

Transitional Justice in Rwanda

For so many reasons, Rwanda should be “an impossible country”.¹ In just 100 days in 1994, out of a total population of seven million, 800,000 people were slaughtered,² two million fled the country as refugees,³ and more than two million have subsequently been prosecuted by international, national and traditional courts.⁴ Yet Rwanda still exists. Indeed, arguably, it is thriving. Eighteen years after the genocide, it has strong economic growth, relative political stability, and comparatively very low crime rates, and, as observed by many perplexed foreign visitors, it is impossibly clean – virtually no rubbish littering the streets and few stray dogs.⁵ After the genocide, the incoming government, the international community and the Rwandese people have utilized a number of different transitional justice strategies to assist the country to move forward peacefully and sustainably. This essay will describe and analyze some of these, and evaluate their overall success in achieving the stated transitional justice goals. The key areas considered are prosecutions and amnesties; truth seeking, reparations and memorialization; institutional reform; and reconciliation.

Background

According to an ancient Rwandan adage, *Turi bene mugabo umwe* – “we are the sons and daughters of the same father.” For centuries, “Rwandans believed this and lived accordingly.”⁶ Rare in the region, the three main groups in Rwanda, Hutu, Tutsi and Twa, “saw themselves first and foremost as Rwandans ... working together, marrying one another, having children together.”⁷ In post-colonial Rwanda, however, “killing Tutsis [became] a political tradition;” it was now killing that “brought people together”.⁸ German and then Belgian⁹ colonizers pursued a

1 Philip Gourevitch, “We Wish To Inform You That Tomorrow We Will Be Killed With Our Families” (1998), 224 (“Gourevitch, ‘We Wish To Inform You’”); Philip Gourevitch, “The Life After”, *The New Yorker* (4 May 2009) 37 (“Gourevitch, ‘The Life After’”).

2 Samantha Power, “A Problem From Hell” (2003), 334.

3 Gourevitch, “We Wish To Inform You”, 20-21.

4 BBC News Africa, 18 June 2012, at <http://www.bbc.co.uk/news/world-africa-18490348> (accessed 5 January 2013).

5 Gourevitch, “We Wish To Inform You”, 147; Gourevitch, “The Life After”, 37; personal observations of the author in Rwanda in 2009 and 2010.

6 Joseph Sebarenzi (with Laura Ann Mullane), “God Sleeps in Rwanda” (2009), 11.

7 Sebarenzi, “God Sleeps in Rwanda” (2009), 11.

8 Gourevitch, “We Wish To Inform You”, 96.

9 Sebarenzi, “God Sleeps in Rwanda” (2009), 12.

divide and rule approach. They destroyed national unity by institutionalizing ethnic difference: creating ethnic identity cards, favoring the Tutsi minority and discriminating against the Hutu majority, and then, in the latter stages, reversing that favoritism.¹⁰

Post-colonial Rwandan history is littered with periodic state-sponsored *muyaga*, or “wind of destruction” ethnic massacres of Tutsis by Hutus.¹¹ Between 1959 and 1967 alone, more than 20,000 Tutsis were killed and 300,000 fled as Hutus “clear[ed] the bush”,¹² setting the scene for a perpetual cycle of violence.¹³ By 1989, there were over one million exiled Rwandans.¹⁴ The Rwandan Patriotic Front (RPF) was formed in 1987 from Tutsi and opposition Hutu refugees in Uganda.¹⁵ In 1990, it began a violent campaign against the extremist Hutu Power¹⁶ regime of President Habyarimana.¹⁷ The Arusha Accords, signed in 1993, theoretically led to a ceasefire and power sharing government.¹⁸ The assassination, however, of Habyarimana on 6 April 1994 unleashed an organized and grass-roots campaign of violence,¹⁹ with the *interahamwe* militia at its core,²⁰ against Tutsis and moderate Hutus. It was a genocide. Until the RPF, under the leadership of Paul Kagame, managed to gain effective control over Rwanda three months later,²¹ 800,000 people, mostly Tutsis, were killed. Over two million refugees, mostly Hutu (and including members of Hutu Power and the *génocidaires*) had fled into neighboring countries.²²

In the aftermath, Rwanda was destroyed physically and psychologically. In 1995, a team from the World Bank declared that Rwanda, economically, was a “nonviable country”.²³ With a per capita GDP of \$80 per year, it was the poorest country in the world.²⁴ This assessment did

10 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 17; Sebarenzi, “God Sleeps in Rwanda” (2009), 13; Gourevitch, “We Wish To Inform You”, 65-66.

11 Sebarenzi, “God Sleeps in Rwanda” (2009), 14; Gourevitch, “We Wish To Inform You”, 59, 65.

12 Sebarenzi, “God Sleeps in Rwanda” (2009), 13; International Panel of Eminent Personalities: Rwanda: the Preventable Genocide, OAU 2000.

13 Gourevitch, “We Wish To Inform You”, 64; Sebarenzi, “God Sleeps in Rwanda” (2009), 231.

14 Gourevitch, “We Wish To Inform You”, 73.

15 Gourevitch, “We Wish To Inform You”, 214.

16 Gourevitch, “We Wish To Inform You”, 17, 81.

17 Gourevitch, “We Wish To Inform You”, 82, 216.

18 Gourevitch, “We Wish To Inform You”, 99.

19 Geoffrey Robertson, “Crimes Against Humanity” (2006), 80; Gourevitch, “We Wish To Inform You”, 110.

20 Geoffrey Robertson, “Crimes Against Humanity” (2006), 80; Gourevitch, “We Wish To Inform You”, 93.

21 Geoffrey Robertson, “Crimes Against Humanity” (2006), 82; Gourevitch, “We Wish To Inform You”, 144.

22 Gourevitch, “We Wish To Inform You”, 20-21.

23 Gourevitch, “The Life After”, 46.

24 Gourevitch, “We Wish To Inform You”, 270.

not even take into account the ongoing impact of the trauma upon survivors,²⁵ the complexities of dealing with reconciling a society that had turned upon itself – neighbor against neighbor,²⁶ the practicalities of running a country with no finances or workable infrastructure,²⁷ and the constant violent attacks by remnants of Hutu Power and *génocidaires* from internationally financed and operated refugee camps based beyond Rwanda's borders.²⁸ Security was a constant threat. Significant and regular massacres occurred into the 2000s by *génocidaires*, with occasional reprisal attacks by Tutsis.²⁹ Hutu Power and *génocidaires*, with the active support of Mobutu, Zaire's long-serving dictator (as the Democratic Republic of Congo was known until Mobutu's overthrow in 1997), committed mass atrocities, ethnic cleansing, and arguably genocide against Zairean Tutsis.³⁰ This only ceased after Rwandese soldiers closed the camps and forcibly repatriated the Hutu refugees back to Rwanda (or saw them flee further into Zaire).³¹

In a relatively short period of time, Rwanda has turned this perilous situation around.³² Its recovery was aided by the unexpectedly rapid return of 750,000 formerly exiled Tutsis and moderate Hutus within the first nine months after the genocide, bringing foreign funds and more than one million cattle.³³ With pressure from Rwandan armed forces, most Hutu refugees also returned to Rwanda (including 1.5 million returnees in the second half of 1996).³⁴ Foreign aid is gradually being replaced by foreign investment and domestic-led growth. Although foreign aid in 2009 still accounted for approximately half of Rwanda's budget,³⁵ President Kagame, using Singapore as his economic model, has focused efforts on education, trade and entrepreneurship.³⁶ The recent development of methane deposits has doubled the electricity supply, and new mines

25 For example, approximately five out of six children had directly witnessed bloodshed. Gourevitch, "We Wish To Inform You", 224.

26 Gourevitch, "We Wish To Inform You", 235-236, 240, 302.

27 Gourevitch, "We Wish To Inform You", 229.

28 Gourevitch, "We Wish To Inform You", 167.

29 Gourevitch, "We Wish To Inform You", 223, 259, 346.

30 Gourevitch, "We Wish To Inform You", 166, 266-267, 279, 290.

31 Gourevitch, "We Wish To Inform You", 293, 295, 300.

32 Gourevitch, "We Wish To Inform You", 232.

33 Gourevitch, "We Wish To Inform You", 230-231.

34 Gourevitch, "We Wish To Inform You", 300, 311.

35 Gourevitch, "The Life After", 46.

36 Gourevitch, "The Life After", 47.

have opened. Plans are underway to establish free trade zones and a rail link to a port in Tanzania.³⁷ In 2011, GDP per capita had risen to \$583 per person,³⁸ and its Human Development Index ranking has more than doubled since its record low in the wake of the genocide.³⁹

It is now a safe and orderly country, with a minimal presence of soldiers on the streets. There is a national health insurance scheme, a police force that even enforces basic road rules, an improving education system, widespread broadband internet and mobile phone coverage, and government officials with regular working hours.⁴⁰ Further, it is the only country in the world to have a majority of female parliamentarians.⁴¹ Serious problems, however, remain. There is still sporadic ethnic-based violence, either against Tutsi survivors or retributive attacks against Hutus; restrictions are in place limiting freedom of speech and suppressing political opposition; there is an ongoing perception of victor's justice in prosecutions, memorialization and truth-seeking; reparations have been minimal and sometimes misdirected; reconciliation is at best a forced concept; Rwanda-backed violence continues to destabilize the eastern Congo;⁴² and there is an ever-present fear of a return to ethnic violence within Rwanda itself.

Prosecutions and Amnesties

Given the sheer numbers involved, the nature of the crimes, and the complete physical collapse of the Rwandan judicial system in 1994, adequately and efficiently prosecuting everyone responsible for serious crimes was near impossible.⁴³ However, despite much external and internal pressure, the new government did not grant a blanket amnesty to perpetrators.⁴⁴ Whilst there were limited amnesties under certain conditions, and significant reductions in sentencing in return for confessions, there was a concerted effort to prosecute perpetrators. Given

37 Gourevitch, "The Life After", 47.

38 GDP tripled between 1994 and 2009, despite a 25% increase in population to 10 million; Gourevitch, "The Life After", 37. In 2011, Rwanda's GDP per capita was higher than Tanzania, Uganda, Burundi and the Democratic Republic of Congo. See World Bank Data at www.data.worldbank.org/indicator (accessed 5 January 2013).

39 From 0.217 in 1995 to 0.429 in 2011, with a ranking of 166 out of 187 measured countries (Tanzania is at 152, Uganda at 161, Burundi at 185 and Democratic Republic of Congo at 187). See UNDP, Human Development Reports at www.hdr.undp.org/en/statistics (accessed 5 January 2013).

40 Gourevitch, "The Life After", 37.

41 Gourevitch, "The Life After", 37.

42 Stefaan Marysse and Filip Reyntjens (eds), "The Political Economy of the Great Lakes Region in Africa" (2005), 35-38; Sebarenzi, "God Sleeps in Rwanda" (2009), 231; Gourevitch, "The Life After", 47-48.

43 Gourevitch, "We Wish To Inform You", 249.

44 Gourevitch, "We Wish To Inform You", 293.

the horrific nature of the atrocities, however, “true genocide and true justice are incompatible”, making prosecution a challenging task.⁴⁵ In each case, however, victims, as witnesses, were empowered at least for a moment to tell their story before the ICTR, national or *gacaca* court. For some, this provided a sense of relief and strength to move forward. For others, however, it only served to deepen the trauma experienced.

International Criminal Tribunal for Rwanda: After failing to act to prevent the genocide, the international community, through the UN Security Council, established the International Criminal Tribunal for Rwanda (ICTR) in late 1994. Based in Arusha, Tanzania, its mandate was to prosecute those most responsible, including political, military, business and religious leaders. Modeled on the International Criminal Tribunal for the former Yugoslavia, the ICTR has so far completed cases against 72 individuals, convicting and sentencing 62 (17 still on appeal) and acquitting 10.⁴⁶ The ICTR will complete operations in 2013, with a Residual Mechanism taking over its responsibilities in a scaled down form.

The ICTR has had considerable success in very publicly ending impunity and holding to account those most responsible for genocide, crimes against humanity and war crimes.⁴⁷ It has contributed much to the body of international law, including ruling that rape is a crime of genocide,⁴⁸ prosecuting members of the media for inciting genocide,⁴⁹ and receiving the only ever admission of guilt by a head of government to genocide.⁵⁰ The ICTR comprises internationally respected jurists and endeavors to deliver justice impartially. It was established in Arusha, Tanzania (rather than in Rwanda or in The Hague), adjacent to where the atrocities occurred. Witnesses, from amongst survivors and accused *génocidaires*, are flown to Arusha to appear in person. More than 3,200 witnesses have testified before the ICTR.⁵¹ After some early reluctance to extradite indictees to the ICTR, most countries soon began working with the court

45 Gourevitch, “We Wish To Inform You”, 249.

46 United Nations, International Criminal Tribunal for Rwanda website at www.unict.org (accessed 5 January 2013).

47 Geoffrey Robertson, “Crimes Against Humanity” (2006), 409.

48 In the trial of Jean-Paul Akayesu. See Samantha Power, “A Problem From Hell” (2002), 485.

49 Allan Thompson, “Media and the Rwanda Genocide” (2007).

50 In the trial of former Prime Minister, Jean Kambanda.

51 Agence Hirondele, “ICTR Heard Over 3,200 Witnesses” (3 January 2012).

to capture and extradite those indicted.⁵² Initial attempts by the ICTR Prosecutor to transfer cases to Rwandan courts were rejected on the basis that a fair trial could not be guaranteed. However, as the ICTR began to wind up its operations and the judicial system in Rwanda was seen to have improved, some cases were successfully transferred.⁵³

However, substantial criticism has been leveled at the ICTR from all sides.⁵⁴ Rwanda, coincidentally a member of the Security Council in 1994, voted against the establishment of the ICTR as it did not permit the death penalty (then currently in force in Rwanda⁵⁵) and it wanted to prosecute cases itself.⁵⁶ The previous inaction during the genocide severely undermined the credibility of the international community, and the hurried establishment of the ICTR was regarded by many in Rwanda as a cynical move to appease its collective conscience.⁵⁷ Without the death penalty, sentences faced by ICTR defendants were inconsistent with those faced in Rwanda. The punishment certainly was not considered to meet the severity of the alleged crimes.⁵⁸ Further, it was widely anticipated that those convicted would serve their sentences in luxurious prisons in Scandinavia.⁵⁹

The ICTR has been enormously expensive to run, and extraordinarily slow. Due to understaffing, mismanagement, and the technical limitations of its Arusha location, there were significant delays, especially within its first two years.⁶⁰ By locating the ICTR in Tanzania, it also removed the Tribunal from where the atrocities occurred and where most victims lived. This physical distance reduced the effectiveness of this justice component of prosecutions for victims, and led to a significant backlash in public opinion against the ICTR within Rwanda.⁶¹ Minimal initial consideration was given to public relations and community engagement in Rwanda by the

52 Gourevitch, "We Wish To Inform You", 336.

53 For example, the case of Pastor Jean Uwinkindi. See Agence Hirondelle, "First Transfer of an ICTR Detainee to Rwanda for Trial" (19 April 2012).

54 Geoffrey Robertson, "Crimes Against Humanity" (2006), 408-409; Samantha Power, "A Problem From Hell" (2002), 484-486, 495; Susan Thomson, "After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond (Review)", *African Studies Review*, Vol 53, No 1 (April 2010), 204-206.

55 Gourevitch, "The Life After", 38.

56 Geoffrey Robertson, "Crimes Against Humanity" (2006), 83; Gourevitch, "We Wish To Inform You", 252,254.

57 Gourevitch, "We Wish To Inform You", 253, 255.

58 Gourevitch, "We Wish To Inform You", 254.

59 Most, however, ended up serving sentences in prisons in various African countries that complied with minimum international standards, such as in Mali. Gourevitch, "We Wish To Inform You", 255.

60 Gourevitch, "We Wish To Inform You", 253.

61 Gourevitch, "We Wish To Inform You", 253.

Tribunal. It has since improved its engagement by establishing information offices in Rwanda and through outreach community education programs.⁶² The ICTR was also criticized for a lack of an effective witness protection program, and for delivering a version of victor's justice. Only Hutus were ever indicted, despite numerous accusations against members of the RPF for war crimes and crimes against humanity.⁶³ When Prosecutor Carla Del Ponte began investigating members of the ICTR, fierce political opposition led to non-renewal of her tenure at the end of her contract in 2003.⁶⁴ Similarly, survivor advocacy groups and the Rwandan government have strongly criticized the ICTR for being biased against Tutsis whenever an acquittal occurred (especially when there was an acquittal on procedural errors⁶⁵), a sentence was considered too lenient or there was an early release.⁶⁶ Of those who were indicted, nine still remain at large, despite regular appeals to suspected host countries to increase efforts to apprehend the suspects.⁶⁷

The ICTR was a very expensive means of prosecuting a small number of people in a geographically and symbolically removed location.⁶⁸ It made substantial early errors, particularly regarding engagement with the Rwandese community. However, it has played a very important role in the transition of Rwanda post-genocide. It removed from the post-conflict environment the most influential leaders of the genocide, brought them before an internationally recognized and supported court, and held them to account for their criminal actions in an impartial and public manner. It did this in a way that did not further undermine the stability of a fragile Rwanda. It also sent a very strong message to those involved in continuing atrocities in Rwanda and in other conflict zones about the ever-present risk of criminal prosecution for human rights violations. It is possible that, without the ICTR, some detainees would have either not been

62 Agence Hirondelle, "Exhibition About the History of the Genocide Set Up in Kigali Stadium" (7 April 2011); Agence Hirondelle, "ICTR Reaches Out to Rwandan Students and Teachers" (28 October 2009).

63 Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 121-122; Sebarenzi, "God Sleeps in Rwanda" (2009), 85.

64 Steven Edwards, World News Journal, "ICTR Prosecutor Carla Del Ponte Says UN Caved to Rwandan Pressure" (17 September 2003), at <http://africannewsanalysis.blogspot.com/2007/03/ictr-prosecutor-carla-del-ponte-says-un.html> (accessed 5 January 2013); Geoffrey Robertson, "Crimes Against Humanity" (2006), 409.

65 For example, Protais Zigiranyirazo; see Agence Hirondelle, "ICTR Appeals Court Acquits 'Mr Z' of 1994 Genocide" (1 November 2012).

66 Agence Hirondelle, "Genocide Survivors 'Shocked' By Early Releases" (17 December 2012).

67 United Nations, International Criminal Tribunal for Rwanda website at www.unict.org, accessed 5 January 2013.

68 Geoffrey Robertson, "Crimes Against Humanity" (2006), 408-409.

prosecuted due to a reluctance to extradite to Rwanda, or would have been subject to highly partial prosecutions in Rwanda without due process and sufficient protection of their defendant rights.

Rwandan National Courts: Recognizing the enormity of the number of detainees involved and the need for a workable solution, the government in 1996 passed a special genocide law that categorized different levels of responsibility.⁶⁹ A National Commission of Triage was established to identify and release “prisoners against whom the accusations of genocide were insubstantial”.⁷⁰ Only more serious cases would be prosecuted in Rwandan national courts. The death penalty, still in force at that stage, was reserved only for the most serious Category One detainees.⁷¹ Whilst only one set of prisoners was executed before the death penalty was abolished, that execution took place before a crowd of 30,000 people.⁷² A “most wanted” list of the top 400 *génocidaires* was created, however, all of them had already fled into exile.⁷³ Those on the lower end were deliberately let “off the hook”, with official acknowledgment of the severe practical limitations of their chosen approach as the “best justice we can try for in the circumstances”.⁷⁴ Given delays in restoring the judicial system, due to financial and human resource shortages, trials only commenced in December 1996.⁷⁵ Most trials lasted less than one day and took place without defence counsel. More lenient sentences were given where defendants confessed, and there were actually even some acquittals.⁷⁶

The government took a great risk in pursuing prosecutions, given the unstable security situation then present. Ignoring international calls for broad amnesties, the government recognized the need for publicly administered justice and personal accountability by the perpetrators for their atrocities.⁷⁷ The impact was noticeable. In response to the trial of a high

69 Gourevitch, “We Wish To Inform You”, 249, 309-310, 346.

70 Gourevitch, “We Wish To Inform You”, 245.

71 Gourevitch, “We Wish To Inform You”, 249, 309-310.

72 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 9; Gourevitch, “The Life After”, 38.

73 Gourevitch, “We Wish To Inform You”, 252.

74 Gourevitch, “We Wish To Inform You”, 250.

75 Gourevitch, “We Wish To Inform You”, 248.

76 Gourevitch, “We Wish To Inform You”, 343.

77 Gourevitch, “We Wish To Inform You”, 293.

level *genocidaire*, Froduald Karamira, in January 1997, the effect upon survivors was “cathartic”, with a “once immensely powerful man so humbled”.⁷⁸ For Hutu refugees in camps outside Rwanda, the government did not provide a blanket amnesty to encourage their return, instead insisting that only those guilty of atrocities would be separated and prosecuted. All others would be free to return to their home communities and previous lives.⁷⁹

The process was far from perfect. Prosecutions did lead to some ongoing instability and targeted killings of potential witnesses.⁸⁰ Due process, according to international standards, was not always followed; it was, however, rarely arbitrary.⁸¹ Due to concerns about the Rwandan judiciary (as well as completely unrelated political considerations), many accused who fled were not extradited to Rwanda.⁸² Rwanda also consistently lost extradition battles in favor of the ICTR.⁸³ Other suspects have been prosecuted abroad, including in Canada and Denmark⁸⁴, whilst some have never faced prosecution.⁸⁵

Crucially, the special genocide law provided that those who confessed would receive lighter sentences (seven years imprisonment for those at a low level).⁸⁶ These short sentences, and subsequent reentry into local communities alongside those against whom they had committed the atrocities, was painful for many survivors.⁸⁷ Some people who were acquitted or released after serving their sentence were killed in retributive attacks.⁸⁸ Accusations of victor's justice also continued. Whilst the RPF was widely regarded as disciplined and comparatively respected by international observers, significant crimes were committed by its members.⁸⁹ Kagame made a deliberate point of prosecuting more than one thousand members of the RPF for

78 Gourevitch, “We Wish To Inform You”, 344.

79 Gourevitch, “We Wish To Inform You”, 293.

80 Gourevitch, “We Wish To Inform You”, 280.

81 Gourevitch, “We Wish To Inform You”, 248.

82 Gourevitch, “We Wish To Inform You”, 35, 43.

83 Gourevitch, “We Wish To Inform You”, 253.

84 France made a point of investigating and charging certain members of the RPF, including Major Rose Kabuye, for involvement in the assassination of President Habyarimana. The crew of the downed plane were French citizens. Major Kabuye was arrested in Germany, but the charges were later lifted.

85 Gourevitch, “We Wish To Inform You”, 43.

86 Gourevitch, “We Wish To Inform You”, 309-310, 346.

87 Gourevitch, “We Wish To Inform You”, 302.

88 Gourevitch, “We Wish To Inform You”, 246.

89 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 161; Gourevitch, “We Wish To Inform You”, 204, 218-219; Sebarenzi, “God Sleeps in Rwanda” (2009), 85.

killings and breaches of discipline, but not to a sufficient degree and with enough openness to negate criticism.⁹⁰

Gacaca: The number of detainees in Rwanda's prison system overwhelmed the limited space available. By the end of 1999, there were more than 150,000 inmates.⁹¹ Unsurprisingly, the prisons, containing inmates as young as seven,⁹² were viewed as a “human rights catastrophe” – with massive overcrowding, widespread disease and infections leading to high fatality rates.⁹³ However, the government allowed international observers to access the prisons and report on conditions,⁹⁴ and then worked to improve conditions inside where possible.⁹⁵ By mid-1996, mortality rates inside prisons were actually lower than those on the outside.⁹⁶ Certainly, some innocent people were interned, but, as Kagame stated, with some justification, better for them to be in prison awaiting trial than to be free and subject to revenge attacks and killings on the outside.⁹⁷ Some inmates even agreed.⁹⁸

For practical reasons, the government thus set up the *gacaca* courts, meaning “the flattened grass under the elders' tree”.⁹⁹ A form of traditional justice, the goal of these courts was to achieve “truth, justice [and] reconciliation”, and to encourage community healing by adjudging defendants more quickly and reducing expense to the state.¹⁰⁰ Operating primarily between 2005 and 2012, more than two million defendants went through this system for offences ranging from stealing property to mass killings. The ultimate conviction rate was approximately 65%.¹⁰¹ More than 12,000 courts were presided over by 160,000 elected lay community members, and the sessions were conducted out in the open within the community where the

90 Gourevitch, “We Wish To Inform You”, 246; Gourevitch, “The Life After”, 46.

91 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 137; Gourevitch, “We Wish To Inform You”, 242.

92 Gourevitch, “We Wish To Inform You”, 248.

93 Gourevitch, “We Wish To Inform You”, 242-248; Sebarenzi, “God Sleeps in Rwanda” (2009), 84-85.

94 Gourevitch, “We Wish To Inform You”, 244.

95 For example, schools were established within prisons, and the Red Cross was allowed to improve sanitary conditions and evacuate the worst medical cases. Gourevitch, “We Wish To Inform You”, 247-248.

96 Gourevitch, “We Wish To Inform You”, 247.

97 Gourevitch, “We Wish To Inform You”, 245.

98 Gourevitch, “We Wish To Inform You”, 246.

99 Jean Hatzfeld, “A Time for Machetes” (2003), 233. See, generally, Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 14-21.

100 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 14; BBC News Africa, 18 June 2012, at <http://www.bbc.co.uk/news/world-africa-18490348> (accessed 5 January 2013).

101 BBC News Africa, 18 June 2012, at <http://www.bbc.co.uk/news/world-africa-18490348> (accessed 5 January 2013).

alleged offences occurred.¹⁰² It was a very direct and personal form of justice – with perpetrators facing victims, members of families, and peers within their community. Complete and honest confessions were rewarded with substantially reduced sentences.¹⁰³

However, the *gacaca* strategy was not without some controversy and condemnation.¹⁰⁴ One criticism was that this top-down, government-initiated approach came “at the expense of individual processes of reconciliation”.¹⁰⁵ Members of the community felt pressured by local officials to attend sessions.¹⁰⁶ Confessions were often viewed cynically by survivors as only partially complete, and expressions of remorse were considered to be insincere.¹⁰⁷ Allegations of corruption were often made against *gacaca* officials, and some judges were later removed and themselves prosecuted for crimes committed during the genocide.¹⁰⁸ There was a lack of due process, protection of the rights of the accused, pressured confessions, and inconsistency in sentencing between the courts.¹⁰⁹ Facing an attacker caused great distress for some victims,¹¹⁰ whilst others (and some defendants) were sometimes subject to intimidation, violence, and even killings.¹¹¹ During one period in 2005, there was an “alarming number of cases in which genocide survivors were murdered before they could testify”.¹¹² This threatened to undermine “years of progress toward ... reconciliation” and led to accusations that Kagame was a “Hutu-lover”.¹¹³ On some levels, *gacaca* itself threatened the peace. Lower sentences meant that perpetrators were returned relatively quickly to freedom in their community, living amongst

102 Gourevitch, “The Life After”, 40.

103 Gourevitch, “The Life After”, 40.

104 See, generally, Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 373-390; Susan Thomson, “After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond (Review)”, *African Studies Review*, Vol 53, No 1 (April 2010), 204-206.

105 Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 374.

106 Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 381.

107 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 19-20; Gourevitch, “We Wish To Inform You”, 318-319; Jean Hatzfeld, “A Time for Machetes” (2003), 188, 192; Gourevitch, “The Life After”, 39, 42.

108 Gourevitch, “The Life After”, 39.

109 Geoffrey Robertson, “Crimes Against Humanity” (2006), 40; Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 383.

110 Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 385.

111 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 19.

112 Gourevitch, “The Life After”, 39.

113 Gourevitch, “The Life After”, 39.

those to whom they had previously caused so much harm. That led to much angst and trauma for survivors, and significant threats of retribution.

Despite these flaws, the *gacaca* approach did result in providing some form of accountability, even if it was only viewed as the most minimalist form of justice by some survivors.¹¹⁴ It was a very practical and pragmatic solution to a complex problem¹¹⁵ – dealing with such large numbers – without resorting to blanket amnesties with resultant perceptions of no justice having been done at all. Taking place within the community made it very direct and personal – bringing with that both a cathartic element for survivors, but, for some, an increase in the relived trauma.¹¹⁶ Along with the justice element, *gacaca* also contributed to the other transitional justice goals of truth-seeking and reconciliation.

Amnesties: International pressure was placed upon the Rwandan government by foreign governments, non-government organizations, and an internationally recognized political front for the former Hutu Power, to grant broad amnesties. They were particularly vocal in respect of those Hutus who remained in the refugee camps outside Rwanda.¹¹⁷ It was pressed that this would encourage them to return. However, the Rwandan government refused, preferring instead to grant uninhibited return to those who had not committed an offence and prosecuting those against whom allegations had been made. To progress, it was viewed that justice, through criminal prosecutions, had to be done. Further, it was considered that any general amnesty given would lead to “chaos” within Rwanda.¹¹⁸ Consequently, the vast majority (in some cases, up to 95% of a particular camp) were ultimately resettled peacefully in their home communities.¹¹⁹ After the final camps in Zaire were forcibly dismantled in late 1996, there was a short moratorium upon arrests to enable a speedy return to Rwanda. This was later lifted and arrests

114 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 20.

115 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 20.

116 Gourevitch, “The Life After”, 40, 42; Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 20-21.

117 Gourevitch, “We Wish To Inform You”, 266, 293.

118 Gourevitch, “We Wish To Inform You”, 252; Sebarenzi, “God Sleeps in Rwanda” (2009), 84-85.

119 Gourevitch, “We Wish To Inform You”, 189; Gourevitch, “The Life After”, 45.

continued.¹²⁰ The vast majority of returnees, however, were once again generally received peacefully in their home communities.¹²¹

Broader amnesties were granted, from time to time, by the President for those imprisoned who were elderly, sick, or had served more than a certain portion of their sentence. This was partly a pragmatic approach to address the continued overcrowding.¹²² Those released, however, had still been held to account, and had served at least some time in prison. Upon release, many were sent to *Ingando*, or Solidarity, camps, to promote national unity and reconciliation.¹²³ The categorization of detainees, under the special genocide laws, ensured that, whilst no general amnesty was given, different people were prosecuted via the more appropriate means, namely through either the national or *gacaca* courts.¹²⁴

Amnesties were provided in select cases. To entice members of the rebel forces who continued to threaten Rwanda from outside, some amnesties were granted. The former leader of the rebel army, General Rwarakabije, for example, returned in 2003 to join the Rwandan Armed Services as a General. He worked closely to rehabilitate expatriated rebel troops.¹²⁵ The majority of returned rebel troops received comparable treatment. Rather than execution or imprisonment, as was feared, these rebels were taken to demobilisation camps, trained in practical skills, given a financial payment, and then returned home soon after.¹²⁶ This had a notable impact upon morale within rebel forces; a campaign to launch an offensive against Rwanda in 2003 was actually aborted by General Rwarakabije (before he deserted) when he learned that captured rebel troops were humanely treated and former Hutu supporters in Rwanda advised that they preferred peace to further rebel-led violence. Half of the 12,000 rebel soldiers soon followed Rwarakabije back to Rwanda.¹²⁷

Conclusion: Despite overwhelming challenges, a large number of those responsible for

120 Gourevitch, "We Wish To Inform You", 307, 317.

121 Gourevitch, "We Wish To Inform You", 272-273.

122 Jean Hatzfeld, "A Time for Machetes" (2003), 234, 237.

123 Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 161-164.

124 Sebarenzi, "God Sleeps in Rwanda" (2009), 84-85.

125 Gourevitch, "The Life After", 45-46.

126 Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 161-164; Gourevitch, "The Life After", 45, 46.

127 Gourevitch, "The Life After", 45-46.

the atrocities in 1994, at both an organizational and grassroots level, were prosecuted in some form. The procedure was far from perfect; certainly, there were false convictions and acquittals,¹²⁸ deprivation of the human rights of accused persons, and associated killings of survivors and alleged perpetrators. Amnesties were not granted en masse, and where granted, seemed to balance the competing concerns of peace and stability, the need for accountability, the importance of minimizing retributive violence, and delivering at least a partial sense of justice to the survivors. It certainly provided a stark contrast to the complete impunity of those who had committed mass atrocities periodically between 1959 and 1994.¹²⁹ One impact of these prosecutions was to send the message, within Rwanda and more broadly, that despite chaos, government issued orders, mob-rule mentality, and apparent disinterest of the international community, there is always a chance that individuals will be held accountable for their criminal actions. Prosecutions also assisted other aspects of the transitional justice strategies, notably truth-seeking, memorialization, reparations, and reconciliation.

Truth-seeking, reparations and memorialization:

Truth-seeking: Whilst there was much planning and organization behind the atrocities of 1994, much of the course of actual events was chaotic. Given the post-colonial history of sporadic ethnic violence, the transition to a sustainable peace requires the production of both a factually accurate and symbolically representative record of events that acknowledges the experiences of all those involved.

Central to truth-seeking were the official records of the ICTR, national and *gacaca* courts. Through the judgments of these bodies, involving a critical assessment of the testimony of prosecution and defence witnesses, and often of the defendant him or herself, there is now a large record of specific episodes of the genocide.¹³⁰ Those who presented testimony were empowered to tell their stories to a receptive audience, and have their accusations or justifications considered

128 Gourevitch, "The Life After", 39.

129 Gourevitch, "We Wish To Inform You", 94.

130 Phil Clark, "When the Killers Go Home", *Dissent*, Vol 2, No 3 (Summer 2005), 20.

and assessed by a judge or their peers.¹³¹ For many, this had a cathartic effect, helping to ease the trauma and further facilitate reconciliation and forward progression. For some, however, the effect was negative, forcibly unearthing memories that they would have rather forgotten.¹³² Problems arise, too, when a version of events is rejected by an official body as lacking credibility or being inconsistent with other stories. This rejection can lead to a denial of that person's truth as remembered, intensify his or her suffering, and further block efforts to move on. Further, these courts also focused primarily on events surrounding the 1994 genocide, ignoring the important historical violence. And given the fact that most were prosecuted for crimes committed against Tutsis, there is a whole side of the opposing story that has not been adequately explored through these official bodies. Regardless, however, the records from these official judicial and semi-judicial bodies serve an important role in recording a more accurate version of events.

Issues arise, however, in the proper safekeeping of these records. With the winding up of the ICTR, Rwanda sought to obtain ownership over its archives.¹³³ This was rejected by the UN Security Council in favor of keeping them in international hands under the auspices of the Residual Mechanism for at least the next four years. It is problematic that the country where the events took place and the people who suffered was denied the right to house and maintain this important record. Understandably, practical concerns about protecting the identity of unidentified witnesses and ensuring that the archive was properly maintained and made available for use by the international community were important. Also, much of the archive is already publicly available – including within Rwanda.

There are serious concerns about the future of the archives of the *gacaca* courts.¹³⁴ With limited resources available to properly house and maintain this record, concerns were expressed after the closure of *gacaca* about the rapid deterioration of much of the archive. Contained mostly on paper, not electronic, it is susceptible to degradation and decay. Without significant

131 Gourevitch, "The Life After", 40.

132 Gourevitch, "We Wish To Inform You", 316; Gourevitch, "The Life After", 40.

133 Agence Hirondelle, "UN Security Council to Decide Final Destination of ICTR Archives" (5 September 2012).

134 Agence Hirondelle, "Gacaca Archives 'In Precarious Conditions'" (1 November 2012).

funds and possibly conversion into a digital format, this record remains rather inaccessible to ordinary persons and highly susceptible to permanent loss.

Field-based research work of interested journalists and authors provides a very important medium for truth-seeking. Although not with the rigorous substantiation of a judicial process, this source also does not have the same narrow confines. Many authors have written comprehensively about the events of 1994¹³⁵ – using extensive interviews with survivors¹³⁶ and perpetrators,¹³⁷ and covering the genocide from different perspectives and time periods. Some survivors have written and published their own personal stories.¹³⁸ Whilst only directly involving a small section of the population, this method provides a voluntary, and thus less confronting, way for some to tell their story as they remember it, adding to the overall representation of events – with which other victims, too, would be able to identify.

Closely linked to this has been the ability of survivors to vocally tell their story to others, either publicly or in private.¹³⁹ When President Bill Clinton, for example, visited Rwanda in 1998, survivors were invited to recount to him their stories.¹⁴⁰ At official memorial events, survivors are usually invited to share with the massed crowd some of their recollections. In the early days after the genocide with the influx of returned exiles, the new arrivals were often overwhelmed, to the point of frustration, with the constant story-telling of survivors (“they want to tell you all their stories forever”).¹⁴¹ Whilst the listeners may have grown tired of the recounting of these truths, for the tellers, it provided an important opportunity to share their stories with a listener who was removed from the intensity of the personal experience. With less substantiation of the accuracy of these truths, they are not as useful for the traditionally defined historical record of actual events, but these opportunities are immensely important for the symbolic and representative stories of what took place.

135 Some notable authors include Alison des Forges, Philip Gourevitch, Phil Clark and Susan Thomson.

136 See, for example, Gourevitch, “We Wish To Inform You”; Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000).

137 See, for example, Jean Hatzfeld, “A Time for Machetes – The Rwandan Genocide: The Killers Speak” (2003).

138 See, for example, Sebarenzi, “God Sleeps in Rwanda” (2009).

139 Gourevitch, “We Wish To Inform You”, 21, 238.

140 Geoffrey Robertson, “Crimes Against Humanity” (2006), 82, 422; Gourevitch, “We Wish To Inform You”, 350.

141 Gourevitch, “We Wish To Inform You”, 236.

Since the genocide, a number of professional and amateur playwrights in Rwanda and abroad have written plays based on the events of 1994.¹⁴² Some are based on actual events, using specific experiences, others have written in the abstract, providing a representation of what occurred. This has also occurred on screen, including with the internationally distributed “Hotel Rwanda” which recounted the story of Paul Rusesabagina and the Hôtel des Mille Collines in Kigali. Not only do these methods allow survivors to share their experiences, but they partly allow others from outside to gain an appreciation and understanding of what those present experienced.

One risk, however, of these informal mechanisms, is that they can lead to the proliferation of false truths and amplification of half truths to the point where the actual truth is lost, and can heighten emotional responses against those who caused the initial suffering. It also suffers the risk of drowning out the legitimate truths of those who suffered on the other side, particularly innocent Hutu survivors of RPF violence or Hutu Power controlled refugee camps.¹⁴³ Their suffering was immense and legitimate,¹⁴⁴ however, up against the overwhelming sorrow of the victims of the genocide itself and the political victory of the RPF, many Hutu sufferers do not feel comfortable or welcome to share their stories.¹⁴⁵ This one sided truth-telling can lead to long-term resentment, stymie reconciliation efforts and lead to further instability and violence.¹⁴⁶ This is particularly the case for children. Tutsi children, “because they can tell the truth ... can make their way back to life”; Hutu children who came “back from Congo ... they live inside silence ... the oppression remains, because they are not facing the past”.¹⁴⁷ Mechanisms need to be put in place to respectfully provide all who want to tell their story with a safe means to do so.

142 See, generally, Brent Blair and Angus Fletcher, “‘We Cry on the Inside’: Image Theatre and Rwanda’s Culture of Silence”, *Theatre Topics*, Vol 20, No 1 (March 2010) 23-31; Amanda Monte, “Performing Reconciliation: Transnational Advocacy in Rwanda”, *PAJ: A Journal of Performance and Art*, Vol 33, No 2 (May 2011) 80-93; Alexandre Dauge-Roth, “Passing on Voices, Going on Haunted: Witnessing and Hospitality in the Play Rwanda 94”, *L’Esprit Createur*, Vol 45, No 3 (Fall 2005) 85-102.

143 Geoffrey Robertson, “Crimes Against Humanity” (1006), 82; Gourevitch, “We Wish To Inform You”, 266-267.

144 Especially for children: see Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000), 221.

145 Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda’s Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 385; Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 161.

146 For a comparison between Tutsi and Hutu children, see Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000), 221.

147 Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000), 220-221.

Establishing a Truth and Reconciliation Commission (TRC) could assist with this objective.¹⁴⁸ The nearest equivalent, the *gacaca* courts, required actual defendants and related witnesses, and involved the prospect of punishment for the accused. A TRC, if established properly, could enable anyone to appear before the Commissioners, on a voluntary basis, to outline and record their experiences. This could then be compiled into another record of what transpired. It would also have a direct benefit to linked concepts of apology, reparation, forgiveness and reconciliation.¹⁴⁹

Government efforts to curtail freedom of speech has been a serious obstacle to accurate and holistic truth-seeking.¹⁵⁰ The government has made illegal any perceived attempt to deny the genocide. This law has often been used creatively to suppress opposition. An opposition presidential candidate, a Hutu, was arrested and imprisoned recently when she attended a genocide memorial and noted that there was no acknowledgment of the killing of moderate Hutus in the early stages of the genocide. Such threats of prosecution, and seemingly arbitrary use of that power to prosecute, severely restrict the ability for open and honest truth-telling.¹⁵¹ Certainly, there is a need to ensure that actual genocide-deniers do not inflame tensions, create instability and incite civil unrest, however, an appropriate balance must be achieved. The current law goes too far to restrict the legitimate pursuit of the truth.

Reparations: Either individual or collective, reparations play an important role in the practical and psychological dimensions of the healing process. Whether to acknowledge that a wrong was committed or to help alleviate the economic consequences of a loss, reparations are inherently linked to justice and the ability to move forward. There have only been limited reparation efforts in Rwanda. The government has downplayed the need for actual reparations by

148 Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 160; Sebarenzi, "God Sleeps in Rwanda" (2009), 233.

149 Sebarenzi, "God Sleeps in Rwanda" (2009), 233.

150 Stefaan Marysse and Filip Reyntjens (eds), "The Political Economy of the Great Lakes Region in Africa" (2005), 18; Phil Clark, "When the Killers Go Home", *Dissent*, Vol 2, No 3 (Summer 2005), 21; Susan Thomson, "After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond (Review)", *African Studies Review*, Vol 53, No 1 (April 2010), 204.

151 Susan Thomson, "The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts", *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 378-379.

arguing that overall economic growth and prosperity should instead be prioritized as a way of providing support to everyone.¹⁵² Further, the government prioritizes payments to demobilized rebel Hutu soldiers rather than to genocide survivors, as “resources are painfully limited, and neglected victims pose no immediate threat to society.”¹⁵³

The ICTR has no power to grant any form of reparation to witnesses. The national and *gacaca* courts do have the ability and some awards have been made. The national courts have awarded millions through civil claims, and many defendants brought before *gacaca* courts were charged with stealing property and ordered to return that property or compensate the victim.¹⁵⁴ Given the inadequacy of money or items to replace family members and personal suffering, any compensation provided could only be symbolic.¹⁵⁵ However, the inability of those convicted to pay the awards, the slowness of enforcement mechanisms, and corruption, have made the amount of actual reparations received negligible. In 2001, a parliamentary bill to establish a compensation fund lapsed due to lack of support and conflicting priorities. The government does apportion 6% of the annual budget to a fund to provide education, health and housing assistance to the most impoverished survivors, however, this does not reach the majority of the survivors.¹⁵⁶

The dire economic circumstances of some survivors, particularly in the first few years after the genocide, meant that many had to squat in the same abodes as those who had recently returned from the refugee camps. Some of those returnees had previously committed atrocities in that same community, sometimes even against members of the family with whom they were now squatting.¹⁵⁷ The situation was particularly dire for orphans and those who lost the breadwinner for their family. In 1996, over 100,000 children were looking after each other in houses “without any adult presence”.¹⁵⁸ There was also resentment amongst survivors towards returning Hutu refugees. In the refugee camps, they had received regular meals and other provisions courtesy of

152 Gourevitch, “The Life After”, 39.

153 Gourevitch, “The Life After”, 46.

154 Gourevitch, “We Wish To Inform You”, 249; Jean Hatzfeld, “A Time for Machetes” (2003), 232.

155 Gourevitch, “We Wish To Inform You”, 250.

156 Juergen Schurr, Third World Resurgence No 253 (September 2011) at 43, available at <http://www.twinside.org.sg/title2/resurgence/2011/253/human1.htm> (accessed 5 January 2013).

157 Gourevitch, “The Life After”, 38.

158 Gourevitch, “We Wish To Inform You”, 228.

an international contribution of \$1 billion. By contrast, over that same period, the international community had contributed only a few hundred million dollars in aid to Rwanda itself – to rebuild the decimated infrastructure and provide for the basic needs of those who remained there.¹⁵⁹

Survivors managed to cope economically by seeking “each other out, assembling surrogate families and squatting together”.¹⁶⁰ Basic living standards have since improved dramatically.¹⁶¹ However, this does not acknowledge the personal suffering of the individual in the way that reparations would, nor does it help to restore victims to an economic position that they would have been in had the atrocities not occurred. But given limited financial resources and overwhelming competing priorities, it is difficult to devise an approach that would address the need for reparations without strong financial support from the international community.

Memorialization: The genocide has left a permanent imprint upon the very heart and soul of contemporary Rwandan society. It is present in the visible scars and absent limbs of people who walk along the street, in the multitude of children now entering adulthood without a family, in the faces of lonely widows who approach their final years without a spouse or child to care for them. It is there in the bullet holes still gaping in some of the buildings, in the ruins of churches and schools that were set alight or bulldozed with victims trapped inside.¹⁶² Bones of the deceased still lie as they fell at some memorial sites.¹⁶³ Some of these signs may disappear with time, but short of significant political change and forced repression of collective memory, or the rewriting of history, it is safe to assume that the genocide will forever be remembered and commemorated in Rwanda. However, one notable failing of current methods of memorialization is that it only tells one part, albeit the largest part, of the story.

Every year since 1995, the seventh of April marks the Genocide Memorial Day.¹⁶⁴,

159 Gourevitch, “We Wish To Inform You”, 314.

160 Gourevitch, “We Wish To Inform You”, 228.

161 Gourevitch, “We Wish To Inform You”, 232.

162 Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000), 3-4.

163 Gourevitch, “We Wish To Inform You”, 16, .

164 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 95; Gourevitch, “The Life After”, 42.

Commemoration events are held throughout the country, attended by national and local officials, survivors and citizens.¹⁶⁵ Over 200 official – and numerous unofficial – memorial sites have been established, notably the Kigali Genocide Memorial Centre, the Nyarubuye Church in Kibungo, and the school in Murambi.¹⁶⁶ School students learn about the genocide to ensure future generations do not forget. A number of groups have been established that aid survivors, lobby on their behalf, and ensure the preservation of memory. *Ibuka* (“Remember”) acts as an umbrella organization that links all of these groups. Novels, plays, movies and art are continually being written, read, filmed and performed to acknowledge the events of 1994 and to ensure that it is remembered around the world.

However, due to laws that forbid discussion of ethnicity and anything that could be interpreted as a denial of the genocide, there is little that acknowledges or memorializes other victims of the violence, namely, victims of the advancing RPF forces, those who perished in the refugee camps, and even those moderate Hutus who were targeted for elimination in the early stages of the genocide.¹⁶⁷ In fact, a UN-sponsored proposal to honor Hutus, such as Paul Rusesabagina of “Hotel Rwanda” fame, who had risked their lives to protect Tutsis during the genocide, was rejected due to infighting within the Rwandan cabinet.¹⁶⁸ The memory of genocide is sometimes even used as a political tool against opposition figures or groups, including, sometimes, school students born after 1994.¹⁶⁹

Controversy surrounds some of the memorial sites, with concerns that leaving skeletons strewn on the ground as they fell deprives victims of a proper burial.¹⁷⁰ The skeleton of one woman, still impaled on a metal pike, was only recently removed from the alter of one church.¹⁷¹

165 Gourevitch, “We Wish To Inform You”, 250; Gourevitch, “The Life After”, 42.

166 Kigali Memorial Centre Website at <http://www.kigalimemorialcentre.org/old/centre/other.html> (accessed 5 January 2013); Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 103-109.

167 Susan Thomson, “The Darker Side of Transitional Justice: The Power Dynamics Behind Rwanda's Gacaca Courts”, *Africa: The Journal of the International African Institute*, Vol 81, No 3 (August 2011), 378-379.

168 Gourevitch, “We Wish To Inform You”, 245.

169 Opposition Pres candidate; Gourevitch, “We Wish To Inform You”, 245; Sebarenzi, “God Sleeps in Rwanda” (2009), 209-210.

170 Gourevitch, “We Wish To Inform You”, 16, 196.

171 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 107.

There are also issues with the risk of burying victims and *génocidaires* together.¹⁷² There are insufficient funds to adequately maintain some memorials, with these building-sized coffins falling into disrepair around the skeletons within. As time moves on, it is essential to ensure that the victims on all sides are adequately and appropriately acknowledged and remembered. Failure to do so will only lead to the build-up of resentment and cause insult to the memory of those who have been forgotten.

Institutional Reform

After colonial rule and successive Hutu-led dictatorships, Rwanda's ethnic division, by 1994, had become institutionalized. It permeated every apparatus of state and society: parliament, education, police, army, judiciary, business, the media, the church, and even within mixed-ethnicity families. Long-standing discrimination and quotas based on lower than actual numbers had ensured that Tutsis were underrepresented in all state institutions. When the genocide began, and with a history of the masses obeying and revering power,¹⁷³ all of these instruments of the state were turned against Tutsis to further the objectives of the genocide.

After the RPF took power, little was left of the Rwandan state in terms of infrastructure and personnel. In a way, this made easier the wholesale recreation of these institutions. The new government could largely begin afresh. The old, however, was not completely discarded. Any provincial or community official who had remained in Rwanda and was not tainted by criminal allegations was permitted to continue in that role.¹⁷⁴ This provided a degree of continuity, and ensured that those who had not done anything wrong were not unduly punished.

Ethnic identity cards, introduced by the Belgians, were banned by the new government.¹⁷⁵ In fact, any identification by ethnicity – as a Hutu or a Tutsi – was made illegal.¹⁷⁶ The official languages of Rwanda were Kinyarwanda and French. The new government, which contained many exiles from English-speaking Uganda and had frosty relations with France after its

172 Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 107.

173 Gourevitch, "We Wish To Inform You", 23; Gourevitch, "The Life After", 40.

174 Gourevitch, "We Wish To Inform You", 245.

175 Gourevitch, "We Wish To Inform You", 223.

176 Gourevitch, "We Wish To Inform You", 235.

prolonged support for Hutu Power (even during the genocide),¹⁷⁷ added English as an official language.¹⁷⁸ English has virtually replaced French as the language of government and much of the education system, and is said to be the way of the future for an economically prosperous Rwanda. For similar reasons, Rwanda also joined the Commonwealth of Nations, becoming the second non-British colony, after Mozambique, to join. Its neighbors to the north and east (Uganda, Tanzania and Kenya), and thus access to the sea, are Commonwealth members too. Rwanda has become a pivotal member of the East African Community, with a customs union, Parliament, and Court of Justice. In 2001, Rwanda also replaced its genocide-tainted national flag and anthem.¹⁷⁹

Some of these decisions have been well received or implemented with little noticeable change. The post-ethnicity laws and language changes have proven more divisive. With ethnicity, there was arguably some merit. Before colonization, ethnicity had not been a source of division. Hutu and Tutsi (and Twa) were all Rwandese. To overcome many decades of violent and artificial ethnic distinction would understandably require deliberate and fundamental change. Legally mandating a post-ethnic Rwanda was one option. Banning the use of ethnic terms, so entrenched in the recent mindsets of the Rwandan people, however, was difficult and required a period of adjustment.¹⁸⁰ Current laws which punish the use of these terms are perhaps ill-suited when the intention is to change the psyche of an entire population. Changing the official language, while evidencing a monumental and appreciable change across the entire country, is problematic.¹⁸¹ Within families, older siblings are fluent in French whereas younger siblings are fluent in English. University students who had begun their studies in French had to redo their courses in English. For some, the additional expenditure and time, and limited English ability, meant an end to their studies – with nothing to show for it. In schools, teachers and principals

177 Gourevitch, "We Wish To Inform You", 89, 90, 155, 160; Gourevitch, "The Life After", 38.

178 Constitution of the Republic of Rwanda (2003), Art.5.

179 Constitution of the Republic of Rwanda (2003), Art.6; Jennie Burnet, "Women, Memory, and Silence in Rwanda" (2012), 165-166.

180 Phil Clark, "When the Killers Go Home", *Dissent*, Vol 2, No 3 (Summer 2005), 21.

181 Interview by the author with Marie Claudine Mukamabano, founder of the Kuki Ndiho Foundation, 30 November 2012.

actively discriminate against French speaking students in favor of English speaking students.¹⁸²

Many Rwandese, Tutsi and Hutu alike, felt as though they had been punished for something which they did not do; a punishment imposed without any valid cause.

The Rwandan constitution was rewritten. It was drafted in an attempt to disperse power amongst different players and to remove the role of ethnicity in the political party system.¹⁸³ For example, one political organization may only hold up to 50% of the positions in Cabinet.¹⁸⁴ This reduces the potential for power once again to be held by a few. A certain number of parliamentary seats were reserved for women,¹⁸⁵ for youth representatives, and for a disabled representative.¹⁸⁶ It also permanently memorializes the genocide, with the Preamble dedicated to discussion of the genocide and the need to ensure that such an event does not re-occur.¹⁸⁷ Despite this, much criticism has been leveled at Kagame for concentrating too much power in his hands at the expense of the other branches of power.¹⁸⁸

Whilst these reforms overcome some of the problems of the previous era, Rwandan democracy is fragile.¹⁸⁹ Under Kagame, rather than a “consensus” style of democracy, there has been significant suppression of opposition, arrests of opposition leaders, and restrictions on freedom of speech.¹⁹⁰ Elections, whilst without widespread violence, regularly experience isolated attacks – including with grenades. At the 2003 Presidential election, Kagame won 95.5% of the vote;¹⁹¹ at the 2010 election, he was re-elected with 93% of the vote. Countless former members of Parliament, the military, the nonprofit sector and the media have fallen out with Kagame and fled into exile or been arrested, including the former President of Rwanda,¹⁹² under whom Kagame served as Vice President and Minister of Defence. Whilst the post-genocide

182 Interview by the author with Marie Claudine Mukamabano, founder of the Kuki Ndiho Foundation, 30 November 2012.

183 Constitution of the Republic of Rwanda (2003), Art.54.

184 Constitution of the Republic of Rwanda (2003), Art.116.

185 Constitution of the Republic of Rwanda (2003), Art.52, 54, 76, 82.

186 Constitution of the Republic of Rwanda (2003), Art.76.

187 Constitution of the Republic of Rwanda (2003), Preamble.

188 Sebarenzi, “God Sleeps in Rwanda” (2009), 137; Gourevitch, “The Life After”, 38.

189 Sebarenzi, “God Sleeps in Rwanda” (2009), 233.

190 Sebarenzi, “God Sleeps in Rwanda” (2009), 228-229.

191 Gourevitch, “The Life After”, 38.

192 Stefaan Marysse and Filip Reyntjens (eds), “The Political Economy of the Great Lakes Region in Africa” (2005), 17-19; Gourevitch, “We Wish To Inform You”, 246; Sebarenzi, “God Sleeps in Rwanda” (2009), 209.

governments have contained a mixture of Tutsi and Hutu,¹⁹³ the most important positions are generally held by RPF members of Kagame's inner circle (and mostly Tutsi).¹⁹⁴ Rwanda and its army have continued to meddle in the east Congo, supporting rebels and thus contributing to regional instability and undermining Rwanda's international reputation.¹⁹⁵

A truly representative and effective democracy tends to be a useful barrier to oppression and systematic violence.¹⁹⁶ However, as advocated by President Museveni of Uganda, who came to power when he overthrew a previous violent dictator during a period of widespread civil strife, after such a period of immense social upheaval and without a history of well-functioning democratic institutions, a period of adjustment is necessary before effective democracy can be allowed to function.¹⁹⁷ Time will determine whether democracy will be strengthened in Rwanda. A crucial test of this will come in 2017 when Kagame finishes his second – and constitutionally final – term as President.¹⁹⁸ If he hands over power smoothly, then that may be a positive sign for future progress.

In the lead-up to and during the genocide, one of the most effective institutions in promoting the genocide was the media, in particular, the radio station, Radio Télévision Libre des Mille Collines.¹⁹⁹ It promoted hate speech over the airwaves against the Tutsis– the *inyenzi*, or cockroaches,²⁰⁰ telling listeners to “do their work” and advertising where and who to kill. Anti-Tutsi and anti-moderate Hutu songs were performed to rally the masses.²⁰¹ In the aftermath, several media personalities and executives were prosecuted by the ICTR, national and *gacaca* courts.²⁰² Parliament adopted anti-hate speech legislation, including the ban on ethnic terms.

193 Gourevitch, “We Wish To Inform You”, 163, 222.

194 Stefaan Marysse and Filip Reyntjens (eds), “The Political Economy of the Great Lakes Region in Africa” (2005), 22-24; Gourevitch, “We Wish To Inform You”, 222.

195 Stefaan Marysse and Filip Reyntjens (eds), “The Political Economy of the Great Lakes Region in Africa” (2005), 35-38; Gourevitch, “We Wish To Inform You”, 295; Sebarenzi, “God Sleeps in Rwanda” (2009), 231; Gourevitch, “The Life After”, 47-48.

196 Sebarenzi, “God Sleeps in Rwanda” (2009), 233.

197 Gourevitch, “We Wish To Inform You”, 329-330, 331.

198 Gourevitch, “The Life After”, 38; Constitution of the Republic of Rwanda (2003), Art.101.

199 Geoffrey Robertson, “Crimes Against Humanity” (1006), 205; Gourevitch, “We Wish To Inform You”, 86, 95, 99; Sebarenzi, “God Sleeps in Rwanda” (2009), 15. See, generally, Allan Thompson, “Media and the Rwanda Genocide” (2007).

200 Gourevitch, “We Wish To Inform You”, 32.

201 Gourevitch, “We Wish To Inform You”, 100.

202 Including Simon Bikindi; see Agence Hironnelle, “Former Rwandan Top Singer Wraps Up His Defence By Singing In

Prior to the genocide, Rwanda was the most Christianised country in Africa, with over 80% identifying themselves as Christians.²⁰³ Despite this adherence to faith, church-going Rwandans still massacred their neighbors. Whilst there was some heroic resistance and many religious figures who were killed, some, including priests, nuns and pastors, actively participated in the genocide.²⁰⁴ Tutsis fled to churches as safe-havens,²⁰⁵ some even encouraged by religious leaders, only to have those same figures participate in their wholesale extermination.²⁰⁶ A number of religious figures were prosecuted by the ICTR, national and *gacaca* courts.²⁰⁷ After the genocide, there was a “broad shift away from the genocide-tainted Catholic Church”, and a noticeable shift in support by the government, towards Protestant evangelicals.²⁰⁸

Schools became targets of attacks during the genocide, sometimes with the assistance of teachers and principals. Before the genocide, the education system was also used to indoctrinate young Hutu students and to discriminate against Tutsi students by restricting their access to education. School officials who committed atrocities were prosecuted in the aftermath.²⁰⁹ Substantial revisions to curriculum were made by the incoming government, including enforced teaching of the official version of the genocide to students. However, much more could be done. One suggestion is to provide “peace education” to students “to shape their character and make them into a peace- and democracy-loving generation ... While adults can change, the anger and guilt that has been ingrained in them over the years makes it difficult. Children are much more receptive.”²¹⁰ If adopted, this could result in a much more permanent change in the education system to encourage transition and long-term peace.

The Rwandan army was deeply involved in the violence of 1994. As the RPF approached,

Court” (30 September 2009).
 203 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 18; Gourevitch, “We Wish To Inform You”, 79.
 204 Gourevitch, “We Wish To Inform You”, 35, 136.
 205 Gourevitch, “We Wish To Inform You”, 126-27; Jean Hatzfeld, “Life Laid Bare: The Survivors in Rwanda Speak” (2000), 3.
 206 Gourevitch, “We Wish To Inform You”, 137-140..
 207 For example, Jean Uwinkindi; see Agence Hirondelle, “Uwinkindi is One of Seven Churchmen Indicted by ICTR” (19 April 2012); Geoffrey Robertson, “Crimes Against Humanity” (2006), 340.
 208 Gourevitch, “The Life After”, 47; Geoffrey Robertson, “Crimes Against Humanity” (2006), 340.
 209 Agence Hirondelle, “Ndahimana Never Led Tutsis' Attacks in Western Rwanda, Claims Witness” (20 April 2011).
 210 Sebarenzi, “God Sleeps in Rwanda” (2009), 230.

most members fled into exile. The RPF, as the new army for Rwanda, promptly changed its name. This helped to, at least symbolically, make a break from its past as a rebel army and to establish itself instead as a national army for all of Rwanda. Several thousand members of the former army were incorporated into the new army.²¹¹ Unlike its previous exclusive Hutu membership, this new army contains both Hutu and Tutsi soldiers, although it is still dominated by figures from the former RPF.

For many of these institutions, those formerly in positions of power and influence are no longer there. Prosecutions have been used to cleanse and punish, and legislative changes made to minimize the risk of re-occurrence. With new names, logos, and people responsible, the trust of the population has generally been restored or improved in such important institutions as the police, army, and judiciary. However, with entrenched ethnic hatred, what is required is a change in individual and societal attitude, a need for liberation from “old mentalities”.²¹² It requires an entrenchment of tolerance and respect for human rights.²¹³ This is a slow process and education and the rule of law are central components. To progress and secure the gains made thus far, forgiveness, or at least a degree of reconciliation, is a very useful step.

Reconciliation

In Rwanda, there is a sense that people get along only because they have no other choice.²¹⁴ Reconciliation by necessity. In a small country with a large population, where almost everyone has a direct connection to the one dramatic event – as a survivor, perpetrator, or witness,²¹⁵ they live together in relative peace because that is what they have been told to do, and because it is the least bad option.²¹⁶ There is a sense that all Rwandans are in this together – Hutu and Tutsi survivors and returnees share the same struggle of overcoming poverty, supporting

211 Gourevitch, “We Wish To Inform You”, 222; Gourevitch, “The Life After”, 46.

212 Gourevitch, “We Wish To Inform You”, 251, 257.

213 Gourevitch, “We Wish To Inform You”, 222.

214 “We must simply go back to living, since life has so decided”: Jean Hatzfeld, “A Time for Machetes” (2003), 185; Gourevitch, “The Life After”, 42-44.

215 Phil Clark, “When the Killers Go Home”, *Dissent*, Vol 2, No 3 (Summer 2005), 16.

216 Gourevitch, “The Life After”, 41.

families, and rebuilding lives.²¹⁷

The government established a National Unity and Reconciliation Commission in 1999. However, this received mixed reviews. The public meetings it held were regarded as top-heavy, provided no opportunity for questions or dialogue, and laws prohibiting “disunity” restricted open exchanges. Further, critics voiced concern that there can be “no reconciliation without truth”, and that a truth commission instead should have been the logical first step.²¹⁸

Whilst important but arguably not essential,²¹⁹ forgiveness is often connected to reconciliation:²²⁰ “We had to find a way to forgive so we *could* move on”.²²¹ For many survivors, forgiveness is something that they do not do by choice, but out of personal loyalty to Kagame: “Forgiveness came from a Presidential order. He's the one who pardoned them”.²²² This is perhaps facilitated by Rwandese societal characteristics of loyalty and obedience,²²³ but the result is a hollow forgiveness. Forgiveness that is done out of obedience lacks the sincerity that will make it permanent: “citizens are required to repeat platitudes about reconciliation, but hatred festers in many hearts”.²²⁴ A change in leader or in respect for that current leader, and that previously given forgiveness could fall away to the resentment and anger that was always simmering under the surface. For some, forgiveness is “impossible – unless, at the very least, the perpetrators of the genocide acknowledged that they had done wrong. With time, the quest for justice [becomes] ... a quest for repentance”.²²⁵ This “gospel of reconciliation through accountability” demonstrates the necessity of the other aspects of transitional justice, especially prosecutions and truth-seeking.²²⁶ Authentic, and sincere, forgiveness often requires a measure of justice to have first been delivered. Even an incomplete justice, such as giving a short sentence

217 Sebarezi, “God Sleeps in Rwanda” (2009), 85-86.

218 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 159-161.

219 Although see Sebarezi, “God Sleeps in Rwanda” (2009), 233-247 and Jean Hatzfeld, “A Time for Machetes” (2003), 185.

220 Gourevitch, “We Wish To Inform You”, 312-313; Jean Hatzfeld, “A Time for Machetes” (2003), 184.

221 Sebarezi, “God Sleeps in Rwanda” (2009), 84-85.

222 Gourevitch, “The Life After”, 41, 43-44.

223 Gourevitch, “We Wish To Inform You”, 23.

224 Stephen Kinzer, “A Thousand Hills: Rwanda's Rebirth and the Man Who Dreamed It” (2008), 4.

225 Gourevitch, “We Wish To Inform You”, 250; Jean Hatzfeld, “A Time for Machetes” (2003), 185.

226 Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 160; Gourevitch, “We Wish To Inform You”, 250; Jean Hatzfeld, “A Time for Machetes” (2003), 186; Gourevitch, “The Life After”, 40.

following an honest confession and sincere expression of remorse, is better than no justice at all. This may instead lay a more solid groundwork for future reconciliation.

The masterminds of the genocide were cunningly evil, ensuring that any type of reconciliation would come only after great heartache and soul-searching. Hutu Power leaders made people “the weapon, and that meant everybody: the entire Hutu population had to kill the entire Tutsi population ... this arrangement eliminated any questions of accountability that might arise. If everybody is implicated, then implication becomes meaningless”.²²⁷ The bad apples cannot simply be cast aside so one could focus efforts on working with the good apples; in Rwanda, the genocide, whether fairly or not, painted almost every Hutu with the same “bad apple” brush. Reconciliation in such circumstances can only come at great sacrifice, and with much time. In the short term, reconciliation for many is “offensive ... Maybe in a long time, but it's a private matter”.²²⁸

In the interim, perhaps mere acceptance is the next best thing. Such an acceptance is slowly spreading throughout Rwanda. In so many places, survivors encounter the murderer of their loved ones on a daily basis. Other survivors, out of necessity, squat in the same abode as those who have killed. They do not like it, but they accept it,²²⁹ and such acceptance is remarkable:²³⁰

“Never before in modern memory had a people who had slaughtered another people, or in whose name the slaughter was carried out, been expected to live with the remainder of the people that was slaughtered, completely intermingled, in the same tiny communities, as one cohesive national society.”²³¹

Kagame acknowledged the complexities of “the feelings of people” and the slow journey that reconciliation will take. He suggests that first we stabilize, reach out to those who are ready and ignore those who are not, then, if need be, aim towards “a kind of peaceful coexistence”.²³² This

227 Gourevitch, “We Wish To Inform You”, 96.

228 Gourevitch, “We Wish To Inform You”, 240; Gourevitch, “The Life After”, 41.

229 Gourevitch, “We Wish To Inform You”, 240, 303-304.

230 Gourevitch, “We Wish To Inform You”, 272-273.

231 Gourevitch, “We Wish To Inform You”, 302.

232 Gourevitch, “We Wish To Inform You”, 308.

is far from uplifting, but it is a practical response.

Kagame also stresses the need to change minds. The attitudes of the past “caused all these problems for you”, so we must learn to change those attitudes.²³³ More widely, people recognized the “need to overcome or to liberate themselves from 'the old mentalities' of colonialism and dictatorship, and from the perfect pecking order of intimidation and obedience”. People had to address issues of impunity and ethnicity and overcome their own experiential instincts: “us or them; kill or be killed”.²³⁴ Only concerted efforts, even on small, individualized paths,²³⁵ can avoid a return to violence in the long-term.²³⁶ However, others are more critical of Kagame and his government's use of intimidation tactics to silence opposition and suppress openness in discussing the past, saying that, as a result, reconciliation is “as distant as the moon”.²³⁷ Certainly, a whitewashed view of history that presents only one side (under threat of legal punishment), will hinder progress towards genuine reconciliation.

Conclusion

In light of the above, it is easy to see why Rwanda should be the “impossible country”.²³⁸ Yet, for all of the hardships and flaws, it does appear to be working. There is no foolproof road map to work from, just trial and error, trying different approaches, keeping those that work and dismissing those that do not. Thus, for example, whilst the *gacaca* method may have had flaws, perhaps it is better than having done nothing at all. Whilst Rwanda may not be a model open democracy, it is perhaps better than an ethnically segregated, divide-and-rule styled oppressive dictatorship. Rwanda has come so far in such a short space of time – and avoided a return to full-scale violence. It must thus be acknowledged that aspects of its transition are working effectively. What is required, from here, is continued patience, eternal vigilance, and time – to enable Rwanda to move forward, step by painful step.

233 Gourevitch, “We Wish To Inform You”, 312-313.

234 Gourevitch, “We Wish To Inform You”, 251.

235 For example some positive stories such as the development of a multi-ethnic Rwandan cycling team. See Philip Gourevitch, “Climbers”, *The New Yorker* (11 July 2011); Jennie Burnet, “Women, Memory, and Silence in Rwanda” (2012), 170-172.

236 Gourevitch, “We Wish To Inform You”, 315.

237 Sebarenzi, “God Sleeps in Rwanda” (2009), 210.

238 Gourevitch, “We Wish To Inform You”, 224; Gourevitch, “The Life After”, 37.