the lasting memory of one of the world’s darkest moments.

Health

The enduring effects of the sexual violence campaign are particularly evident in the areas of mental and physical health. Those women who were assaulted and survived saw their family members killed and discarded by the side of the road or

¹⁶³ Ibid., 104.

¹⁶⁴ Nowrojee, *Shattered Lives*, 41.

thrown into the Nyabarongo River. The physical and psychological affects of this trauma will last a lifetime and further affect subsequent generations. However, women are less likely to seek healthcare assistance because the wounds they carry with them are primarily from sexual violence. Again, the social stigma frightens women from seeking assistance; however, there are also the issues of fewer doctors and health facilities after the genocide, and the increase in poverty levels amongst women, especially those that are left as the heads of households.¹⁶⁵ Many women also hesitate to seek medical advice out of fear of discovering that they are HIV positive.¹⁶⁶ Prior to the genocide, statistics indicate that 45 to 60 per cent of Rwandan soldiers were infected with HIV.¹⁶⁷ Due to the rape campaign, the genocide's death toll continues to rise to this day as many victims were infected with HIV and are now dying of AIDS.¹⁶⁸ Due to this increase in the AIDS crisis, 65,000 underage heads of households have been left to support 350,000 children left parentless due to AIDS related deaths.¹⁶⁹ In the dire economic conditions of Rwanda after the genocide, access to healthcare professionals and medications were limited and remain so today, especially for women who are disproportionately marginalized in society.¹⁷⁰

¹⁶⁵ Ibid., 39.

¹⁶⁶ Nowrojee, *Shattered Lives*, 39.

¹⁶⁷ Twagiramariya & Turshen, *Favours to Give*, 110.

¹⁶⁸ Acquaro & Sherman, *God Sleeps in Rwanda*.

¹⁶⁹ Ibid.

¹⁷⁰ Nowrojee, *Shattered Lives*, 39.

Poverty

The overarching effect of the sexual violence campaign against women during the genocide is poverty. Women were physically and psychologically damaged, forced to witness the murders of family and friends, and experienced torture and rape of unimaginable horror. With their survival came the responsibility of healing and providing for themselves, as well as taking on the care of those in their family who had survived, as the majority of the men of the families were now dead. Women traditionally occupied positions in agriculture and domesticity in Rwanda. Due to patriarchal customary property and inheritance law, women were not entitled to their husband's or father's land, land on which they had undoubtedly always worked.¹⁷¹ One can only imagine what it was like to endure such physical and psychological trauma, and then to have lost land and/or the ability to provide and be self-sufficient. Women were exceedingly vulnerable as targets of the sexual violence campaign of the genocide, and this vulnerability carried over into the reconstruction period of the conflict, due to the increase in socio-economic disadvantages faced.

Conclusions

This brief gender analysis of the first three stages of the Rwandan genocide explains how women have been historically marginalised and disadvantaged in Rwandan society, effectively considered second-class citizens compared with men. The Hutu propaganda campaign of ethnic hatred specifically targeted Tutsi women, labelling them as sexually subversive, and it left them vulnerable to

¹⁷¹ These laws have now been updated, see Chapter 1 for a further discussion in Rombouts, *Women and Reparations in Rwanda*.

attacks on their sexuality and body. In short, the campaign was effective in gendering the ethnic violence. Those women that survived the genocide have been left further impoverished, with lasting physical and psychological traumas from the violence they endured during the genocide.

The following chapter will discuss women's specific gender-based needs in Rwanda's fourth stage of conflict, the post-conflict period, through a gendered evaluation of the transitional justice program. This evaluation will provide new insight into the difficulties women face in seeking access to justice in Rwanda. The government of Rwanda has the opportunity to alter the marginal position of women in Rwanda if women's concerns are given priority at all levels of justice programming. Recommendations for increasing the gender sensitivity of elements of the transitional justice project are provided in the final chapter, including the education of legal authorities and a gender sensitive reparations program.

CHAPTER III: TRANSITIONAL JUSTICE IN RWANDA FROM A GENDER PERSPECTIVE

Introduction

In the summer of 1994, the Rwandan Patriotic Front (RPF) defeated the Hutu rebel army and militia groups and assumed government power. Restoring justice was proclaimed a top priority for the new government as a means of establishing order and fighting impunity.¹⁷² This chapter will evaluate the three transitional justice mechanisms instituted as part of Rwanda's justice framework: the International Criminal Tribunal for Rwanda (ICTR), the national genocide trials, and the Gacaca court system. This chapter will evaluate the reasoning for the inception of specific justice mechanisms as well as their various strengths and weaknesses from a gender perspective. As reported in Chapter II, the Tutsi women of Rwanda were ethnic and gender targets during the genocide, and gender and ethnic identities determined the types of attacks they suffered. This chapter establishes that the transitional justice program is not adequately addressing the gender-based violence endured, and it highlights areas of improvement that must be addressed in order to provide justice to the female victims of the genocide.

¹⁷² Longman, *Justice at the Grassroots?* 208.

International Criminal Tribunal for Rwanda (ICTR)

United Nations Security Council (UNSC) Resolution 955 established the International Criminal Tribunal for Rwanda (ICTR) under Chapter VII of the United Nations Charter on 8 November 1994. The ICTR is situated in Arusha, Tanzania, and is mandated to prosecute those persons “responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and December 1994.”¹⁷³ The government of Rwanda urged the international community to intervene in order to restore justice by establishing an international criminal tribunal to fight impunity and assist in re-establishing order.¹⁷⁴ Later, unpredictably, the government of Rwanda was the only country to vote against the establishment of the ICTR, ultimately due to disapproval of the temporal limitation on jurisdiction.¹⁷⁵ Rwandan officials felt that the limited jurisdictional timeframe could not capture the criminal scope of the genocide as crimes of preparation, called “pilot projects for extermination” by Manzi Bakuramutsa,¹⁷⁶ had been taking place since 1990.¹⁷⁷ However, with the commencement of proceedings in January of 1997, the government of Rwanda pledged its cooperation and support for the proceedings.¹⁷⁸

¹⁷³ International Criminal Tribunal for Rwanda, “General Information,” ICTR website. <http://69.94.11.53/default.htm>. (accessed August 2, 2008).

¹⁷⁴ Longman, *Justice at the Grassroots?*, 208.

¹⁷⁵ Rwanda was a temporary member of the United Nations Security Council at the time of the resolution, affording them a vote.

¹⁷⁶ Rwanda’s Ambassador for the United Nations in 1994.

¹⁷⁷ Longman, *Justice at the Grassroots?*, 208

¹⁷⁸ Ibid.

Achievements

The primary purpose of an international criminal tribunal is to “underscore the atrocities that violate universal standards of justice and engage public opinion worldwide.”¹⁷⁹ Clearly, this is a retributive, prosecutorial process, with the hopes of deterring for future crimes of the same magnitude, and to eliminate impunity. As of June 2006, the ICTR has indicted 81 people, with nine suspects remaining at large.¹⁸⁰ To this date, the ICTR has convicted 25 of 28 accused that have stood trial.¹⁸¹ The ICTR is primarily concerned with prosecuting the masterminds of the genocide, and those politically influential members of the community that were instrumental in encouraging civilian participation. The first conviction of the ICTR (Akayesu case), included the fundamental achievement of securing the first conviction of rape as an act of genocide. Included in the convictions of the ICTR was the former Prime Minister of Rwanda, Jean Kambanda, whose conviction set two precedents: Mr. Kambanda was the first Head of State ever to be convicted of the crime of genocide, and he was the first accused ever to acknowledge guilt for the crime of genocide.¹⁸²

¹⁷⁹ Jack L. Snyder and Leslie Vinjamuri, “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28, no.3 (2003/04): 17.

¹⁸⁰ IRIN news, “Rwanda: International Criminal Tribunal for Rwanda (ICTR),” *In-Depth: Justice for a Lawless World? Rights and Reconciliation in a New Era of International Law* (July 2006). <http://www.irinnews.org/InDepthMain.aspx?InDepthId=7&ReportId=59475>. (accessed August 2, 2008).

¹⁸¹ International Criminal Tribunal for Rwanda, “Achievements of the ICTR,” ICTR website. <http://69.94.11.53/default.htm>. (accessed August 2, 2008).

¹⁸² *Ibid.*

Failures and Criticisms

Twelve years after the commencement of prosecution, the ICTR is perceived to have largely failed to achieve its mandate of providing justice for the victims of Rwanda's genocide. Critics have claimed that the ICTR "has been ill-suited to presenting a coherent account of the events leading to the genocide."¹⁸³ The desperately slow pace of the proceedings has been coupled with the "inefficiency and expense of its operation." The overall cost of the tribunal is also highly criticized. The biennial budgets of \$280,386,800 gross (\$259,391,700 net) for 2008 – 2009 has recently been approved by the General Assembly, furthering the tribunals expenditure in its final year.¹⁸⁴ Indeed, the ICTR has been described as an "embarrassing farce which added fresh insult to the Rwandan people as well as ultimately working counter to the judicial needs of their fragile society."¹⁸⁵ Some critics claim the creation of the ICTR was a means of appeasing the guilt of the west over the justice of Rwandans.¹⁸⁶ According to others, including several international human rights organizations such as Amnesty International and Human Rights Watch, the failure of the ICTR is in part the failure of key member states of the United Nations (UN) who have yet to pay their required contributions.¹⁸⁷

¹⁸³ Snyder & Vinjamuri., *Trials and Errors*, 24.

¹⁸⁴ International Criminal Tribunal for Rwanda, *General Information*.

¹⁸⁵ Colin Waugh, *Paul Kagame and Rwanda: Power, Genocide and the Rwandan Patriotic Front* (Jefferson: McFarland & Company, Inc., 2004), 168.

¹⁸⁶ Ibid.

¹⁸⁷ IRIN news, *Rwanda: International Criminal Tribunal for Rwanda*.

The work of the tribunal has been described as being “virtually invisible” to the people of Rwanda.¹⁸⁸ The UN saw the ICTR’s location in Arusha as a necessity considering the high ethnic tensions remaining in Rwanda, and the desecration of the capital’s general infrastructure. However, holding the tribunal in neighbouring Tanzania has done “little to strengthen domestic institutions or to enhance the protection of political and civil liberties in Rwanda.”¹⁸⁹ The government of Rwanda, which has had a tense partnership with the ICTR since its inception, has suggested that the tribunal was “more concerned with due process and the rights of the accused than it was with holding leaders of the genocide accountable.”¹⁹⁰ Having established its own genocide law in order to prosecute suspected genocidaires who will not be prosecuted by the ICTR, the government of Rwanda has been prosecuting and sentencing to death participants of the genocide who have less collective responsibility (as opposed to those who influenced and incited multiple mass killings) than those facing a maximum prison sentence of life under the tribunal’s laws. Remarkably, the tribunal’s mandate is to cease at the end of 2008, with appeals progressing until 2010.¹⁹¹ Those cases that are unfinished or are yet untried will be transferred to Rwanda for prosecution by the national judicial system.

¹⁸⁸ Snyder & Vinjamuri., *Trials and Errors*, 24.

¹⁸⁹ *Ibid.*, 25.

¹⁹⁰ *Ibid.*

¹⁹¹ IRIN news, *Rwanda: International Criminal Tribunal for Rwanda (ICTR)*.

Strengths and Weaknesses of the ICTR from a Gender Perspective

The genocide in Rwanda was marked by widespread sexual violence, resulting in the rape of hundreds of thousands of women. The demonizing of Tutsi sexuality was propagated by Hutu hate propaganda that incited the sexual violence against women and girls. Women were raped and mutilated in public, by gangs and individuals, leaving them scarred and traumatized both mentally and physically. The commonality of sexual violence during the genocide prompted the UN Special Rapporteur on Rwanda, Rene Degni-Segui, to comment that "Rape was the rule and absence the exception."¹⁹² Rape, when committed on a grand scale, is defined as a crime against humanity, and is considered a violation of the Geneva Conventions. Rape is also a crime of genocide if inflicted with the intent "to destroy in whole or in part, a national, ethnic, racial or religious group through killing or serious bodily harm."¹⁹³ The ICTR concluded rape was an act of genocide in its first judgement, in the case against Jean-Paul Akayesu. The subsequent conviction of Akayesu marked the first conviction of rape as an act of genocide, and suggested that the prosecution of sexual violence was a priority of the ICTR. Due to the sheer numbers of sexual assaults, it has been suggested that virtually every case before the ICTR should carry the charge of inciting or inflicting rape.¹⁹⁴ In fact, the opposite is occurring, with only 30% of the adjudicated cases including rape charges.¹⁹⁵ There have been only two actual

¹⁹² Neuffer, *The Key to My Neighbor's House*, 276.

¹⁹³ Nowrojee, *Your Justice is too Slow*, 2.

¹⁹⁴ *Ibid.*, iv.

¹⁹⁵ *Ibid.*

convictions, including sexual violence charges, and none of the acquittals for rape have been appealed by the Prosecutor's Office.¹⁹⁶

When women in Rwanda are asked what they want from the tribunal, they express that they desire acknowledgement, and for the acts committed against them to be condemned by the international community.¹⁹⁷ "They want the ICTR to say loudly and in no uncertain terms that what was done to women was a crime of genocide, and that as rape survivors they did not willingly collaborate with those who committed genocide, who kept them alive to rape."¹⁹⁸ Many women who were raped during the genocide are now infected with HIV/AIDS. For those women, the chance to testify and have their truth witnessed may never come. As one woman expresses:

For those of us on the road to death, this justice will be too slow. We will be dead and no one will know our story. Our families have been killed and our remaining children are too young to know. What happened to us will be buried with us. The people for whom this tribunal was set up for are facing extinction—we are dying. We will be dead before we see any justice.¹⁹⁹

At the beginning of the ICTR's mandate, the Prosecutor's Office had a limited understanding of sexual violence crimes and how to address sexual violence victims during investigations and trials. The tribunal had no witness protection program, and investigators would arrive in communities to conduct interviews in

¹⁹⁶ Ibid.

¹⁹⁷ Ibid., 6.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

their conspicuous white UN vehicles.²⁰⁰ Investigators claimed that women would not talk about being raped. However, victims have stated that was not due to a lack of desire to tell their story, but primarily due to safety concerns and fears of community ostracization.²⁰¹ The investigators of the Prosecutor's Office reportedly had "little to no experience investigating sex crimes."²⁰² This resulted in the investigators rarely inquiring about rape in the course of their interviews.²⁰³ In some instances, it has been reported that criminal cases have moved forward without sexual violence charges, despite strong evidence of these crimes being committed.²⁰⁴ Binaifer Nowrojee reports: "In a significant number of cases, rape charges have been added belatedly as amendments, as an afterthought, rather than an integral part of prosecution strategy that acknowledges that rape was used as a form of genocidal violence."²⁰⁵ The ICTR lacks a consistent approach to the investigations and prosecution of sexual violence against women, and the inconsistency has been exacerbated by the different approaches of the four Chief Prosecutors that have held office.

There are many female victims of the genocide who express a desire to testify and have their truths witnessed at the ICTR,²⁰⁶ however, few will get the opportunity and those that do are not participating without sacrifice and risk. Women must leave their families and communities in order to testify in Tanzania.

²⁰⁰ Neuffer, *The Key to My Neighbor's House*, 264.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Nowrojee, *Your Justice is Too Slow*, 7.

²⁰⁵ Ibid., 7.

²⁰⁶ See interviews in Nowrojee, *Your Justice is Too Slow*; and Neuffer, *The Key to My Neighbor's House*.

While this journey is financed by the ICTR,²⁰⁷ women are losing time at work and are being forced to leave the security of family and community behind. In addition, women face the possible stigma of being recognized as rape survivors within their communities upon their return. During their time at the ICTR, women have access to psychological counselling; yet, this may not prepare them adequately for the adversarial format of the trial environment. While women may be prepared to testify, legal counsels and judges may not have the adequate sensitivity education to avoid re-traumatizing the victim through testimony and cross-examination. It has been reported at the ICTR that women have been “harangued and harassed” in cross-examination without intervention by judge and counsel.²⁰⁸ In one now infamous case, judges were heard laughing at a victim’s rape testimony:

As lawyer Mwanyumba ineptly and insensitively questioned the witness at length about the rape, the judges burst out laughing twice at the lawyer while witness TA described in detail the lead-up to the rape One of the more offensive questions put by defence lawyer Mwanyumba included reference to the fact that the witness had not taken a bath, and the implication that she could not have been raped because she smelled. Other questions asked were, “Did you touch the accused’s penis?”, “How was it introduced into your vagina?” and “Were you injured in the process

²⁰⁷ International Criminal Tribunal for Rwanda, “Witnesses and Victims Support Section.” ICTR website. <http://69.94.11.53/default.htm>. (accessed August 2, 2008).

²⁰⁸ Nowrojee, *Your Justice is Too Slow*, 23.

of being raped by nine men?” To which witness TA responded, “If you were raped by nine people, you would not be intact.”²⁰⁹

The three judges involved never apologised to the witness and never received any form of reprimand.²¹⁰ Unfortunately, this witness TA was also an example of the absence of follow-up programming at the ICTR. This is an important element for all witness testimony, but principally for Rwanda’s women who risk the social stigma of being identified as a rape victim, as their societal value is marked by their virtue. TA’s community discovered that she had testified as a rape victim; consequently, her fiancé left her and her house was attacked.²¹¹

Despite emotional and security concerns many female victims of the genocide maintain the belief that testifying about their own experiences in front of the international community will help bring them justice for the crimes endured. These women sacrifice personal security in order to take part in the justice process; nonetheless, this process in the form of the ICTR has failed them. The tribunal’s slow pace, and lack of will to prosecute sexual violence crimes, even after the precedent setting conviction of rape as an act of genocide, clearly states that women and the crimes perpetrated against them are considered to be of inferior importance by those awarding justice.

National Genocide Trials

In July 1994, the Rwandan Patriotic Front seized power in Rwanda and immediately began arresting thousands of people accused of participating in the

²⁰⁹ Ibid., 24.

²¹⁰ Ibid.

²¹¹ Ibid.

killings. By the end of 1996, as returnees arrived from Hutu refugee camps, the number of genocide suspects imprisoned reached 120,000.²¹² As mentioned previously, the judicial administration was devastated during the genocide, with “the vast majority of judges, lawyers, and magistrates dead or in exile.”²¹³ In addition to the lack of judicial staff to prosecute genocide suspects, Rwanda did not have a “genocide law” that covered the crimes of genocide in its penal code. Therefore, an estimated 120,000 suspects were imprisoned in conditions fit for 40,000 prisoners without being charged for their crimes, as there was not yet a law in Rwanda that existed for genocide and even if there had been one no one was trained to actually prosecute those charged.²¹⁴ The first genocide trials began in December 1996 with 7,181 being judged by the summer of 2002.²¹⁵ This may appear to be justice at breakneck speeds compared to the slow pace of the ICTR; but the judicial system was still overwhelmed by the number of suspects imprisoned and a lack of fully qualified staff and funding.

Achievements

Once the violence in Rwanda subsided in the summer of 1994, the new government sought justice for those victims of the genocide as a means to re-

²¹² Longman, *Justice at the Grassroots?*, 208.

²¹³ Ibid.

²¹⁴ Phil Clark, “When the Killers Go Home,” *Dissent Magazine Online* (Summer 2005): 205. <http://www.dissentmagazine.org/article/?article=205>. (accessed November 20, 2006).

²¹⁵ President of the High Court Johnston Busingye in a paper delivered at the Centre for International Legal Cooperation, Seminar on Legal and Judicial Reform in Post Conflict Situations and the Role of the International Community (Dec 7, 2006) and published as “Reality and challenges of legal and judicial reconstruction in Rwanda,” *The New Times* (December 31, 2006). As qtd in, *Law and Reality*, Section VI, para 22.

establish order and fight impunity.²¹⁶ This justice came in the form of national genocide trials that began at the end of 1996 after the reconstruction of the national judicial system. The reestablishment of the judicial infrastructure and administration is itself a commendable feat as the majority of the judicial staff had been killed or had fled into exile during the genocide. The Ministry of Justice literally had to be pieced back together: "Holes in roofs were plugged, walls and floors repaired and painted, windows installed, water, electricity, and telephone lines restored."²¹⁷ Legal texts and all forms of stationary had been stolen or destroyed, including copies of the penal code and the code of criminal procedure.²¹⁸ In 1995, the government began a recruitment campaign for lawyers, legal assistants and judges.²¹⁹ Understandably, many of the people hired had little to no training in the legal field requiring the government to fast track legal training for all levels of judicial service. The UN found that by May of 1996, of the 258 judges and prosecutors presiding in Rwanda, only a very small amount had any legal training.²²⁰

Although Rwanda had ratified the Geneva Conventions and Genocide Convention, it did not have a legal provision for prosecuting the crime of genocide under the domestic penal code. The Transitional National Assembly passed Rwanda's genocide law, or Organic Law 8/96, on August 9, 1996; with its

²¹⁶ Longman, *Justice at the Grassroots?*, 208.

²¹⁷ HRFOR Status Report, "The Administration of Justice in Post-Genocide Rwanda," June 1996, at 4, para. 21. As quoted in Human Rights First, *Prosecuting Genocide in Rwanda: A Human Rights First on the ICTR and National Trials*. Human Rights First website (July 1997), Section VIII, 2B1, para 1. <http://www.humanrightsfirst.org/pubs/descriptions/rwanda.htm>. (accessed August 3, 2008).

²¹⁸ Human Rights First, *Prosecuting Genocide in Rwanda*, Section VIII, 2B1, para 2.

²¹⁹ *Ibid.* Section VIII, 2B2, para 2.

²²⁰ *Ibid.*

enactment taking place on September 1, 2006 by authority of the Constitutional Court.²²¹ The genocide law's provisions extend past the 'intent' to harm and destroy a 'group' definition of genocide by including provisional crimes "in relation with events,"²²² making crimes of theft and property destruction acts of genocide.²²³ This legal provision drastically increased the number of genocide suspects to be brought before the judicial system, which was already functioning outside of its capacity in 1996 (at the law's inception) with an estimated 120,000 detainees awaiting trial.²²⁴ By 2002, some 7,181 suspects had seen their day in court, but tens of thousands of suspects languished in deplorable prison conditions. Despite the achievement of rejuvenating the Ministry of Justice, the government of Rwanda has fallen far short of achieving the expectations of justice held by its citizens.

Failures and Criticisms

Criticisms of the national genocide trials in Rwanda abound. These range from concerns over prison conditions and unlawful incarceration of suspects to the lack of investigation and prosecution of sexual violence crimes. The most pressing of Rwanda's human rights issues is the "overcrowding and inhumane conditions" prevalent in its prison system.²²⁵ The mass arrest of over 100,000

²²¹ Ibid., Section VIII, 2C, para 2.

²²² Organic law 8/96 of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed since 1 October 1990, article 1. As qtd in. Human Rights Watch, *Law and Reality: Progress and Judicial Reform in Rwanda*, HRW (July 2008). Section V, para 9. <http://www.hrw.org/reports/2008/rwanda0708/rwanda0708web.pdf>. (access August 3, 2008).

²²³ Human Rights Watch, *Law and Reality*, Section V, para 9.

²²⁴ Human Rights First, *Prosecuting Genocide in Rwanda*, Section VIII, 2C, para 2.

²²⁵ Ibid., 2E, para 1.

genocide suspects overwhelmed the judicial and prison systems. The Rwandan government stated that the arrests were to ensure the pursuit of justice and to eliminate the possibility for vengeance.²²⁶ However, there was no law yet to punish them, leaving the prisoners to languish in overcrowded cells, with reports of inmates succumbing to deaths from “overcrowding or asphyxiation, tuberculosis, and dysentery.”²²⁷ There have also been reports of prisoner abuse and torture, and lack of food and basic medicines.²²⁸ In the worst prison, Gitarama, “there were eight to nine deaths per day between February and May 1995 with a total of 867 prisoners dying in Gitarama from December 1994 to June 1995.”²²⁹ Female perpetrators were in prison blocks separate from the men; however, they complain of similar conditions: overcrowding, frequent illness and ill-treatment by authorities.²³⁰

In addition to the dreadful prison conditions faced, many inmates have suffered because case files or official charges have not been laid.²³¹ Those of the accused that had their day in court were subject to the death penalty for category one offenses, until July of 2007.²³² In 1998, the first executions of convicted genocide participants took place in public at the sports stadium in

²²⁶ Neuffer, *The Key to My Neighbor's House*, 257.

²²⁷ *Ibid.*, 260.

²²⁸ Human Rights First, *Prosecuting Genocide in Rwanda*, Section VIII, 2E, para 3.

²²⁹ HRFOR Status Report, *Administration of Justice*, *supra* note 112, at 7, para 43. As cited in, Human Rights First, *Prosecuting Genocide in Rwanda*, Section VIII, 2E, para 3 .

²³⁰ Nicole Hogg, *Women accused of Genocide in Rwanda*, Women's Rights Coalition website (Fall 2001). http://www.womensrightscoalition.org/site/publications/vol4No1/womenaccusedofgenociderwanda_en.php. (accessed August 5, 2008).

²³¹ des Forges, *Leave None to Tell the Story*, 749.

²³² *Ibid.* Category One offences under the Genocide Law account for the most serious of crimes: organizers and leaders of genocide, notorious killers, and persons who committed 'sexual torture.'

Kigali.²³³ Strongly condemned by the United Nations and international human rights organizations, the executions by rifle were conducted in front of approximately 20,000 spectators.²³⁴ The government of Rwanda's reasoning for the public executions was that "Justice must be seen to be done."²³⁵ However, must also be seen, as fair to be legitimate, and the innocent must be protected. The Hutu population commonly expresses concerns over the ability of the government of Rwanda to produce a fair justice. The retributive justice deployed by the government, and the poor conditions with which they treat the accused, have resulted in accusations of a Tutsi victor's justice in Rwanda.²³⁶

Strengths and Weaknesses of the National Trials from a Gender Perspective

Many of the strengths and weaknesses of the national genocide trials are similar to those of the ICTR. They encompass the possibility of re-victimization during testimony and community stigmatization of "rape victims." However, the trial system also provides a forum for women to tell their story and have the crimes perpetrated against them documented and condemned as punishable under law and therefore unacceptable by the community. Some differences marking the national trial system (compared to the ICTR) are the prison conditions suspects are forced to endure, the lack of sufficient legal advice and counselling provided to witnesses and perpetrators, insufficient legal training for judicial staff; and

²³³ The death penalty was abolished in Rwanda in July 2007 in an effort to entice countries holding genocide suspects to return them to Rwanda for judgement.

²³⁴ Neuffer, *The Key to My Neighbor's House*, 337.

²³⁵ *Ibid.*, 338.

²³⁶ For discussions of victor's justice in the Rwanda situation: Tiemessen, *After Arusha*, 65; Mamdani, *When Victims Become Killers*, 272-273; and Human Rights First, *Prosecuting Genocide in Rwanda*, Section II, para 6.

inadequate privacy and protection for witnesses, all the same problems as experienced with the ICTR. The factors that are similar in the two retributive systems are the society-based fear of stigmatization, issues concerning personal security, and an inadequate level of sexual violence education amongst the judicial community.

According to Human Rights Watch (HRW), Rwanda is an example of “both the prospects and limits of efforts to achieve post-conflict accountability at the national level for sexual violence crimes.”²³⁷ The primary vehicle for addressing sexual violence crimes in a transitioning environment is through national trials. Rwanda is no different, as the vast majority of those who directly committed sexual violence crimes will not be tried by international tribunals since the latter are primarily concerned with the masterminds of the conflict.²³⁸ Rwanda’s national court system has managed to prosecute a shockingly small number of cases with sexual abuse charges. From December 1996 to December 2003, 9,728 persons were tried on genocide charges.²³⁹ In a study conducted of 1,000 of these cases, HRW determined that only 32 of these cases included charges of sexual violence.²⁴⁰ As a relative marker for how seriously the government takes the prosecution of the sexual violence crimes, it would be fair to say that gender-based violence has not been a priority of prosecution and is therefore not a priority of the government’s justice program.

²³⁷ Human Rights Watch, *Law and Reality*, Section IV, para 11.

²³⁸ Ibid.

²³⁹ Human Rights Watch interview with NGO representative, Kigali, March 30, 2004. This figure refers to the number of accused persons that have been tried rather than the total number of trials. As cited in Ibid., para 12.

²⁴⁰ Human Rights Watch, *Law and Reality*, Section IV, para 12.

Women interviewed by HRW state that when they do report the crimes of rape, their complaints are not taken seriously, and often they hear of men they have accused of raping them being prosecuted but without rape charges attached to their cases.²⁴¹ In addition, when reporting crimes to officials, women are made to feel that their complaints are not of importance.²⁴² Prosecutors cite a lack of sexual violence charges based upon a lack of reporting by victims;²⁴³ this is due primarily to the lack of privacy and security protections afforded women that do report such crimes. HRW identifies the following as barriers to justice for genocide rape victims:

...the particular context of April-July 1994, one of mass violence and social disorder, and its impact on national accountability mechanisms ... the failure to define rape and other gaps in statutory law; systematic weaknesses within the police, Prosecutor's Offices and judiciary; and cultural and social obstacles.²⁴⁴

Of particular concern regarding social stigma and security is the fact that the Rwandan Code of Criminal Procedure does not protect the identity of those who provide witness testimony; the names of girls and women who voiced charges against the accused may be printed in final judgements.²⁴⁵ This practice discourages women from making complaints and from providing testimony, effectively reducing their access to justice. The national genocide trials were charged with an enormous burden of processing over 100,000 suspects for

²⁴¹ Ibid., para 16.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid, para 21.

²⁴⁵ Ibid., para 36.

crimes of genocide. This mechanism was to be the main source of justice for women of sexual violence during the genocide. However, the lack of gender-based violence education, resources, and will on the part of the Prosecutor's Office has seen few victims of wartime gender-based violence crimes be awarded with the justice that the genocide law was enacted to provide.

Gacaca

'Gacaca,' (ga-ca-cha), the Kinyarwanda word for "justice on the grass,' has been recognized in Rwandan society as a means of adjudicating community disputes for three hundred years. Gacaca in its traditional form can be defined as, "a method of dispute resolution, where respected elders (*inyangamugoyo*, literally 'those who detest disgrace') adjudicated disputes over property, inheritance, personal injury, and marital relations. Punishment was not individualized; rather, family and clan members were also obligated to repay any assessed judgment."²⁴⁶ In 1998, the Rwandan government sought to reintroduce this judicial process as a means of clearing out overcrowded jails, and of achieving the community based justice that the Tutsi population so desperately wanted. The Gacaca law was formally adopted in 2001²⁴⁷ and with the election of 260,000 judges to oversee these 'grass courts', a revival of indigenous restorative justice was underway.²⁴⁸ Gacaca court proceedings commenced in January of 2005, after several years of pilot programs, which tested the

²⁴⁶ Waldorf, *Rwanda's failing Experiment*, 425.

²⁴⁷ The Gacaca Law was revised in 2004 to include recommendations from the Pilot Program. Further revisions were entrenched in the 2006 version of the law.

²⁴⁸ Lyn S. Graybill, "Ten Years After, Rwanda Tries Reconciliation," *Current History* (May 2004): 204.

responsiveness and structure of the process. Gacaca has been publicly touted as a restorative justice model “rooted in local, customary practices,”²⁴⁹ but it has also been characterized as a hybrid retributive/restorative system, as it incorporates: “confessions *and* accusations, plea-bargains *and* trials, forgiveness *and* punishment, community service *and* incarceration.”²⁵⁰

The Rwandan government turned to Gacaca as means of speeding up the judicial process and emptying the jails, which had been occupied at over capacity levels since 1994 by genocide suspects. The prosecution of these suspects began in 1996; however, with approximately 120,000 prisoners in regional jails, with minimal numbers having case files years after their imprisonment, it was estimated that it would take the Rwandan judicial system up to 150 years to process all suspects’ cases.²⁵¹ Gacaca has been taken from a traditional justice system characterized by accessibility, informality, public participation, restitution, reconciliation, and social pressure and converted into a new form for hybrid justice, complete with formal institutions, “intimately linked to the state apparatus of prosecutions and incarceration, and applying codified, rather than customary law.”²⁵² Such experiments with hybrid justice systems have usually failed:

Linking the two systems tends to undermine the positive attributes of the informal system. The process becomes no longer voluntary and is backed up by state coercion. As a result, the court need no longer rely on social

²⁴⁹ As listed in Waldorf: Cobban 2002a, 2002b; Drumbl 2002; Harrell 2003; Power 2003.

²⁵⁰ Original emphasis. Waldorf, *Rwanda’s failing Experiment*, 422.

²⁵¹ Stephanie Wolters, “The Gacaca Process: Eradicating the culture of impunity?” *Institute for Security Studies Situation Report* (August 5, 2005): 1.

²⁵² Waldorf, *Rwanda’s failing Experiment*, 425. *Gacaca law passed in 2001, most recently amended in June 2006.

sanctions, and public participation loses its primary importance ...
Procedural requirements invariably become greater and public participation is curtailed.²⁵³

The traditional Gacaca process was never used to try serious crimes like murder and manslaughter, let alone genocide. In addition to murder and manslaughter, Gacaca is responsible for trying assaults (not including sexual)²⁵⁴ and property crimes related to the genocide.

Achievements

Tangible achievements of the Gacaca process are difficult to uncover as of yet. The Indemnification Fund (Fonds d'Indemnisation) (FIND), which first appeared in the 1996 Genocide Organic Law, has subsequently been suggested as an appropriate reparations scheme to be incorporated within Gacaca. However, this reparations component remains in draft form and has not yet been written into law. I include the FIND draft as an achievement because it is the best hope for restitutive reparations payments in Rwanda's transitional justice program to date. The investigation phase of the Gacaca process took place from January 2005 to July 2006; evidence in the form of accusations and confessions was collected from the various communities.²⁵⁵ From information collected, the judges

²⁵³ J. Stevens, *Traditional and Informal Justice Systems in Africa, South Asia, and the Caribbean* (Paris: Penal Reform International, 1998). As qtd in Waldorf, 425.

²⁵⁴ Sexual crimes are reported and determined in the preliminary stages of Gacaca, which were also publicly held community forums. Once it was determined that a sex crime was committed, the accused would be turned over the national courts. However, due to lack of privacy and fear of ostracization, many women did not testify or report sex crimes. This is discussed further in the next section.

²⁵⁵ Bert Ingelaere, "The Gacaca Courts in Rwanda," In *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, eds., Luc Huyse and Mark Salter (Stockholm: International Institute for Democracy and Electoral Assistance): 41.

categorized the accused into three categories relevant to the severity of crimes, with level one resulting in the accused being tried by the national genocide courts. At the end of the information collection phase, the National Service of the Gacaca Courts reported that 818,564 individuals would face prosecution in the Gacaca Courts for genocide-related crimes.²⁵⁶ In July 2006, the trial phase commenced, with as many as 10,000 persons being tried every month until July 2007.²⁵⁷ The Gacaca courts are scheduled to be held until everyone has been tried, but the authorities are under great pressure to increase the already rapid speed by which these proceedings are to be held due to the vast numbers of accused.²⁵⁸

Failures and Criticisms

The fundamental weakness of the modern Gacaca system lies in the framework of the system itself. Although promoted as a form of restorative justice to assist in the reconciliation of the community, the Gacaca courts are, in fact, courts with judges that are mandated to conclude guilt or innocence by way of the state constructed law. Lars Waldorf highlights four fundamental flaws from a restorative justice perspective: “1) it is not truly participatory; 2) it provides no compensation to the victims; 3) it is ‘victor’s justice;’ and 4) it risks imposing collective blame on the Hutu.”²⁵⁹ For restorative justice to be successful, it must include the active and willing participation of the community that the crime

²⁵⁶ Government of Rwanda, “Rwanda, Report on Collecting Data in Gacaca Courts,” (Kigali: National Service of the Gacaca Courts, 2006). Ibid, 42. *Of these numbers, 44,204 are not in Rwanda, and another 87,063 are deceased.

²⁵⁷ Ingelaere, *The Gacaca Courts*, 43.

²⁵⁸ Ibid., 43.

²⁵⁹ Waldorf, *Rwanda’s Failing Experiment*, 429.

affected. Participation for Gacaca is difficult to achieve voluntarily for several reasons. Some 90% of Rwandans are subsistence farmers; they simply cannot sacrifice a days away from tending their fields. In addition, community-members see this new form of Gacaca as an “instrument of the state,” as opposed to the healing mechanism of its original form.²⁶⁰

Concerning those Tutsi that remain, their reliability as witnesses is called into question, since many were in hiding (where they heard events instead of being ‘eyewitnesses’ to them) or were so traumatized during events, their memories may not be accurate and/or reliable. Additionally, their memories of the crimes they did witness may be clouded now that the events are 14 years past. In addition, the Hutu and Tutsi naturally view the courts very differently: “Hutu generally view it as a way to release family members wrongly imprisoned, while Tutsi survivors often see it as a disguised amnesty for those who killed their family members.”²⁶¹ Confessionals, encouraged by Gacaca, that are without guilt or sorrow may lead to more hurt and separation of the community rather than a restoration. Not only are the criminals who murdered and raped their family members not expressing sorrow for their actions, but they are receiving reduced sentences for their crimes, or returning to the communities without any convictions, living side by side with survivors. Victims expect confessions to be truthful to warrant the reduced sentence offered by Gacaca; however, forgiveness should always be the prerogative of the individual victim.

²⁶⁰ Ingelaere, *The Gacaca Courts*, 44.

²⁶¹ Waldorf, *Rwanda's failing Experiment*, 428.

As Waldorf acknowledges from surveys of confessions in several transitioning countries, “perpetrators rarely make remorseful confessions. Even when they do, their expression of remorse is usually undermined by the language of justification, excuse, and victimhood.”²⁶² It is often the case that offenders expect forgiveness just for having asked for it from the victim. The killers in Machete Season prove this point with their testimonials:

Jean-Baptist: I am certain of being forgiven, because I confessed, because I am convinced of my offense and determined to live in the right way, like before.²⁶³

Adalbert: If I am pardoned by the authorities, if I am pardoned by God, I *will* be pardoned by my neighbours.²⁶⁴

The heavy emphasis placed upon forgiveness of the victims in Gacaca, may prove to simply re-victimize the survivors as they are being asked to give more of themselves emotionally than are the perpetrators: “Where the violations are brutal, severe, and intimate, it can be a new assault to expect the victims to forgive Fundamentally, forgiveness must remain a choice by individuals; the power to forgive must be inextricable from the power to choose not to do so, it cannot be ordered or pressured.”²⁶⁵

There remains very little incentive for the Hutu to participate in this process. Many express fears of being accused of wrongdoing or being a

²⁶² Ibid.

²⁶³ Hatzfield, *Machete Season*, 203.

²⁶⁴ Ibid, 204. *Emphasis added.

²⁶⁵ Minow, Memory and Hate: Are There Lessons from Around the World? In *Breaking Cycles of Hatred: Memory, Law, and Repair*, eds., Martha Minow and Nancy L. Rosenblum. (Princeton: Princeton University Press, 2002). As qtd in Waldorf, *Rwanda's failing Experiment*, 422.

bystander to genocide. The 2004 Gacaca Law imposes participation due to the previous lack of voluntary participation. According to the law, “every Rwandan citizen has the duty to participate in the Gacaca courts activities” and prison sentences are imposed (3 months to one year) for those who remain silent or refuse to testify.²⁶⁶ Of major concern is that the Gacaca process is just another means by the RPF fronted government to impose a victor’s justice upon the people. The Gacaca trials were created to prosecute the crimes of the Hutu during the genocide only, but not the crimes of the RPF militia, which is accused of partaking in murderous reprisals after gaining control in July 1994. Any dissension expressed towards the RPF is seen as promoting “genocidal ideologies,” and the government has been accused by international civil society organizations such as the British Broadcasting Corporation (BBC) and CARE International of promoting such ideas.²⁶⁷ In addition, the criminalizing of property crimes indirectly targets the poor and women who were left to support their families during the genocide by any means possible when their husbands left to participate in the killings. There is no reasonable argument that can equate looting of property with the ‘intent to destroy’ an ethnic group.²⁶⁸

²⁶⁶ Organic Law no. 6/2004 of 19 June 2004 on the Establishing of the Organisation, Competence and Functioning of Gacaca Courts charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity, committed between October 1, 1990 and December 31, 1994. As qtd. in *Ibid.*, 429.

²⁶⁷ Frontline. “Ghosts of Rwanda.” PBS.org. (2005). <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/>. (accessed October 25, 2006).

²⁶⁸ These crimes would be argued in the realm of reasonability for survival, however, the accused are being charged with genocide. The crime of property theft and destruction does not reasonably equate to the destruction of an ethnicity.

Strengths and Weaknesses of Gacaca from a Gender Perspective

The Gacaca justice system is a hybrid of retributive and restorative elements, from which reconciliation and restoration for the community is desired and expected. Each of these forms of justice has positive and negative effects for women. The lasting effects of the sexual traumas inflicted upon the female victims of the genocide are, in the very least, immense, as women have been scarred both physically and mentally from their attacks. It is clear that with such trauma a form of healing is required. For female survivors of sexual violence, it is common to want the legal process to recognize and convict the perpetrator as it “pronounce(s) societal disapproval” of the crime.²⁶⁹ However, the traditional prosecutorial process has several potential problems concerning re-victimization during the testimonial process, through stigmatization of the crime itself and the accusation that women were complicit in their own victimization.

According to the HRW report *Struggling to Survive*, the Gacaca process “has heightened women’s fears of stigmatization, community rejection, and retraumatization.”²⁷⁰ Women are given the option at Gacaca trials to give testimony concerning sexual violence ‘in camera,’ or in writing for protection of privacy. However, HRW calls these actions “inadequate,” due to the small communities in which the courts are held.²⁷¹ Furthermore, many women interviewed by HRW did not even know that they had the option to testify in

²⁶⁹ Waldorf, *Rwanda’s failing Experiment*, 424.

²⁷⁰ Human Rights Watch, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda*. Vol 16, no. 10(A) (September 2004). <http://www.hrw.org/reports/2004/rwanda0904/>. (accessed August 2, 2008). Section V, para 26.

²⁷¹ *Ibid.*

private.²⁷² Reports of ‘snickering and accusations of lying have been reported at Gacaca trials where women have testified to sexual violence charges.²⁷³ Women have stated that they are unwilling to testify in this public process due to fear of their husbands abandoning them for being rape victims. Women who escaped the attacks without contracting HIV/AIDS or without noticeable outward trauma are less likely to testify for fear of being viewed as unmarriageable.²⁷⁴ Women also face threats to their personal security when testifying in Gacaca’s open and public forum. According to Penal Reform International, “rape victims, whose gacaca testimony may lead to life imprisonment or the death penalty for their alleged rapists, commonly face threats by fellow community members.”²⁷⁵

M. Kay Harris has called restorative justice a “feminist vision of justice;”²⁷⁶ however, this does not imply that restorative mechanisms are suited for all women or all crimes. The story-telling narrative of restorative processes is considered one of the most positive aspects of the process, and an essential element to the admittance of truth; however, this truth may be impossible to uncover due to the nature and gravity of the crimes committed. Studies have found that victims themselves have difficulty telling truths “due to shame or fear

²⁷² Ibid.

²⁷³ Ibid., para 27 & 28.

²⁷⁴ Ibid., para 31.

²⁷⁵ Penal Reform International, *Research on the Gacaca: Report V* (Kigali: September 2003), 9; as cited in Ibid., para 31. <http://www.penalreform.org/resources/rep-ga4-2003-guilty-plea-en.pdf>. (accessed August 3, 2008).

²⁷⁶ *Gaarder and Presser essay is an analysis of the concept of restorative justice as feminist justice, inspired by the article: Harris M.K., “Moving into the new millennium: toward a feminist vision of justice,” in H.E. Pepinsky and R. Quinney, eds., *Criminology as Peacemaking*, (Bloomington, IN: Indiana UP, 1991). Gaarder, Emily and Lois Presser, “A feminist vision of justice? The problems and possibilities of restorative justice for girls and women,” Sullivan, Dennis and Larry Tuft, *Handbook of Restorative Justice: a global perspective*. (London; New York: 2006), 485.

of retaliation; victims tailor their truths for the sake of drawing empathy; and participants are unsupportive.”²⁷⁷ In Rwanda, where the perpetrators are returning to the communities where they participated in systematic massacres, there may be a sense of a heightened threat from facing the offender, especially if that victim has suppressed their trauma for coping purposes.²⁷⁸ Tutsi female participants at Gacaca trials may also face a degree of ‘un-supportiveness’ from other participants in addition to the “power differentials” that may exist between victim and offender: “When one attempts to bring into conversation parties who are unequal, it is likely that the more powerful person will have his or her way.”²⁷⁹ In order for restorative justice to be achieved, the community must be supportive of the victim or else the reintegrative shaming aspect of the process will be unsuccessful. In a related notion, “restorative justice must not assume that communities have enough resources – emotional, material, or other – to either support women or adequately sanction men’s violence;”²⁸⁰ This is why reparations programs, and justice mechanisms that get to the root of cultural and gender inequalities are essential for supporting the women survivors of the genocide.

²⁷⁷ Gaarder, et al., *A feminist vision of justice?*, 485.

²⁷⁸ Kathleen Daly, “Sexual Assault and Restorative Justice,” in *Restorative Justice and Family Violence*, eds., H. Strang and J. Braithwaite (Cambridge: Cambridge University Press, 2002), 65. As qtd in Gaarder & Presser, *A feminist vision of justice?*, 486.

²⁷⁹ *Ibid.*, 488.

²⁸⁰ *Ibid.*

As the Gacaca trials have only recently commenced (March 2005), very few testimonials or empirical studies assessing levels of justice attained, including gender-based results, have been produced.²⁸¹ The few testimonials that do exist, suggest that the victims are weary and unprepared for the return of perpetrators: “It is frightening for us survivors to see these people back here. Can we trust them not to repeat what they did to us before? They might not have received enough lessons from the government [in the solidarity camps]. ... For most of us survivors, the release was a mockery. Haven’t we suffered enough already?”²⁸² There are also rumours of reprisals and vengeance due to the lack of knowledge given to the public about the exact nature of the Gacaca process. In late 2003, a group of returned detainees in southwest Rwanda murdered three genocide survivors because, it was widely reported, they intended to testify against the prisoners at Gacaca.²⁸³ There are many questions still to be answered concerning the possibility of reconciliation for the Rwandan people. If the true intent of the government of Rwanda is to achieve truth and reconciliation through justice, they need to create a more just form of restoration by consulting all Rwandans regarding their needs, but especially, those women who are attempting to cope with the atrocities of the past and build a future for their remaining families.

²⁸¹ Gender-based results would include studies concerning the involvement of women in the process and their assessment of how crimes committed against them were being addressed. Such crimes would include but are not limited to sexual violence crimes.

²⁸² Clark, *When the Killers Go Home*, 205.

²⁸³ Ibid.

Concluding Thoughts

At the end of that season in the marshes, we were so disappointed we had failed. We were disheartened by what we were going to lose, and truly frightened by the misfortune and vengeance reaching out for us. But deep down, we were not tired of anything. - *Alphonse*²⁸⁴

The misty hills of Rwanda sit with a majestic stillness even after so much blood has been shed upon them. The scars of the conflict are not reflected upon Rwanda's landscape, but upon the faces of the people who inhabit it: "We have all lost something. We even have an expression for it: *bapfuye buhagazi*. It means the walking dead. This is the land of the walking dead."²⁸⁵ The people of Rwanda, both Tutsi and Hutu, demand justice for the events that occurred in 1994; however, the lingering lack of remorse on the part of the Hutu and the mistrust that remains on the part of the Tutsi have not created an environment conducive to reconciliation. The Tutsi-led government is determined to build reconciliation through judicial prosecutions of the Hutu people. By disregarding Tutsi war crimes, the government has only been successful in determining a victor's justice, which may encourage the possibility of resurgent conflict in the future. The attempt to combine restorative and retributive justice mechanism in a culturally inclusive context historically known as Gacaca has proven to fall short of its desired reconciliatory promise. The framework of Gacaca, in combination with the grand scale of the atrocities, and the totality of the community's

²⁸⁴ Hatzfield, *Machete Season*, 244.

²⁸⁵ *Ibid.*, 251.

involvement, leaves little hope that justice will be achieved, especially for the women of Rwanda. Women are often viewed as the fabric of society, and therefore, their needs must be assessed and met in order for post-conflict societies to achieve a state of reconciliation, for reconstruction to be successful and for a lasting peace to be achieved.

CHAPTER IV: RECOMMENDATIONS FOR A GENDERED JUSTICE IN RWANDA

Introduction

The gender analysis of the Rwandan genocide conducted in this thesis explored the extent and ways in which women were affected by the conflict in 1994. Tutsi women were exploited and targeted as reproducers of the ethnic 'other.' Sexual violence and torture was used as a tool of eradication and genocide as a means of destroying the Tutsi minority in Rwanda. The systematic rape and humiliation of Tutsi women and girls left lasting effects of physical and mental trauma, including the post-conflict realities of children born of rape, HIV/AIDs infection, physical and psychological injury. Many women were also forced to abandon community and family. Historically, women of all ethnicities in Rwanda have been marginalized, a reality that continues today despite recent political efforts of the new regime to increase women's equality through public representation. Women in Rwanda are still viewed as second-class citizens and their requests for justice have been treated as being of inferior importance in the transitional justice program.

Gender-based violence (GBV) crimes are not a priority of prosecution at any level in Rwanda's transitional justice program. Despite a hopeful start at the International Criminal Tribunal for Rwanda (ICTR) with the first conviction of rape

as an act of genocide, little effort has been made to prosecute sexual violence crimes on a regular basis at the international and national prosecutorial levels. Continually, women face barriers to justice due to a lack of gender education, understanding, and planning on the part of those who have constructed the current justice measures. This chapter addresses the gaps highlighted in Chapter III's gender evaluation of Rwanda's transitional justice program, and makes recommendations that may improve women's access to justice in Rwanda.

Recommendations for a 'Just' Transitional Justice Program

The transitional justice framework in Rwanda was instituted as an effort to provide justice and reconciliation to a people targeted for genocide by the previous political regime. The Rwandan genocide took place over one hundred days in the spring of 1994, killing approximately 800,000 people. The international community sought to provide justice through an *ad hoc* international criminal tribunal charged with the prosecution of the masterminds of the genocide and other notorious offenders. The pressures put upon the national-level transitional justice programming were exacerbated by the RPF-fronted government's enthusiasm to arrest and prosecute every person associated with the genocide. Some 120,000 suspects were arrested under accusations of acts of genocide, overwhelming the prison system. By 2001, the government relented to the reality that the national genocide courts would take over one hundred

years to prosecute all genocide suspects currently incarcerated.²⁸⁶ The Gacaca courts were thus introduced by the government and promoted as a restorative justice measure that would provide justice to all through community-based courts with hopes of speeding up the reconciliation process.

All three levels of Rwanda's transitional justice framework have been inadequate in addressing the sexual violence crimes of the genocide. Women have expressed their alienation from the process with reference to all three mechanisms. Although women seek justice, recognition, and truth for the crimes that they endured and the lasting effects that haunt them, they have been unable to receive adequate redress from Rwanda's transitional justice program, which was instituted to provide justice for all victims of the genocide.

Within the justice mechanisms instituted, several barriers to justice are repeatedly highlighted. This is because all three mechanisms are of a retributive justice form. The ICTR, national genocide trials and the Gacaca community courts all rely on a prosecutorial system for hearing and trying criminal cases. The retributive process requires testimony from a witness to prove the guilt of the accused. It is important to note that although many women have supported the concept of witness testimony as a means to expressing the truth, it is not a truth-telling process as it is offender-centric and restricted to a single event timeline. The witness is exposed to questioning by opposing counsel, judges and/or the community (Gacaca), as opposed to being supported while expressing her truth. Victims have expressed fear at every level of the procedural process, beginning

²⁸⁶ BBC News/Africa. "Q&A Justice in Rwanda," *BBC News World Edition*, (June 18, 2002). <http://news.bbc.co.uk/2/hi/africa/2051526.stm>. (accessed August 13, 2008).

with reporting the crimes to police officers or caseworkers who do not believe their stories and/or question the victim's ability to give evidence. Women express concern over being exposed as rape survivors because witness protection is inadequate at all levels of justice. This exposure as rape victims causes further trauma in their lives as they face increased marginalization in their communities. Incidences of women experiencing humiliation in the courts exists as was highlighted by the victim testimony of TA, introduced in Chapter III, who was laughed at during her testimony at the ICTR.²⁸⁷

In recognition that the ICTR prosecutions are set to end this year, and the national genocide courts of Rwanda have turned the majority of their accused over to the Gacaca courts, the majority of recommendations concerning retributive procedures will be focussed upon the Gacaca system. However, *ad hoc* international criminal tribunals and national court prosecutions also can take heed of the following gender sensitive recommendations.²⁸⁸

1. Courts and tribunals should be within the same country, if not the same community, in which the crimes took place. The expense incurred for women to travel long distances when they are living at subsistence poverty levels is too great. The ICTR has paid for the travel of witnesses; however, there is no funding for reimbursement of lost wages, or family care while the women are away in Arusha. In order for women to keep

²⁸⁷ Nowrojee, *Your Justice is Too Slow*, 24.

²⁸⁸ For further recommendations concerning gender improvements for the ICTR, see: Eva Gazurek and Anne Saris, "The Protection of Women as Witnesses and the ICTR," Coalition for Women's Human Rights in Conflict Situations, (2002). http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/witnessProtection/protectionofwitnesses_en.php. (accessed January 1, 2008).

their privacy and security concerning witness testimony, they must come up with a reason to be away from their community for the length of time it takes to travel and provide testimony, increasing the burden of testimony on the victim.

2. A serious financial commitment by the member states of the United Nations and international donor community (those that have committed to financing the transitional justice program) must be made to ensure adequate resources for the international and national courts. Lip service is far from adequate when creating a justice institution and the poor levels of resource availability and management shown by the ICTR²⁸⁹ is cause of insult and embarrassment to the victims of the genocide, particularly when cries for help during the conflict went unanswered. A half-hearted gesture towards justice is not an adequate response for Rwanda's victims. Increased donor compliance would also enable the international and national tribunals to introduce gender sensitivity and sexual violence education programming for the judicial membership.
3. Already established women's organizations can be used to disseminate tribunal information, such as status of cases and the number of convictions. They can also provide education to communities concerning GBV and, with appropriate funding, provide counselling and skills training to victims.

²⁸⁹ The ICTR has been referred to as the International Criminal Tribunal for the Former Yugoslavia's poor cousin, see: Neuffer, *The Key to My Neighbor's House*, 266.

4. Witness counselling should be provided before, during, and after testimony, including in-community follow-up counselling to ensure the safe return to community after the often traumatic event of testimony in a court of law, which involves the reliving of crimes committed against the victim in front of the perpetrator. Witness counselling may not prevent the witness from being ostracised or criticised for being a victim and testifying, but it would assist in coping with emotions that would arise if such community judgement were evident.
5. There should be discrete investigative units that are educated concerning GBV crimes, and are sensitive to the security and privacy of the victim in order to protect the privacy of the witness in the community.
6. There needs to be a clear policy on prosecuting GBV crimes at the prosecutors' offices of both international and national tribunals that is not changeable on the political whim of every new Chief Prosecutor.²⁹⁰

As South African Supreme Court justice, Albie Sachs stated: "Justice is not only in the end result. It is also in the process."²⁹¹ The international and national tribunals have been unable to provide justice to women throughout their justice processes. The previous recommendations may provide for a greater gender balance in the retributive justice mechanisms employed as agents of justice in post-genocide Rwanda. As the Gacaca courts are now the primary means to justice for the genocide victims, the remaining gender-specific recommendations

²⁹⁰ Nowrojee, *Your Justice is Too Slow*, 8.

²⁹¹ Neuffer, *The Key to My Neighbor's House*, 389.

in the chapter will be concerned with improving access to justice for women within this process.

Gacaca Specific Recommendations

Today, the primary means of prosecuting genocide perpetrators is the hybrid Gacaca system. As discussed in Chapter III, Gacaca is described as a 'hybrid' mechanism for justice because it is based upon a customary form of restorative justice traditionally used in dispute resolution throughout Rwanda. However, the new political regime has altered this traditional form of community resolution and turned it into a retributive process marked by legal statutes and incarceration for convictions of serious crimes. The government has been willing to address some of the concerns voiced about Gacaca, principally regarding the need to increase the restorative element.²⁹² The Gacaca Law (2004)²⁹³ allows for a reduction in sentence (when confessions are believed to be sincere) and the increased prominence of community service as a means of serving one's sentence.²⁹⁴ Persistent concerns regarding Gacaca's ability to provide justice and assist in reconciliation remain, particularly for female victims of sexual violence. Women have expressed concern over the reintegration of offenders within their own and neighbouring villages. Some of the men who committed crimes have paid their debts through community service or incarceration, but as noted in the previous

²⁹² Ingelaere, *The Gacaca Courts in Rwanda*, 52.

²⁹³ Organic Law of 2004 was further augmented in 2006, with Organic Law no. 28/2006 of 27/06/2006 Organic Law modifying and complementing Organic Law no. 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994. <http://www.inkiko-gacaca.gov.rw/pdf/Organic%20Law%2027062006.pdf>. (accessed August 13, 2008).

²⁹⁴ Ingelaere, *The Gacaca Courts*, 52.

chapter, very few of these men have had to face punishment for the gender-based offences they committed. The fear of reprisal for testimony and/or the fear of being a victim of sexual violence again, due to the men never having been prosecuted for the offences, linger amongst the female population.²⁹⁵

Hutu women also suffer as a result of Gacaca as they may lose the main income earner in the family if their husbands are called before a Gacaca court and then sent to prison or solidarity camps. Hutu women, who were victims of sexual violence at the hands of the RPF, are also being denied justice. The government will not try crimes of the Tutsi population or the RPF through Gacaca, which has established a “moral hierarchy of right and wrong”²⁹⁶ in Rwanda. The Hutu population, therefore, has very little incentive to participate in the proceedings as they see them as a victor’s justice. The possibility of fines and incarceration for not participating keep the Gacaca courts functioning; however, what does this coercion and the lack of equality as perceived by the majority of the population mean for the prospects of reconciliation in Rwanda?

The continued denial of RPF offences and the state of collective guilt thrust upon the majority of the population does not bode well for future reconciliation prospects. Bert Ingelaere has described the RPF’s immovable position on prosecution of members of the RPF as a “self-fulfilling prophecy,” as “it creates, perpetuates or even enhances that which it is supposedly eradicating – a Hutu subculture.”²⁹⁷ Recommendations concerning the Gacaca process

²⁹⁵ Human Rights Watch, *Law and Reality*, Section IV, para 16.

²⁹⁶ *Ibid.*, 56.

²⁹⁷ *Ibid.*, 56.

begin with the need for the government to accept that equal prosecution of Tutsi accused is a necessary component for the entire population to believe that justice has been done. A state of victor's justice decreases the legitimacy of the Gacaca process in the eyes of the local population and the world.

Further improvements concerning the Gacaca process from a gendered perspective include the creation of a reintegration awareness program where women are given ample warning of the men that are returning. Counselling should be made available for these women, and community organizations could be required to provide a "block watch" atmosphere for those women who are concerned. Further still, gender-based violence must be addressed in a large-scale education program developed by the government. Intolerance of abuse of women needs to be created in Rwandan society so that women will not fear reprisals from returnees (or their husbands for that matter). The root cause of gender injustice in Rwanda is the gender inequality that exists and is accepted within Rwandan society.

Women are able to provide testimony of sexual abuse in private through 'in camera' sessions with Gacaca judges or by documenting their testimony in writing. Women have complained that they were not made aware of these options for alternative testimony.²⁹⁸ This gender-sensitive aspect of Gacaca needs to be better publicized to the community. The strictest care then needs to be ensured to protect witness identity and privacy. The government also needs to commit to prosecuting sexual violence offences. These crimes are included as

²⁹⁸ Human Rights Watch, *Struggling to Survive*, Section IV, para 19.

Category One offences under the Gacaca Law and therefore will be prosecuted by a national genocide court. However, due to women's fears during the investigation stage of Gacaca, a process that takes place in front of the community, many men are not facing charges of sexual violence. The government must pursue investigations of sexual violence crimes whenever there is a possibility of these crimes having been committed.

Reparations

Repeatedly women have called for reparation programming to be part of Rwanda's transitional justice program. Reparations are associated with the restorative form of justice, as it is a means of providing a socio-economic justice without the persecution of criminal wrongs. The marginalized position of women in Rwanda means that they have a more difficult time accessing all forms of social assistance. Reparations in the form of restitution for crimes of property loss and damage could provide some relief for women who are unable to receive assistance from the government. The government needs to step-in and provide a comprehensive reparations program as a priority in the next years of the transitional justice process. The strengthening of social programming and institutional capacity would benefit all members of Rwanda's population, and would ease efforts at reconciliation. Current efforts that benefit only a few continue to stoke the anger of many.

Reparations programming is not one of the government's priorities, as policymakers prefer to pursue forms of prosecutorial justice as opposed to including a justice system that will address the socio-economic concerns that

resulted from the genocide. The literature suggests two purposes of reparation programming that may be beneficial in the pursuit of reconciliation: “to contribute to [the] establishment of civic trust among citizens and between citizens and state institutions; and to build social solidarity where the society empathizes with the victims.”²⁹⁹ Two limited attempts have been made to address the requests for reparations in the past with the Indemnification Fund (Fonds d’Indemnisation) (FIND), which first appeared in the 1996 Genocide Organic Law, reappearing in the 2001 and 2004 Gacaca Laws; and the Assistance Fund for Genocide Survivors (Fonds d’Assistance aux Rescapes du Genocide) (FARG).

The FIND draft in 1996 was to provide reparations for victims in the national courts; however, no compensation was ever paid out.³⁰⁰ Instead, as the government turned over the responsibility of prosecution to the Gacaca courts, a new FIND law was drafted in 2001, with the intention of paying monetary reparations to all those who are victims of the genocide. Victim lists were created during the investigation phase of the Gacaca trials, determining level of harm and therefore level of compensation. Victimization was consequently evaluated by participation in the Gacaca process, and defined as experiencing one or more of three harms: “material loss, loss of life, and permanent incapacity.”³⁰¹ Gender-specific harms such as trauma due to sexual attack, and forced pregnancy “have not been explicitly considered” as ‘harm.’³⁰² In 2002, prior to the 2001 draft being

²⁹⁹ Bosire, *Overpromised, Underdelivered*, 16.

³⁰⁰ Rombouts, *Women and Reparations in Rwanda*, 214.

²⁹⁰ *Ibid.*, 217.

²⁹¹ *Ibid.*

²⁹² *Ibid.*, 202. Currency conversions as of October 2005.

passed, a new FIND law was drafted which would provide a lump-sum cash amount (12 million FRW – US\$21,887)³⁰³ to all victims, regardless of the level of harm; or alternatively, the victim would be able to access free social services up to the cash amount indicated by the lump sum award.³⁰⁴ To this day, the 2002 FIND draft has never been passed into law.³⁰⁵

The FARG Law was established in 1998 to assist rescapes (survivors) of crimes between October 1, 1990 and December 31, 1994, access social services. At the heart of the FARG Law debate is its distinction of survivor as beneficiary, instead of victim (as in the FIND draft). Hiedy Rombouts describes a victim as one who can be defined as experiencing harm or a loss, while a survivor in the Rwandan context is someone who “has escaped persecution,” (as Tutsi during the conflict) which can be determined in a variety of ways. By determining the beneficiary as a survivor instead of a victim or person determined to be in need, the plan automatically excludes any Hutu victims of the conflict, furthering the perceptions of a victor's justice. The FARG benefits are also limited to those of the rescape (survivor) group who can show need, again a factor that is difficult to determine. A person of ‘need’ according to the FARG Law is an orphan, a widow or someone who is handicapped.³⁰⁶ There is no

²⁹³ Ibid, 199.

²⁹⁴ Ibid.

²⁹⁵ Ibid., 200.

²⁹⁶ Ibid., 214.

mention in the law of someone who has experienced crimes that resulted in permanent physical or mental injury, such as sexual violence crimes, as being a survivor or a person of need. According to Hiedy Rombouts, the FARG is also “insensitive to the gender-specific nature of the ensuing harms, such as different forms of trauma, loss of a breadwinner, loss of reproductive capacity, HIV infections, and forced pregnancies.”³⁰⁷ Victims that do qualify for FARG assistance claim that the FARG assistance “should not be considered as reparation, but only as a social service to them because they are poor.”³⁰⁸ The FARG also drives the society further apart along socially constructed lines, no longer Hutu and Tutsi, but victim, survivor, and perpetrator. Only the survivor group, which may include victims, can access free social services from the state, while the vast majority of Rwandans suffer in abject poverty. There clearly needs to be an overarching benefits plan to assist the victims, survivors and perpetrators with the long-term effects of the genocide.

The government of Rwanda needs to reassess the FIND draft and the FARG law to create a comprehensive reparations package, which includes monetary and social service awards. According to Nowrojee, “The most effective reparations programs are comprehensive, addressing as inclusive a universe of violations as possible, and including a broad menu of redress options.”³⁰⁹ The international donor community, which has given so much financial support to the

³⁰⁷ Ibid., 215.

³⁰⁸ Ibid., 200.

³⁰⁹ Bosire, *Overpromised, Underdelivered*, 16.

establishment of Gacaca,³¹⁰ needs to devote further funding to the establishment of a reparations package as part of the Gacaca process. Women's groups need to be involved in the development process of the reparations program, so that gender-specific harms can be addressed in the allocation of funding. The Rwandan government needs to address the victims of the RPF murders and attacks upon moderate Hutu populations during the genocide in the reparations package. Further still, the government needs to create greater access to social services to alleviate the burden of poverty upon all Rwandans, thus assisting in the possibility of a future national reconciliation.

Concluding Thoughts

Transitional justice has become the preeminent means to seeking justice for post-conflict societies in the post-Cold War era. Rwanda's transitional justice program is a three-pronged retributive justice approach, with the internationally constructed *ad hoc* International Criminal Tribunal for Rwanda in Arusha, the national genocide courts and the Gacaca tribunal system. The failure of the first two justice mechanisms to provide fair and equitable justice to the victims of the 1994 genocide has been made clear by the research presented in this thesis. The Gacaca process, although only three years into hearings, appears to have inherited many of the other transitional mechanisms barriers to justice.

Female victims face the most barriers to justice and also the most significant marginalization in everyday Rwandan life. In the post-genocide era, much has been made of the rise to the public arena of Rwandan women.

³¹⁰ Ingaelare, *The Gacaca Courts*, 47.

Women have achieved great representational numbers in public office due to quota initiatives, and the overturning of some longstanding discriminatory customary laws. Women, however, still comprise the highest percentage of the lower socio-economic class, with the least amount of education and earning potential in Rwanda. Through the gender analysis conducted of the Rwandan conflict it is clear to see that women in Rwanda today lack access to post-genocide justice because of the root cause of gender inequality in society. It is also evident that the transitional justice program is not adequately addressing women's specific experiences during the genocide. The gender analysis conducted from a liberal feminist theoretical framework (with insights drawn from postmodernism), has provided context and rationale for the applicability of this approach to the development of a gendered transitional justice, as long as it provides room for cultural context and social subjectivity. Women need to be brought in at all levels of the decision-making processes during the transition period as a first step to equality in the eyes of Rwandan society. This paper emphasizes that having women at the discussion table must not be the end goal for the feminist movement in Rwanda, but a jumping off point for women to address their specific circumstance in Rwandan life and to ensure that their individual experiences as Rwandan women and victims of genocide are addressed by the new laws and institutions being developed during Rwanda's transitional period.

Justice for women in Rwanda will not be achieved until the government recognizes the gender imbalance in society and corrects this imbalance through

education and gender-sensitive approaches at all levels of policy formulation, through the inclusion of women in the decision-making and policy formulation process. Women have expressed their desire for legal recognition of the suffering they endured during the genocide. The lack of prosecution of sexual violence crimes committed during the genocide proves that women's concerns for justice are not a priority in Rwanda's transitional justice program. The addressing of women's justice needs as an equal priority of the justice project would be a first step in rectifying the inequality of women's position in Rwandan society. Without government recognition and programs that address their needs women have been forced to rely upon themselves, forming women's organizations to address justice issues, and fill the "social spaces torn apart by genocide."³¹¹ As a result of this need to work together as a gender, women have served as an example to the possibility of reconciliation despite the lack of justice provided by the transitional justice program.

Rwandan winner of the Millennium Peace Prize for Women, Veneranda Nzambazamariya argued for women to resolve to move forward in Rwanda and create change despite the injustice they endure: "Let yourselves be consoled, you have been sacrificed by systems it is necessary to change. Unite so as to transform problems into opportunities for action."³¹² As Baines states in her article, "Les Femmes Aux Mille Bras: Building Peace in Rwanda," the above quote alludes to the injustice that women faced during the genocide, as well as

³¹¹ This is already being done by the numerous Women's organizations that were established after the genocide in Rwanda to fill the gap in social services not being addressed by the government. Baines, *Les Femmes*, 227.

³¹² As qtd. In Baines, *Les Femmes*, 220.

their marginalization in the transitioning period.³¹³ The large number of women's organizations that have sprung up in Rwanda after the genocide is representative of the initiative on the part of women to provide the services and support they require, which the government is not providing through justice mechanisms.³¹⁴ Women of both Hutu and Tutsi ethnicities work together in these organizations, recognizing that the commonalities of women in Rwanda outweigh their past differences.³¹⁵ This recognition of commonalities and a desire for the betterment of circumstances suggests that reconciliation may be possible despite the struggles of the current transitional justice program.

Further Research

Further research concerning transitional justice programming in Rwanda and other post-conflict states needs to be conducted, particularly concerning the gender impacts of such justice initiatives. Comparative studies comprising of several case studies with long-term time frames for data collection is important to infer whether justice is actually being accomplished and whether these communities are moving towards reconciliation. As stated previously in this thesis, gender issues have historically been left out of transitional justice literature, with only a recent recognition of the devastating impact of gender-based violence on societies attempting to rebuild. A greater concentration on this study in the future will provide much needed and informed policy recommendations for transitioning governments and international organizations

³¹³ Baines, *Les Femmes*, 238.

³¹⁴ Further discussion of Women's Organizations in Rwanda, see: Baines, *Les Femmes*.

³¹⁵ Baines, *Les Femmes*, 221.

charged with peacebuilding and transitional justice development in post-conflict societies.

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