

Truth, Justice and Security in Rwanda - Gacaca Courts as a Post-Genocide Reconciliation Effort

Essay by

Majken Jul Soerensen

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Introduction

All efforts to reconcile societies after a violent conflict are difficult and will inevitably be met with criticism and face a number of dilemmas - about how to do justice to the people who have suffered, how to punish the perpetrators, and how to prevent the violence from erupting again. The case of Rwanda is especially intriguing because so many people were affected, either as victims or perpetrators. It is impossible to handle all the killers within the ordinary legal system, so Rwanda has tried to introduce a modern version of the traditional Gacaca trials which involve the whole community. This essay explores the role of Gacaca in post-genocidal Rwanda. Many people have written about justice in Rwanda (including Gacaca) from the legal perspective: Lawyers and human rights organisations are worried about the lack of counsel for the accused, the conditions in the prisons, and lack of education for the judges.¹ Another way of looking at Gacaca, which is what I do in this essay, is to analyse the relationship between Gacaca and the paradoxes of reconciliation. The questions I want to answer are:

- What are the characteristics of post-genocide Rwanda and what implications do these characteristics have for the ways truth, justice and security can be handled?
- Truth, justice and security are all central concepts in a post-genocidal society, but sometimes they contradict each other. What is the relationship between these concepts and the Gacaca courts?
- What can be considered possible root causes of the genocide, and are these root causes addressed by Gacaca?

The genocide in Rwanda and its root causes

The history of the relationship between Hutus and Tutsis is disputed², but the violence of 1994 dates back to 1959 when Tutsis were massacred and thousands fled to Uganda. In October 1990, the

¹ This is for example Amnesty International in AI, *Rwanda: Gacaca: A Question of Justice* Amnesty International, 2002 available from <http://web.amnesty.org/library/index/engaf470072002>., and academics like Fierens, "Gacaca Courts: Between Fantasy and Reality," *Journal of International Criminal Justice* 3 (2005).

² The differences in the perceptions of the history between the two major ethnic groups, Hutus and Tutsis, are so big that it is possible to talk about two completely different narratives, with absolute denial of atrocities committed against the other ethnic group. Allison Corey and Sandra F. Joireman, "Retributive Justice: The Gacaca Courts in Rwanda," *African Affairs* 103 (2004), Rene Lemarchand, "Genocide in the Great Lakes: Which Genocide? Whose Genocide?," *African Studies Review* 41, no. 1 (April) (1998).

Rwandan Patriotic Front (RPF) - composed of sons and daughters of these refugees - launched an attack on Rwanda, and this civil war is the background to the 1994 genocide. Most of the genocide took place during 100 days from April to July 1994, until the Rwandan government (planner and organiser of the genocide) was defeated by RPF, but there were massacres both before and after 1994.³ The genocide was centrally planned but carried out locally by police, military, militias, “self defence” community units and ordinary peasants sent to work as if they were clearing bush.⁴

Exactly how many people were killed in the genocide will never be known, but the most frequently cited number is 800,000 out of a population of 8 million.⁵ Most of these victims were Tutsis, but moderate Hutus were also killed. Machetes were the most common weapon, which made the slaughter very direct when neighbours killed each other, teachers killed their students, and husbands killed their wives. The horrors, rapes and torture are well documented, especially in the book “Leave None to Tell the Story”⁶. It has been argued that killing was the norm, and **not** participating was the deviant behaviour, making this an example of “radical evil”⁷.

Why and how was this mass slaughter possible? I have identified five possible root causes mentioned in the literature: **1. fear; 2. poverty and overpopulation; 3. racism; 4. obedience and 5. “a culture of impunity”**. Mamdani thinks that the main driving force for the Hutus was **fear**, not greed or hatred. The Hutu propaganda was spreading the conviction that if the RPF won the civil war, they would take the land and give it to Tutsis, and keep the power to themselves. This is the political explanation⁸, but other explanations are economic or cultural. The economic reasons given by e.g. USAID are **overpopulation, poverty**, fighting over scarce land resources to farm, and decline in income during the second part of the 1980s.⁹ One cultural cause supported by Peter Uvin is the widespread **racism** throughout society, and another cultural explanation given by Gerard

³ Mark A. Drumbl, "Punishment, Postgenocide: From Guilt to Shame to Civis in Rwanda," *New York University Law Review* 75, no. 5 (2000). p 1222-1224, Corey and Joireman, "Retributive Justice: The Gacaca Courts in Rwanda." pp. 73, 78

⁴ Mahmood Mamdani, *When Victims Become Killers : Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, N.J.: Princeton University Press, 2001). p. 194

⁵ Estimates vary between 500.000 and 1 million. Drumbl, "Punishment, Postgenocide."pp. 1222-1223.

⁶ Alison Liebhafsky Des Forges, *"Leave None to Tell the Story" : Genocide in Rwanda* (New York: Human Rights Watch & International Federation of Human Rights, 1999).

⁷ The word "radical evil" is used by Drumbl, who borrows it from Carlos Santiago Nino, who credits Kant. Drumbl, "Punishment, Postgenocide."

⁸ Mamdani, *When Victims Become Killers : Colonialism, Nativism, and the Genocide in Rwanda*. p. 191

⁹ Referred to by Mamdani, *When Victims Become Killers : Colonialism, Nativism, and the Genocide in Rwanda*. pp. 197-198

Prunier is **obedience** and conformity to state power. Prunier claims that in Rwanda's authoritarian state, people tend to believe the powerful and do as they are told.¹⁰ Another cultural root cause for the genocide often used is the “**culture of impunity**”. The hypothesis is that for decades, ethnic based killings and massacres were not punished, which supposedly led the Hutus to believe that they could get away with the genocide. Many of these killings took place in the 1960s and 70s and the RPF invasion in 1990 triggered new rounds of killings without punishment. This theory of a “culture of impunity” is the cause of the genocide mentioned most frequently and also supported by the government in Rwanda. The reason why the present RPF led government is so focused on justice as a way to reconciliation is because they want Rwanda to get out of this circle of impunity.¹¹

In this essay, I will not discuss which of these explanations is most plausible, but explore how they are addressed by the reconciliation process. My opinion is that understanding the genocide cannot be narrowed down to one or two reasons, and all of these explanations can have contributed to the genocide. I find it likely that the planners had one reason and the ordinary killers other reasons. It is also necessary to differentiate between initial causes and the reasons that sustained the killing over time. What is most important for this essay is that what is accepted as a cause of the genocide ought to influence the way you try to reconcile. When I later analyse whether Gacaca will bring Rwanda closer towards reconciliation, I also want to analyse which possible root causes are being addressed and in what ways.

A dualist post-genocidal society

Drumbl calls Rwanda a dualist post-genocidal society, as opposed to homogeneous post-genocidal societies where the genocide succeeded, and pluralist post-genocidal societies where several groups live together. The dualist post-genocidal society is characterised by the two groups still living among each other, because the genocide did not succeed fully. Other characteristics, which

¹⁰ Referred to by Mamdani, *When Victims Become Killers : Colonialism, Nativism, and the Genocide in Rwanda*. p. 199

¹¹ This is the most widespread explanation that I have come across, supported by e.g Barbara Oomen, "Donor-Driven Justice and Its Discontents: The Case of Rwanda," *Development and Change* 36, no. 5 (2005). p. 889; Lemarchand, "Genocide in the Great Lakes: Which Genocide? Whose Genocide?." p. 13; Mamdani, *When Victims Become Killers : Colonialism, Nativism, and the Genocide in Rwanda*. p. 192 and William A. Schabas, "Genocide Trials and Gacaca Courts," *Journal of International Criminal Justice* 3, no. 4 (2005). p.879
Peter E. Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice* (New York: Writers Club Press, 2003).p. 46, includes a quote by the Rwandan minister of justice who refer to “a culture of impunity”

differentiate Rwanda from other dualist post-genocidal societies, is the large proportion of the population which participated in the atrocities¹², the geographic mix of the groups that make it very difficult to imagine a separate “Hutuland” and “Tutsiland”, and that the victim group for the moment controls the power.¹³ These characteristics are decisive for considerations about the past and the future. Drumbl writes: *“Dualist postgenocidal societies always are overshadowed by the possibility that genocide may reoccur. As a result, rule-of-law initiatives in dualist postgenocidal societies should be particularly sensitive to the need to prevent future violence and not just punish past violence.”*¹⁴

Drumbl’s important observation about who controls power now is consistent with the argument made by Rigby, that the transition situation after mass violence determines what kind of justice it is possible to pursue. A clear break from the past regime, and the installation of a new government, means that you can have trials, punishment and a focus on justice. A negotiated transition where parts of the old regime remain in power after the transition increases the chances that the past will be dealt with in terms of amnesty and pardon. Situations inbetween generate different kinds of truth and/or reconciliation commissions.¹⁵

In this framework, Rwanda is a case of a clear break with the past. The government that planned and committed the genocide was defeated in a civil war, and driven away by the RPF, which has been in a position where it can emphasise justice strongly. It was not necessary to sacrifice justice in order to get peace and security. But the duality of post-genocide Rwanda makes the focus on justice instead of reconciliation a difficult path to pursue. The Tutsis are and will continue to be a minority in Rwanda, and the large number of perpetrators in the genocide makes the situation different from anywhere else; the survivors literally have to live next door to the people who killed their families.

¹² It is estimated that Gacaca can get 1 million cases to try. Fierens, "Gacaca Courts: Between Fantasy and Reality." p. 900. The 1 million estimate also includes persons who did not kill but “only” participated in crimes against property, like looting dead peoples houses. According to Schabas, "Genocide Trials and Gacaca Courts." p. 882, 1 million suspects is about 1/3 of Rwanda’s adult population. Even with lower estimates of participation, it is a very big proportion of the population.

¹³ Drumbl, "Punishment, Postgenocide."pp. 1237-1239

¹⁴ Drumbl, "Punishment, Postgenocide."p. 1239

¹⁵ Andrew Rigby, *Justice and Reconciliation : After the Violence* (Boulder, Colo.: L. Rienner, 2001).

Four types of courts

After the genocide, four different types of courts have been used to deal with the perpetrators of the genocide.

1. The International Criminal Tribunal for Rwanda (ICTR)
2. Rwanda's national courts
3. Military courts
4. Gacaca courts

The ICTR is set up by the United Nations and only indicts a small number of people, the organisers of the genocide.¹⁶ Because of the attempt to face the culture of impunity by trying **all** suspects, the Rwandan national courts were left to deal with the remaining suspects. After the RPF came to power, they detained 120,000 genocide suspects. The courts have been very slow, and the prison conditions criticised widely¹⁷.

Based on the number of acquittals so far in the national courts, it is estimated that about 20% of the suspects are innocent. The speed of the trials and the conditions in the prison has improved in recent years, but in January 2005, 89,000 were still in prison¹⁸.

The third type of courts, The Military Tribunal and the Military High Court, have jurisdiction over members of the military, and do not play a big role.¹⁹

The fourth type of court, Gacaca, has been introduced to speed up the slow process in the national courts, lower the costs of prisons, get the truth about the genocide told, and is also an effort to work towards reconciliation.²⁰ The structure of Gacaca and the different categories of offences are described in Appendix A. The courts are community based, and the judges are elected by the

¹⁶ ICTR has been haunted by problems: Bureaucracy, distance from Rwanda (it is placed in Tanzania), corruption, nepotism and lack of money. Elizabeth Neuffer, *The Key to My Neighbor's House : Seeking Justice in Bosnia and Rwanda*, 1st ed. (New York: Picador, 2001). pp 265-270.

By 2004, ICTR had tried 21 cases and cost around 2 billion USD. Oomen, "Donor-Driven Justice and Its Discontents: The Case of Rwanda." p. 896.

¹⁷ See note 1 page 1 for references.

¹⁸ Schabas, "Genocide Trials and Gacaca Courts." p. 880

¹⁹ According to Fierens is it difficult to find out how many of the trials in these courts concern soldiers accused of genocide and how many are RPA accused of human rights violations. Fierens, "Gacaca Courts: Between Fantasy and Reality." p. 902 note 25.

²⁰ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)* Penal Reform International (PRI), 2001 available from http://www.penalreform.org/english/gacaca_research.htm. pp. 31-40

local community. The lowest level of the Gacaca, the cell, elected 24 people of “high integrity”²¹ in as judges in 2001,²² and about one-third of the judges are women²³. The cell Gacaca is responsible for establishing who lived in the cell before the genocide and who was killed or injured, and will decide which category the suspects belong to. It is expected that Gacaca will raise the number of suspects because witness testimonies in the pilot Gacaca raises the number of suspects²⁴. The Guilty Pleas procedure (please see Appendix A for details) gives considerably lower sentences for confessions, which is another reason why the number of suspects rise, because suspects who confess implicate even more people.²⁵

The contradictions of reconciliation and their implications for Gacaca

Reconciliation is full of contradictions and paradoxes²⁶. It is a process that has to take many complex and sometimes conflicting concepts into consideration – like truth, justice, security, forgiveness and apologies. Reconciliation looks at the past at the same time as it tries to bring hope for the future, and in the case of Rwanda it has to do this in the middle of a very difficult presence.

²¹ known as inyangamugayo, people who fulfil 8 criteria: Rwandan nationals, 21 years or older, have not served any long prison sentences, are not suspects in the genocide, have a local reputation for being honest, are not extremists, are trustworthy and not afraid of speaking in public. Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*.

²² These elections are considered to be fair, although there were some problems. Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*. p. 77. The voter turnout was very high, but this was mainly because people thought they had to vote. PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*. More than 254.000 people were elected, but the 2004 Gacaca law that simplified the process will lead to a reduction in the number of judges. PRI, *Research Report on the Gacaca. Report Vi: From Camp to Hill, the Reintegration of Released Prisoners* May 2004 2004 available from http://www.penalreform.org/english/gacaca_research.htm. The training for the judges is very basic. 36 hours if the judges got the training they were entitled to, but some did not get any training. Many of the judges do not have any school education at all, especially at the cell level. There are many concerns about whether the judges will be capable of doing their administrative jobs, like establishing the number of inhabitants in the cell at the time of the genocide. Even after training there are many questions the judges cannot answer. There are also concerns about the risk of corruption because the judges are not paid.

²³ Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*. p. 78. Harrell considers this to be a good rate, but PRI interpret 1/3 less optimistic, especially since the number of women decrease on the higher level of Gacaca courts. PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.

²⁴ Fierens, "Gacaca Courts: Between Fantasy and Reality." p. 900

²⁵ PRI thinks that it is possible to get even more guilty pleas than what is done now. Some people refrain from pleading guilty because they get threats from people who fear they will implicate them. PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*. p. 24

²⁶ My ideas about paradoxes and contradictions in reconciliation are to a large degree influenced by John Paul Lederach, especially John Paul Lederach, *Building Peace : Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997). Chapter 2, and the way his thinking about reconciliation has been used by Bloomfield et al. in David Bloomfield et al., *Reconciliation after Violent Conflict : A Handbook, Handbook Series / International Idea*, (Stockholm: International IDEA, 2003).

Different people have different ideas about how to get to reconciliation – some say that justice is most important, other stress truth or security. To complicate matters further, there is the question of different groups generated by the genocide: The perpetrators, the victims and survivors, the bystanders that did nothing, and the people who tried to help. These groups all have different expectations of reconciliation and different needs and concerns for the present and the future. In addition, reconciliation is both a process taking place between individuals and something that can be reinforced by national reconciliation efforts. The national political landscape can influence reconciliation at the individual level in both positive and negative directions.

On top of the problems generated by all these contradictions, there are also concerns about more practical aspects of Gacaca: In some districts the genocide was so “successful” that the perpetrators can be elected as judges because the Tutsis were exterminated²⁷. In other places it is feared that the judges will be biased or judge inconsistently between people they know and other people.²⁸ And I find it striking that both Hutus and Tutsis fear that the other group will not be able to be impartial as judges.²⁹

Opinions about Gacaca are many, even though the courts are not expected to be fully operational until 2006³⁰. Judgements so far are based on the idea of the project, and the pilot Gacaca that has been conducted in some areas since 2001. In 2000 a national survey about Rwandans’ perceptions about Gacaca was carried out on behalf of the government, to investigate what kind of information was needed. The two major findings were that people knew very little about Gacaca, but that they had a positive impression and planned to participate.³¹ It is too early to evaluate the outcome of Gacaca, but the most detailed written information about Gacaca so far comes from Penal Reform International (PRI) who are doing action research about Gacaca through interviews and observations with the intention of improving the system and giving recommendations to the government. Their findings contradict the first optimism about participation. PRI find that a “wait and see” attitude is widespread, and fear that this will lead to mistrust and frustration.³²

²⁷ Fierens, "Gacaca Courts: Between Fantasy and Reality." p. 912

²⁸ Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*. p. 88

²⁹ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*. p. 28

³⁰ Schabas, "Genocide Trials and Gacaca Courts." p. 894

³¹ S. Gabisirege and S. Babaloo, "Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study," (Baltimore: Johns Hopkins University School of Public Health, Centre for Communication Programs, 2001).pp. 19-20

³² PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 44

Truth, justice and security

In all societies marked by violent conflict, ideas and expectations about truth, justice and security have to be weighed against each other, and this is also relevant for Rwanda and the Gacaca courts. I see three different contradictions here, which I will analyse in turn: **1. justice/security; 2. justice/truth; 3. truth/security?**

1. Justice/Security

As I have discussed already, there is not a big contradiction between justice and security in Rwanda because the RPF defeated the previous regime almost completely. But the Gacaca does make some of the survivors feel more insecure, because it means some of the prisoners are released and will be back as their neighbours while they await the Gacaca trials, and will serve the rest of their punishment as community service.³³

2. Justice/Truth

When it comes to choosing between justice or truth, there are many opinions about what is best for the victims: Some people argue that a trial will not give them a chance to tell their story, because everything they say will be questioned, and they have to go through cross-examinations. This leaves the victims “*wounded and re-traumatized*”³⁴. Graybill thinks some kind of truth commission give the victims a chance to tell their story in a much more decent way, that acknowledges their pain, an opinion supported by Sarkin³⁵. In principal, the victims’ opportunity to tell their story should be greater in Gacaca than in the national courts, but this may not always be the case, because of fear and witness intimidation.³⁶ Another reason for caution is that maybe telling their story is not what the victims want most. It is often said in connection with mass atrocities that

³³ PRI, *Research Report on the Gacaca. Report Vi: From Camp to Hill, the Reintegration of Released Prisoners*.pp. 42-48. It is not only the survivors who fear for their safety when the detainees are released. PRI also mention examples of former prisoners who have been attacked as revenge by the survivors who think they should not have been released.

³⁴ Lyn Graybill, "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission," *Human Rights Review*, no. July-September (2001). p. 5

³⁵ Jeremy Sarkin, "Promoting Justice: Truth and Reconciliation in Transitional Societies: Evaluating Rwanda's Approach in the New Millennium of Using Community Based Gacaca Tribunals to Deal with the Past," *International Law FORUM du droit international* 2 (2000).p. 117. Sarkin also remind us that having Gacaca now does not exclude latter truth and reconciliation commissions.

³⁶ PRI, *Research Report on the Gacaca. Report Vi: From Camp to Hill, the Reintegration of Released Prisoners*.p.14

what the victims and survivors want most of all is to know the truth,³⁷ and in western thinking, especially in psychology, it is considered healthy to talk about a painful past.³⁸ But I think one should be careful before forcing this “truth-telling” on everyone. It is possible that some people will prefer to try to forget a painful past because it hurts too much to talk about it.³⁹

Confessions and truth-telling are part of Gacaca, and a powerful incentive is a considerable reduction in the number of years in prison in exchange for the “whole truth”. But some survivors see it as a hidden amnesty. For them, telling the truth means that justice will not be carried out, and for some of the survivors, it sounds as if they would rather keep the perpetrators in prison than release them in exchange for the truth.⁴⁰

Many people in Rwanda hope Gacaca will bring them the truth about what happened during the genocide. Tutsis want to know what happened to their family, and Hutus want to establish that not all Hutus participated in the genocide⁴¹. PRI findings show, that some of the survivors doubt that the truth will be told, because the survivors did not see much from their hiding places, and they don't trust that the guilty will be denounced by their neighbours and family. Fear, mistrust and witness intimidation make it very unlikely that Gacaca will bring the truth about what happened in 1994⁴².

As I have illustrated here, the whole idea about truth leading to reconciliation can be doubted. The same can be said about justice. The problems with emphasising justice are much deeper than the practical problems faced by all the 4 types of courts. Fierens considers the aim of the Gacaca to be too ambitious and writes: “*At any rate, courts, especially criminal ones, rarely enable*

³⁷ For opinions like this, see for example Graybill, "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission."p. 5.

³⁸ Graybill, "To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission.", Ervin Staub, Laurie Anne Pearlman, and Vachel Miller, "Healing the Roots of Genocide in Rwanda," *Peace Review* 15, no. 3 (2003). p 289.

³⁹ That there is not a solution that fits everyone can be illustrated by the following: Elisabeth Neuffer tells the story of a woman who testified about organised rape against herself and other women. She had a very positive experience and was not intimidated by the court style and cross-examination. Neuffer, *The Key to My Neighbor's House : Seeking Justice in Bosnia and Rwanda*. p. 290

⁴⁰ PRI, *Research Report on Gacaca Courts - Pri: Gacaca and Reconciliation: Kibuye Case Study* Penal Reform International, May 2004 2004 available from http://www.penalreform.org/english/gacaca_research.htm.p. 19

⁴¹ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 42

⁴² PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 15

PRI, *Research Report on Gacaca Courts - Pri: Gacaca and Reconciliation: Kibuye Case Study*.p. 17 and

PRI, *Research Report on the Gacaca. Report Vi: From Camp to Hill, the Reintegration of Released Prisoners*.p. 14

reconciliation, particularly when the crimes in question are among the most serious imaginable."⁴³ For many others, some form of justice is an absolutely necessary part of reconciliation.⁴⁴ But there are many forms of justice, the main differentiation being between restorative and criminal justice. In Rwanda, criminal justice is what is done by the national courts and the ICTR. Gacaca has components of both criminal and restorative justice. In restorative justice, the focus is not so much on punishment, but on restoring the relationship between the parties to a conflict.⁴⁵ Community service instead of prison is one way of restoring the past wrongs and reintegrates the convicted into society. Community service was probably introduced to save money, but it is much more future oriented than prison sentences, and makes it possible for the survivors to see the perpetrators restore some of what they destroyed.⁴⁶ However, there is concern that the community service is not implemented, and PRI fears that a failure to implement the service will lead to people seeing Gacaca as a hidden amnesty.⁴⁷

3. Truth/Security

The last contradiction, between truth and security, can be exemplified by the women who were raped. Because of the stigma caused by rape, the women do not necessarily feel that the truth will help them. *"We even had the impression that recently the feelings of insecurity and despair among these women [rape victims] increased as a consequence of the approaching Gacaca jurisdictions as old memories were revived in anticipation of public hearings and admissions."*⁴⁸

Each of the concepts of truth, justice and security can also be analysed individually – whose truth, whose justice, and security for whom are we talking about? What is considered truth and just by one group and what makes them feel secure, may make another group in society feel insecure and their ideas about truth and justice repressed. Let's look at an example of a contradiction generated by Gacaca: The law that guides the Gacaca deals with crimes against humanity and

⁴³ Fierens, "Gacaca Courts: Between Fantasy and Reality." p. 916

⁴⁴ Luc Huyse, "Justice," in *Reconciliation after Violent Conflict: A Handbook*, ed. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003).p. 97

⁴⁵ Huyse, "Justice."p. 97

⁴⁶ Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*.pp. 85-88

⁴⁷ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 12

PRI, *Research Report on Gacaca Courts - Pri: Gacaca and Reconciliation: Kibuye Case Study*.p. 19

⁴⁸ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 38

crimes of genocide⁴⁹. This could also include crimes committed by the Tutsis, but in practise the government says that Gacaca is only for acts of genocide committed between 1990 and 31 December 1994 against the Tutsis. That way, the worst cases where RPF killed Hutu civilians is excluded, e.g. the killing of Hutu refugees in Kibeho 1995⁵⁰. This means that, for the Hutus, Gacaca is “victors’ justice” – only crimes committed by Hutus against Tutsis are dealt with by Gacaca. For the Hutus (and many of them did not participate in the genocide), this is the Tutsis’ truth, and the Tutsis’ justice. If this feeling is widespread, it means that Gacaca will not lead to reconciliation, but will increase the Hutus’ feelings of alienation, which in turn will jeopardise the Tutsis’ security even more. It is unlikely that the praxis of the law will be changed, although that is a possibility that would increase reconciliation.⁵¹

Another aspect related to “justice for whom?”, is the issue of compensation. It is a big problem that promised compensation is still not paid to the victims, and that needs to start functioning. When it does, compensation to Hutus who spent years in prisons and were later acquitted could be a powerful instrument to show that this is not victors’ justice.⁵²

Individual and society

I also find another paradox when I look at reconciliation, the contradiction between the level of society and the level of the individual. The two are of course linked – it is difficult to imagine a reconciled society were the individuals are not involved. But what brings reconciliation at the level of society (understood as no return to mass violence and official acknowledgement of past wrongs) does not necessarily bring reconciliation between individuals. A national (society) focus on reconciliation that expects people to move forward and not pay too much attention to the past can worsen the relationship between individuals. If the perpetrators confess and ask for forgiveness, which is part of Gacaca, the survivors are from the national level encouraged to grant the

⁴⁹ *Organic Law N°16/2004 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* 2004 available from <http://www.grandslacs.net/doc/3677.pdf>.

⁵⁰ Lemarchand, "Genocide in the Great Lakes: Which Genocide? Whose Genocide?" p. 8

Corey and Joireman, "Retributive Justice: The Gacaca Courts in Rwanda." pp. 80,86

⁵¹ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 43

Corey and Joireman, "Retributive Justice: The Gacaca Courts in Rwanda."p. 86

⁵² PRI, *Research Report on Gacaca Courts - Pri: Gacaca and Reconciliation: Kibuye Case Study*.pp. 20-22

forgiveness and move on with their lives – but because the confession might give the victims new knowledge about the past, or open old wounds, this forgiveness and reconciliation can seem further away than ever for the individual.

A sincere apology at the individual level can be a very powerful gesture, as discussed by Tavuchis in “*Mea Culpa*”, because an apology acknowledges that something wrong was done, takes responsibility for the wrong without finding excuses, and indicates that the harm will not be repeated. If the offender regrets and shows remorse, there is a chance that the victim will accept the apology and grant forgiveness, but the victim also have the power to not accept the apology because what was done is considered unforgivable by this victim, or because the apology or regret or remorse is not considered sincere⁵³. Although it does happen that somebody makes an apology on behalf of a group, and that apology is accepted by most members of the other group, I think that apologies and forgiveness are mainly individual. A feeling of forgiveness is not something that can be imposed, and there is no guarantee that remorse and apologies are sincere. This can also be seen in some pre-gacaca sessions that PRI observed: The prison and local mayor had organised some public confessions prior to the first pilot Gacacas, where the detainees described their crimes and asked for forgiveness. Many of the confessions was not in line with Tavuchis’s criteria for making apologies – the detainees made excuses for their crimes, did not show any sign of remorse, and talked in an aggressive way which was not received very well by the public. The detainees, who may have expected to be forgiven now they had confessed, seemed surprised that this forgiveness was not granted, which in some cases made them even more aggressive.⁵⁴ Because of the personal

⁵³ Nicholas Tavuchis, *Mea Culpa : A Sociology of Apology and Reconciliation* (Stanford, Calif.: Stanford University Press, 1991).pp. 3,8 and 23

⁵⁴ PRI, *Pri Research Team on Gacaca: Report Iii: April-June 2002* Penal Reform International, 2002 available from http://www.penalreform.org/english/gacaca_research.htm. pp. 15-25.

This is also supported by later observations of “superficial” remorse PRI, *Research Report on Gacaca Courts - Pri: Gacaca and Reconciliation: Kibuye Case Study*.p. 18 and PRI, *Research Report on the Gacaca. Report Vi: From Camp to Hill, the Reintegration of Released Prisoners*.pp. 57-60

The observation of a lack of remorse is supported by the journalist Jean Hatzfeld who interviewed a group of prisoners who were already convicted in the national courts, and had nothing to loose by telling him the truth. In his book “The killers speak” he let them to a large degree speak for themselves. When it comes to considerations about reconciliation, one of the most worrisome signs is the almost complete lack of remorse. One of the killers says: “*In prison and on the hills, everyone is obviously sorry. But most of the killers are sorry they didn’t finish the job. They accuse themselves of negligence rather than wickedness*”. (Quote from page 154). In Hatzfeld’s analysis of the interviews, he writes: “The killer seem oblivious to the minimum requirement for those seeking forgiveness. That they tell the truth, with no tactical calculations, in order to help the victims in their work of remembrance and mourning(...) The killer does not understand that in seeking forgiveness, he is demanding that the victim make an extraordinary effort (...) The killer does not realize that when he asks for forgiveness as though it were a simple formality, his attitude increases the victim’s pain by

nature of regret and remorse, it is impossible to know if the confessions were accompanied with regret or remorse. The aggression could be a result of the perpetrators' own trauma, but it clearly reveals the problems related to expectations of apologies and forgiveness at the level of society. If the perpetrators don't feel any remorse or don't manage to communicate it to the survivors, the Gacacas' **expectations** of confessions and forgiveness may turn out to be counterproductive and increase the level of distrust.

Bloomfield et al. argue that reconciliation should take place in a democratic setting in order to be successful,⁵⁵ but RPF's way of governing has recently been criticised, especially by Reyntjens who calls the present government a dictatorship. He describes how initially after the genocide RPF had an attitude of openness and a wish to include Hutus in the government, but later the government's human rights record has deteriorated; the 2001 local elections were flawed, and many Hutus in leading positions have left Rwanda over the years⁵⁶. It is this government that is implementing Gacaca and has decided that war crimes committed by Tutsis should not be included in Gacaca. This also illustrates how reconciliation, truth, justice and security are political questions that reflect the political reality. At the moment, that reality at the national level makes reconciliation between individuals even more difficult.

This contradiction between the individual and society can of course also be the other way around – that the Gacaca in some parts of the country or in individual cases bring reconciliation, but without any national impact.

Does Gacaca address the root causes of the genocide?

In the beginning of this essay, I mentioned five different explanations which have been suggested as a root cause for the genocide. In this last section of the essay, I want to return to these root causes, to see to what degree they are addressed by the Gacaca so that future genocides can be prevented.

Root cause one: Fear

ignoring it" pp. 187-188. Jean Hatzfeld, *A Time for Machetes: The Rwandan Genocide: The Killers Speak*, trans. Linda Coverdale (London: Serpent's Tail, 2005).

⁵⁵ Bloomfield et al., *Reconciliation after Violent Conflict: A Handbook*.p. 10

⁵⁶ Filip Reyntjens, "Rwanda, Ten Years On: From Genocide to Dictatorship," *African Affairs* 103 (2004).p. 179 for the period immediately after the genocide, pp. 180-182 for the names of the large number of Hutus who have left, p. 183 for critic of the election and pp. 194-197 for human rights abuses.

If Mamdani is right that the main reason for the genocide was the Hutus' fear that the Tutsis would be politically dominant, then courts and emphasis on justice will not help, no matter if they have the format of national courts or Gacaca. On the contrary, this fear is being sustained by the Gacaca, as long as only Hutus who committed crimes of genocide are accused and not Tutsis who committed war crimes. If this was changed and Hutus who spend years in prison on false accusations were to be compensated, maybe it would serve to reduce this fear. Another thing that could reduce this fear is if RPF commits itself to power sharing and carry it out in praxis.

Root cause two: Poverty and overpopulation

If a reason for the genocide is economic – poverty, lack of land to farm and overpopulation, then this reason is not being addressed to a very high degree by Gacaca in its present form. Courts don't address these problems, and Oomen even argues that the international financial support for all kinds of "justice" (including Gacaca) is taken away resources from traditional development aid.⁵⁷ If she is right, and the economic explanation for the genocide is correct, then the "international community" is not helping Rwanda avoid another genocide at the moment. However, if this root cause is correct, then Gacaca is a step in the right direction compared to the other types of courts because of the community service. Releasing prisoners ought to lead to lower costs for prisons (and thereby more money available for development)⁵⁸, and if the community service actually gets implemented, it means that the convicts are contributing to development that can benefit the whole community.

Root cause three: Racism

Racism is a root cause that is difficult to deal with through courts, including Gacaca. Education in the form of new schoolbooks and media are better at developing new attitudes towards racism than courts are.

Root cause four: Obedience

A culture of obedience to state power and authority cannot be addressed by any kind of courts. Again, education and a celebration of the people who resisted participating in the genocide are more natural ways to combat obedience. Oomen and PRI write that the same obedience is being

⁵⁷ Oomen, "Donor-Driven Justice and Its Discontents: The Case of Rwanda."p. 895

⁵⁸ However, for this to come true would take that the Rwandan government is actually using the freed resources on development and not something else.

used to make people participate in Gacaca.⁵⁹ *“Many so called awareness programs in Rwanda are organised from a top-down perspective and have more characteristics of dictating Gacaca than of sensitising the audience via open dialogue or interactive approaches.”*⁶⁰

Root cause five: “Culture of impunity”

If it is correct that a culture of impunity is a root cause of the genocide, then the courts have an important role to play, and this modern version of Gacaca can be seen a good, although far from perfect, invention to speed up the process of handing down justice to the perpetrators and free the people who are innocent. But whether you see courts as a good solution depends on to what degree you consider criminal or restorative justice the best solution to counter this culture of impunity. People who prefer the criminal variant of justice might consider Gacaca too “soft”. On the other hand, people who think restorative justice is the best solution might think that Gacaca is not doing enough towards restoration, and that much more needs to be done in terms of reconciliation, since it is not the fear of punishment, but the realisation that what one did was wrong, that will prevent future violence. Among criminologists it is believed that punishment seldom work as a deterrent, especially not against violent crime. Punishment by the state does not mean the convicted feel they did something wrong as long as they do not recognise it as a legitimate punishment. For people to change, they need to feel ashamed of what they did⁶¹.

Conclusion

In this essay I have argued that Rwanda is a dualist post-genocidal society, characterised by a high degree of complicity and a huge number of victims. This makes it impossible for a government that believe a culture of impunity to be the main reason for the genocide, and have embarked on an attempt to punish every single person that participated in the genocide, to use an ordinary legal system.

Gacaca is intended, among other things, to bring truth, justice and reconciliation; but as I have illustrated, reconciliation is a complex process with many contradictions. Justice and truth are not straightforward concepts but often contradict each other and have to be weighted against present

⁵⁹ Oomen, "Donor-Driven Justice and Its Discontents: The Case of Rwanda."p. 905

PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 15

⁶⁰ PRI, *Interim Report on Research on Gacaca Jurisdiction and Its Preparations (July-December 2001)*.p. 15

⁶¹ Drumbl, "Punishment, Postgenocide."pp. 1253-1263

security needs for survivors, perpetrators and bystanders. At the same time, the concepts of justice and truth are in themselves full of contradictions because different groups in society have different perceptions about what constitutes truth and justice for them. I have also shown how reconciliation is influenced by the political reality, and how the national focus on reconciliation through Gacaca does not necessarily lead to reconciliation between individuals.

Finally I have explored how the possible root causes of the genocide are being addressed by Gacaca, and it is clear that Gacaca continue the emphasis on a “culture of impunity”. Gacaca can be seen as a step in the right direction when it comes to work against poverty because of the introduction of community service, but Gacaca may turn out to be counterproductive in addressing fear of political domination and obedience to state power.

However, before judging Gacaca’s shortcomings in working towards truth, justice and security for everybody in Rwanda, one should of course keep in mind the difficulties of finding alternatives that will satisfy everybody. Other possibilities for reconciliation have not been investigated in this essay, but are of course used at the moment and ought to be explored even more in the future.

Appendix A: Laws and structure behind Gacaca

Laws⁶²

The first law regarding the genocide is Organic Law No. 08/96 of August 1996, which covers crimes of genocide and crimes against humanity from 1 October 1990. This original legislation had four categories of offences, which was also part of the first Gacaca law in 2001 (Organic Law No. 40/2000 of 16 January 2001). The law covers crimes of genocide and crimes against humanity committed between 1 October 1990 and 31 December 1994. The Gacaca legislation was simplified in 2004 by Organic Law No. 16/2004 of 19 June 2004, which made three categories of offences instead of four by merging categories 2 and 3.

Categories of offences⁶³

Category 1: Planners and organisers of the genocide, including people who held positions in the army, government, militias and religious organisations who participated in the genocide. This category also includes crimes of rape, torture and murder with brutal circumstances.

Category 2: Murders and crimes against the person that led to death, other crimes against the person

Category 3: Crimes against property.

Category 1 suspects are outside the Gacaca jurisdiction, and will be tried by the national courts. It is expected that up to 80% of all suspects will be tried for killings and belong to category 2.

3 levels of Gacaca⁶⁴

The Gacaca Court of the Cell

The Gacaca system is built on the already existing administrative system. The lowest level is the cell level, and adults belong to a cell and are expected to attend the meetings which take place once a week, and to tell what they know about who lived in the cell and what happened to them. There are penalties for not testifying. In 2001, each cell elected its judges, and all adults could participate in these elections.

⁶² Information about the legislation according to Schabas, "Genocide Trials and Gacaca Courts." pp. 885, 892, 894

⁶³ This section is based on *Organic Law N°16/2004 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*. article 51, and Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*. p. 70

Please note that the 1996 legislation had 4 categories of offences, this was changed in 2004 when former categories 2+3 was merged. Most of the literature I have used in this essay refer to 4 categories.

⁶⁴ This section is based on *Organic Law N°16/2004 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*. Article 42, 43 and 44

The cell tries cases of category 3 suspects, and is responsible for establishing who lived in the cell and for categorising all the suspects.

The Gacaca Court of the Sector

The sector level tries suspects from category 2.

The Gacaca Court of Appeal

The Gacaca court of Appeal hears appeals from the sector.

Confession and Guilty Plea procedure⁶⁵

An important part of the 1996 law that has been carried forward to the Gacaca legislation is the "Confession and Guilty Plea Procedure". According to this procedure, offenders from categories 2 and 3 get a substantial reduction in their penalties, and can serve half of the sentence as community service. A confession must include a complete description of the crime and name any accomplices. As part of the confession the offender is required to ask for forgiveness in public.

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⁶⁵ Information about this procedure is from Schabas, "Genocide Trials and Gacaca Courts." p. 885, and Harrell, *Rwanda's Gamble : Gacaca and a New Model of Transitional Justice*. p. 76

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