

4 Justice as Memory

Closure is not possible. Even if it were, any closure would insult those whose lives are forever ruptured. Even to speak, to grope for words to describe horrific events, is to pretend to negate their unspeakable qualities and effects. Yet silence is also an unacceptable offense, a shocking implication that the perpetrators in fact succeeded, a stunning indictment that the present audience is simply the current incarnation of the silent bystanders complicit with oppressive regimes. Legal responses are inevitably frail and insufficient... But inaction by legal institutions means that the perpetrators prevailed in paralyzing the instruments of justice. Even new waves of massive violence turned upon the oppressors would offer more hope than inaction for the resurgence of ideals, of justice, of humanity. Yet new cycles of revenge and violence in the name of justice kill even that hope.

– Martha Minow, *Between Vengeance and Forgiveness*

The Prison on a Hill

Gisovu Prison lies on a high mountain along the continental divide between the Nile and Congo River basins several hours' drive from the capital of the former Kibuye Province. The prison is in a beautiful setting, surrounded by tea plantations and perched high above the banks of Lake Kivu, but also remote, on steep gravel and dirt roads that become impassible after heavy rains. Built with international funds after the genocide as a second prison for Kibuye to help solve problems of overcrowding, Gisovu became the province's only prison when government officials determined that the Kibuye Central Prison's position in the center of town detracted from plans to develop Kibuye, with its breathtaking lake views, as a major tourist site.

In my years as a human rights worker and researcher, I have visited many prisons. In 1995, I walked through the squalor of the Butare Prison that had been built for 1,000 prisoners but was housing more than 8,000 individuals, with people forced to sleep on the roof and in the bathrooms

and showers. I have seen the fresh scars of prisoners who have been whipped and beaten. I have searched prisons for individuals arrested secretly and now missing. I have interviewed many prisoners, some of whom I was convinced were innocent, others I was sure were murderers. But I approached Gisovu Prison with particular trepidation and excitement. I had been told that this was the prison where the people who had murdered my friends were being kept, people I had known before the genocide but who had turned on their own neighbors and friends. I wanted to find them, and I wanted to confront them.

I lived in Rwanda shortly before the genocide, conducting research for my dissertation on religion and politics. During a yearlong period of fieldwork, I studied in several communities in various parts of the country, but Kirinda, a small village in Kibuye, was where I made a home in Rwanda. Kirinda, the site of the first Protestant parish in the country, housed two secondary schools, a hospital, and several national offices for the Presbyterian Church. I spent my first months in Rwanda there, studying Kinyarwanda, getting to know the population, and making good friends, and I came back there often during my fieldwork. Kirinda and the neighboring village of Biguhu became the center of my analysis and ultimately my first book.¹ In Kirinda, I most clearly saw the rise of ethnic and political tensions in the country and the way that ethnic politics became entwined with struggles to preserve individual power and privilege. Local leaders of the church and schools allied themselves with the increasingly racist anti-Tutsi Habyarimana regime, while the general population of all ethnicities joined parties in opposition to Habyarimana. Tensions in the community rose with every RPF attack on Rwanda, and Tutsi students came to me expressing their fear at the changing climate in Rwanda.

During the genocide, the Tutsi of both Biguhu and Kirinda gathered at one of the Kirinda schools, and a few gathered at the parish itself, where community leaders promised that they would be protected. Instead, these same leaders organized a gang of mostly unemployed and disenfranchised local youths into a militia group to attack and kill the Tutsi. The gang attacked the school and later the church and killed Tito, the former hospital chauffeur, and his wife and children. They killed the Biguhu pastor's wife and all seven of his children, though he himself managed to escape and flee into hiding. Géras, the agronomist I worked with closely in Biguhu, paid the head of the hospital to save him, but as he and his wife and daughters were led away, they were betrayed and killed anyway. His youngest daughter, who was born while I was staying in Biguhu,

¹ Longman, *Christianity and Genocide in Rwanda*.

survived for a while until she was murdered in her hospital bed during a campaign in May to finish off the survivors. The local government organized a security committee, composed of the principal of one of the high schools, the head of the hospital, and Musa, a local businessman, and they organized the local community to work barricades and carry out patrols that helped to root out survivors of the first massacres. Church leaders supported these efforts, urging their parishioners to defend the country from the RPF menace. In the end, only four or five of Kirinda's Tutsi survived, while all the rest were slaughtered by their neighbors. One close Tutsi friend survived, but was gang raped. Another friend lost his entire family.

When I returned to Rwanda in 1995 as head of the HRW office, I researched what happened in this community where I had found a home. I located the Tutsi survivors, most of whom lived outside Kirinda, and they told me their stories of murder, rape, and torture. I went back to Kirinda and interviewed other people in the community and searched through the records at the communal office. The leaders of the communal government clearly worked closely with the leaders of the church, its school and hospital, and the local business community to organize the genocide in Kirinda. As the RPF arrived, the community fled en masse to Zaire, where the village gathered in a single refugee camp and the leaders maintained their hold over the population. When the RPF bombed and closed the camps in 1996, most of the leaders of Kirinda returned to the community, and many were arrested and eventually ended up in Gisovu. Amani, the young businessman who had led the militia death squad, escaped into Congo and was never found, but Fidèle, the high school principal, Léonidas, the regional church president, Musa, the businessman who supplied the killers with machetes, and Antoine, the hospital chief, were all imprisoned in Kibuye and then moved to Gisovu. These were people I knew before the genocide. Both eyewitness testimonies and written records proved them responsible for the murder of my friends, for the rape of my friends, for using the genocide as a tool to build their personal power and wealth at the expense of everyone else. I wanted to see these people, to confront them, to hear directly from them what happened in Kirinda and why they did what they did.

In January 2005, I traveled to Gisovu with a research team and film crew from the Internews Newsreel Project, a program to raise consciousness on justice issues and the judicial process and to develop journalistic skills by producing and showing films about gacaca, the ICTR, and Rwandan courts. The Internews group was scheduled to screen a film for the prison population and interview several prisoners for a future film. My research team was to conduct focus group interviews with prisoners

after the screening for an assessment of Internews that I had been hired to undertake.² The film screening was set for the early afternoon, and my research team and I planned to meet the Internews crew at the prison. We left Kibuye town just after lunch and set off going south along the shores of Lake Kivu, on the poorly kept rocky road that linked Kibuye with Cyangugu. Even with a four-wheel-drive Landcruiser, our progress on the rocky road was slow. After some distance along the lake, we turned inland off the main road and began to climb up toward the continental divide. We passed Bisesero, where Tutsi had resisted the genocide and a monument now stood, and kept going. As the road went on and on, we stopped periodically to ask directions, to make sure we were not lost. Eventually, more than three hours after leaving Kibuye, we arrived at a tea plantation in the high mountains, and there in the middle of the beautiful verdant tea fields sat, incongruously, the Gisovu prison.

While we waited for the Internews film crew to arrive, I arranged the focus groups and explored the prison. I struck up a conversation with the assistant warden, who, it turned out, had attended high school in Kirinda before the genocide. We compared notes on people we knew in common and where they were today, and we talked about what had happened in Kirinda in 1994. I told him that I would like to interview some of the leaders of Kirinda, those I held responsible for the genocide there, and he just shook his head. "There are only peasants here now. All the important people, all those with influence, they have been released. People have intervened for them, and they are now free. So it is only the poor and powerless who are left." He confirmed that Léonidas and Musa and Fidèle had all been imprisoned in Gisovu at one point, but they had used their wealth and connections to gain their freedom. Now it was only the minor actors, those who had followed their orders, who were left in prison.

When the Internews team arrived, the entire prison population of over 3,000 gathered in the central prison courtyard, crowded together on small wooden benches, or looking in from the windows of the surrounding buildings. My research team and I were seated in the front of the crowd, and the warden introduced us, along with the Internews workers. He mentioned that I had lived in Kirinda before the war and asked those from Kirinda to stand. A few young men in bright pink prison uniforms stood shyly here and there in the crowd, and I saw that the assistant warden had been right. These were not the pastors and teachers and doctors

² On the work of Internews in Rwanda, see www.internews.org/regions/africa/default.shtm#rwanda. Their documentary films on justice in post-genocide Rwanda are available in a number of US and international libraries and provide an excellent overview of the ICTR and Rwandan national trials.

and businessmen who had overseen the killing in Kirinda. These were the poor, unemployed youths who had been the mere foot soldiers of the genocide. Promised opportunity and power in exchange for their cooperation, they were now abandoned to undefined terms in prison awaiting trial, while those who had led them astray walked free. My vision of confronting the people who killed my friends was not to be, at least not here at Gisovu Prison on this day.

Justice and the Rwandan Genocide

The Rwandan genocide has become the most heavily adjudicated mass atrocity in history. In the aftermath of the 1994 genocide, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) to try the genocide's organizers, while Belgium, Finland, France, Sweden, Canada, and Switzerland have tried Rwandan citizens in their national courts for genocide offenses. In Rwanda itself, more than 125,000 people were imprisoned on genocide charges in the years immediately after the RPF took power.³ The Rwandan courts began to try cases in 1996, but the extraordinary caseload overwhelmed the system, that would, it was predicted, need 100 years to try all of the accused. To speed up the prosecutions, Rwandan officials developed an innovative popular form of justice based loosely on a traditional dispute resolution mechanism. Set up throughout the country, *gacaca* courts had popularly elected panels of non-professional judges charged with determining how the genocide occurred in their community and sitting in judgment over the majority of those accused. The *gacaca* courts represented a massive undertaking, involving over 170,000 judges in more than 9,000 jurisdictions.⁴

For both the international community and the Government of Rwanda, judicial action has become the most significant and far reaching means of seeking to promote the reconstruction of Rwandan society. Yet the motives for holding trials have been mixed, and their actual impact on Rwandan society is poorly understood. Like the memorials reviewed in the last chapter, trials contribute to public discourse about the past and attempt to shape public perceptions. In Chapter 8, I explore the public

³ Alison Des Forges and Timothy Longman, "Legal Responses to Genocide in Rwanda," in Harvey Weinstein and Eric Stover, eds., *My Neighbor, My Enemy: Justice and Social Reconstruction in Rwanda and the Former Yugoslavia*, Cambridge: Cambridge University Press, 2004, pp. 49–68.

⁴ On the *gacaca* courts see Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, New York: Cambridge University Press, 2011; Lars Waldorf, "Mass Justice for Mass Atrocity: Transitional Justice and Illiberal Peace-Building in Rwanda," PhD Dissertation, National University of Ireland, Galway, November 2013; and Chakravarty, *Investing in Authoritarian Rule*.

reaction to the many trials held in Rwanda and discuss their impact. In this chapter, I review the scholarly analysis of trials in the aftermath of mass atrocity then explain the various judicial processes that have been undertaken in response to the Rwandan genocide. I explore the motives of various parties for holding trials and argue that for the Rwandan government, the goal of “seeking justice” was less important than securing the authority of the regime and controlling the population. The rhetoric from government officials about the trials and the extraordinary reach of the prosecution implied collective guilt for the Hutu population that effectively disempowered them politically and socially.⁵

Trials after Mass Atrocity

The military tribunals held in Germany and Japan following the Second World War set an important precedent for holding individuals, particularly national leaders, accountable to international standards of propriety.⁶ Although they represent the classic cases of victors’ justice, carried out by the victorious armies at the conclusion of war, these trials established several important principles that have become foundations for modern international law. In the most famous of these trials, the Trial of Major War Criminals held in Nuremberg from November 1945 to October 1946, the Allies prosecuted twenty-four prominent German leaders on four charges: conspiracy to “crimes against peace”; “waging wars of aggression” in violation of various peace treaties; “war crimes,” the violation of the Geneva Convention’s protections of prisoners of war and injured soldiers; and a newly developed category of “crimes against humanity,” for their treatment of civilians, particularly in occupied territories. This last category of crimes allowed the prosecution to enter evidence about the massacres of Jews, Roma, and other groups the Germans deemed undesirable, but the legal basis for these charges was questionable, since there were no treaties that defined the offenses, and there was no precedent for holding national leaders accountable for their treatment of their own citizens.⁷

⁵ Eltringham, *Accounting for Horror*, pp. 69–99 explores how post-genocide language has served to imply collective guilt for Hutu and collective victimization for Tutsi.

⁶ Although commonly known as the Nuremberg and Tokyo Military Tribunals, the United States and other allied powers actually organized a number of military tribunals in a number of locations in Germany and Japan.

⁷ Donald Bloxham, *Genocide on Trial: The War Crimes Trials and the Formation of Holocaust History and Memory*, Oxford: Oxford University Press, 2001; Drexel A. Sprecher, *Inside the Nuremberg Trial: A Prosecutor’s Comprehensive Account*, Lanham, MD: University Press of America, 1999.

The limitation in international law highlighted by the Nuremberg Trials and the international reaction against the horrors of the Holocaust inspired the adoption of a series of human rights declarations and treaties in the next several decades – the Universal Declaration of Human Rights (1948), Convention on the Prevention and Punishment of the Crime of Genocide (1948), International Covenant on Economic, Social, and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966), and a growing list of additional human rights documents. Despite the growth in international human rights law, the precedent of the Nuremberg and Tokyo trials lay fallow for more than four decades. Genocides in Indonesia, Cambodia, and Iraq were largely overlooked by the international community, as were mass atrocities in places such as China, Congo, and Biafra. Yet the creation in May 1993 of the International Criminal Tribunal for the Former Yugoslavia (ICTY) inspired a new wave of prosecutions, both national and international, that has quickly transformed judicial action into an essential part of post-authoritarian and post-conflict transition. Following the creation of the International Criminal Tribunal for Rwanda (ICTR) in 1994, the international community helped organize trials in Sierra Leone, Kosovo, Timor Leste, and Cambodia. Countries such as Ethiopia, Argentina, and Peru have prosecuted members of former regimes for abuses during their tenure. Charges were brought against the former presidents of Chile, Chad, and Liberia. Following the Rome Convention in 1998, the International Criminal Court (ICC) came into existence in 2002, and the ICC has investigated cases in the Democratic Republic of Congo, northern Uganda, the Central African Republic, the Darfur region of Sudan, Libya, Kenya, and Côte d'Ivoire.⁸ Trials have become the cornerstone of transitional justice, the now ubiquitous approach to promoting peace and reconciliation through accountability for the past that also includes truth commissions, memorialization, reparations, and historical revision.⁹

Despite the widespread use of trials as a response to mass atrocity, little agreement exists over what exact purpose holding perpetrators of

⁸ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*, New York: WW Norton, 2011, explores the development of the idea of putting perpetrators of mass atrocities on trial.

⁹ For other useful reviews of the legal initiatives in the area of transitional justice, see Teitel, *Transitional Justice*; Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Transitional Justice in the 21st Century and Beyond*, Cambridge University Press, 2006; Steven R. Ratner and Jason S. Abrahams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, Oxford: Oxford University Press, 2001; and Melissa Williams, Rosemary Nagy, and Jon Elster, eds., *Transitional Justice*, New York: New York University Press, 2012.

atrocities accountable for their actions serves in the aftermath of violence. In her celebrated work on the trial of Adolf Eichman, Hannah Arendt wrote that, “The purpose of a trial is to render justice, and nothing else; even the noblest of ulterior purposes ... can only detract from the law’s main business: to weigh the charges brought against the accused, to render judgment, and to mete out due punishment.”¹⁰ Leaving aside the question of what “rendering justice” means,¹¹ many scholars agree with Arendt that justice is a good in and of itself. Many human rights activists and legal scholars claim that people should be held accountable for violating human rights, because allowing impunity is unjust. For example, Aryeh Neier, head of the Open Society Institute, criticized societies that do not hold trials after mass atrocities for failing to “do justice.”¹² The leading international human rights organizations Human Rights Watch and Amnesty International regularly call for accountability following massive human rights abuses and denounce attempts to grant amnesties to offenders.¹³

Yet the pure interest in “rendering justice” is not the primary purpose driving the recent wave of transitional justice. Even the most ardent supporters of justice as a motive in and of itself see other important reasons for holding trials. Neier, for example, touched on another reason for holding trials, probably the primary reason they have been implemented so widely after mass violence, the idea that accountability helps to fight impunity and establish rule of law. He argued that, “A retributive theory of justice turns on the arguments that society punishes to restore equilibrium of benefits and burdens in a society unfairly disrupted by crime and that it needs to demonstrate the seriousness with which it regards its laws against criminality, its condemnation of transgressions, and its respect for victims.”¹⁴ If people are allowed to get away with human rights violations, then the law itself loses value, and people will not respect it. In the

¹⁰ Hannah Arendt, *Eichman in Jerusalem: A Report on the Banality of Evil*, New York: Penguin, 1991, 1992, p. 253.

¹¹ For example, Brad R. Roth, “Peaceful Transition and Retrospective Justice: Some Reservations: A Response to Juan Méndez,” *Ethics and International Affairs*, 15, no. 1, 2001, 45–50, critiques human rights lawyer and activist Juan Méndez for assuming that the content of “justice ... derived by reference to established international human rights standards, is taken to be unproblematic.”

¹² Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice*, New York: Random House, 1998, writes critically in an overview of political transitions that, “For the most part, civilian governments in the other Latin American countries that underwent transitions from military rule in the 1980s also failed to do justice” because they did not hold trials (p. 85).

¹³ The reports available at HRW.org and Amnesty.org regularly call for trials as part of their recommendations.

¹⁴ Neier, *War Crimes*, p. 83.

aftermath of conflict, fighting impunity and establishing rule of law can contribute to building a peaceful society, since if there is accountability, people who might otherwise want to carry out crimes will be deterred from doing so, while building the rule of law encourages people to settle disputes through legal means rather than through violence. Martha Minow argued that trials can help to stop cycles of revenge, because they take the role of seeking vengeance out of the hands of individuals. According to Minow, "A trial in the aftermath of mass atrocity ... transfers the individuals' desires for revenge to the state or official bodies. The transfer cools vengeance into retribution, slows judgment with procedure, and interrupts, with documents, cross-examination, and the presumption of innocence, the vicious cycle of blame and feud."¹⁵

Another major reason that people advocate for trials after mass atrocity is to promote reconciliation. The idea that trials contribute to reconciliation is based on several results that many advocates assume trials produce. By identifying specific perpetrators guilty of specific crimes, trials are thought to help avoid collective guilt, thus allowing those not found guilty – even if they are from the same ethnic or religious community as the perpetrators – to be reintegrated into their communities. As Antonio Cassese, first president of the ICTY, wrote, "trials establish individual responsibility over collective assignation of guilt, i.e., they establish that not all Germans were responsible for the Holocaust, nor all Turks for the Armenian genocide, nor all Serbs, Muslims, Croats or Hutus but individual perpetrators."¹⁶

Many advocates of trials contend that trials help victims by allowing them to move on with their lives. Some advocates argue that trials demonstrate that society takes the crimes committed seriously, recognize the suffering of the victims, and provide valuable information, such as how people died, who is responsible, and where bodies are buried.¹⁷ Some claim that after trials, "victims are prepared to be reconciled with their

¹⁵ Minow, *Between Vengeance and Forgiveness*, p. 26. While recognizing that trials can add to reconciliation in certain circumstances, Minow sees serious limitations in the ability of trials to rebuild social relations.

¹⁶ Antonio Cassese, "Reflections on International Criminal Justice," *Modern Law Review*, January 1998, 1–10, citation p. 7.

¹⁷ See Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in Neil J. Kritz, ed., *Transitional Justice*, Washington, DC: United States Institute of Peace Press, 1995, pp. 3–31; Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review*, March 1990, 449–513, argues, "Investigation of past violations is essential to provide victims' families with some relief, especially in cases of disappearance where the victim's fate may still be unknown" (p. 508).

erstwhile tormentors, because they know that the latter have now paid for their crimes.”¹⁸

Another way that trials are seen as supporting reconciliation is in encouraging dialogue within a society over the nature of the violence they experienced. Mark Osiel is a strong advocate of trials as a means of getting a society to talk about what went wrong. He argued that trials of key leaders of mass atrocities may be used effectively after conflicts to, “stimulate public discussion in ways that foster the liberal virtues of toleration, moderation, and civil respect.”¹⁹ While many other scholars feel that Osiel goes too far in arguing that post-conflict trials should focus on their didactic purposes, even at the expense of fair trial standards, many advocates do believe, like Osiel, that trials help to open a conversation about social conflict.²⁰

Finally, advocates urge trials after mass atrocity to help establish a collective understanding of the truth surrounding human rights violations. Juan Mendez, UN Special Advisor for the Prevention of Genocide, has argued that because trials allow confrontation and cross-examination and ultimately end in a verdict, “the truth thus established has a ‘tested’ quality that makes it all the more persuasive.”²¹ Some advocates of trials believe that developing an official transcript about past crimes can allow societies to move forward and avoid future atrocities. Naomi Roht-Arriaza, for example, argued that investigation of abuses for trials, “allows the ‘air to be cleared’ of the rumors, fear, and mutual suspicion created by years of repression, so that the country may move forward on a firm footing.”²²

Other writers and activists have challenged the decision for trials in the aftermath of mass violence and human rights abuses. The Truth and Reconciliation Commission (TRC), implemented by South Africa in 1996, has inspired considerable focus on forms of transitional justice that are less confrontational than trials.²³ Truth commissions have

¹⁸ Cassese, “Reflections on International Criminal Justice,” p. 7. Laurel E. Fletcher and Harvey M. Weinstein, “Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation,” *Human Rights Quarterly*, 2002, 573–639 and Minow, *Between Vengeance and Forgiveness*, p. 5, strongly criticize the idea that trials bring closure for victims.

¹⁹ Mark Osiel, *Mass Atrocity, Collective Memory and the Law*, New Brunswick and London: Transaction Publishers, 1997, citation p. 2.

²⁰ See review of Osiel by Samantha Power, “The Stages of Justice,” *The New Republic*, March 2, 1998, 32–38.

²¹ Juan Mendez, “Accountability for Past Abuses,” *Human Rights Quarterly*, 19, no. 2, 1997, 255–282, citation p. 278.

²² Roht-Arriaza, “State Responsibility to Investigate and Prosecute,” pp. 508–509.

²³ Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?*, Boulder and London: Lynne Rienner Publishers, 2002; Martin Meredith, *Coming to Terms: South Africa’s Search for Truth*, Washington: Public Affairs, 19; Beth Lyons, “Between

been chosen generally in cases of negotiated transition, where those who committed atrocities retain considerable power, but some claim they are a more effective means of encouraging public dialogue without exacerbating social divisions.²⁴ Truth commissions are promoted as a form of restorative, rather than retributive, justice, a more effective means of rebuilding community bonds and promoting reconciliation. In Guatemala, Sierra Leone, Peru, and elsewhere, often with the assistance of the international community, truth commissions have sought to establish a public record of atrocities that have taken place, hoping that this will allow societies to build a collective memory of the past that can become a basis for a more peaceful and just future.²⁵ While truth commissions are sometimes portrayed as opting for truth over justice,²⁶ initiatives in Sierra Leone, Timor Leste, and Peru have challenged this dichotomy by combining truth commissions and trials.²⁷ Other tools of transitional justice have also been attempted as alternatives to trials. Following the fall of communism in Eastern Europe, the primary form of accountability for past human rights abuses was lustration, a policy that forbids former communist officials or others implicated by files from the secret police from holding public office.²⁸ In other cases, reparations for victims of abuse have been a means of seeking accountability,²⁹ in some cases including symbolic reparations.³⁰

Nuremberg and Amnesia: The Truth and Reconciliation Commission in South Africa,” *Monthly Review*, 49, no. 4, September 1997, 5–23.

²⁴ Minow, *Between Vengeance and Forgiveness*.

²⁵ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity: How Truth Commissions Around the World are Challenging the Past and Shaping the Future*, New York and London: Routledge, 2001; Tina Rosenberg, “Recovering from Apartheid,” *The New Yorker*, November 18, 1996, 86–95; Desmond Tutu, “Healing a Nation”, interview, *Index on Censorship*, 5, 1996, 39–51.

²⁶ Reed Brody, “Justice: The First Casualty of Truth? The Global Movement to End Impunity for Human Rights Abuses Faces a Daunting Question,” *The Nation*, April 30, 2001; Heribert Adam, “Trading Justice for Truth,” *The World Today*, January 1998, 11–13; Adeale Maja-Pearce, “Binding the Wounds: Resentment, Anger and the Desire for Revenge Threaten to Undermine the Truth Commission’s Attempt to Reconcile Victims and Oppressors,” *Index on Censorship*, 5, 1996, 48–53.

²⁷ Roht-Arriaza and Mariezcurrena, *Transitional Justice in the 21st Century and Beyond*.

²⁸ Vojtech Cepl and Mark Gillis, “Making Amends After Communism,” *Journal of Democracy*, October 1996, 118–124; Roman David and Susanne Choi Yuk-ping, “Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic,” *Human Rights Quarterly*, May 2005, 392–435; Adam Michnik, “Reflections on the Collapse of Communism,” *Journal of Democracy*, January 2000, 119–126.

²⁹ Naomi Roht-Arriaza, “Reparations in the Aftermath of Mass Violence,” in Eric Stover and Harvey Weinstein, eds., *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, Cambridge: Cambridge University Press, 2004, pp. 121–139; Christian Pross, *Paying for the Past: The Struggle over Reparations for Surviving Victims of the Nazi Terror*, Baltimore: Johns Hopkins University Press, 1998.

³⁰ Hite, “The Eye that Cries.”

Some scholars challenge the effectiveness and fairness of all forms of transitional justice, whether trials or other means. Reviewing the array of recent trials and truth commissions across the globe, Charles T. Call argued that, “New international tribunals, truth-telling mechanisms, and post-transition hybrid courts have recurrent, structural problems. These problems range from a lack of resources to politicization to virtual impunity for rich countries.”³¹ Call in particular decried the selective application of transitional justice, its use against those groups and individuals who lose armed conflicts while the winners enjoy impunity and the reality that, “Individuals from powerful or wealthy countries, particularly the United States, enjoy significantly more immunity from international criminal prosecution.”³² Bronwyn Anne Leebaw argued that transitional justice mechanisms, whether trials or truth commissions, are hampered by their conflicting interests in simultaneously trying to promote rule of law and political transformation. She wrote that, “in evaluating the political role of transitional justice institutions, more attention should be given to the ways in which their efforts to expose, remember, and understand political violence are in tension with their role as tools for establishing stability and legitimating transitional compromises.”³³ She went on to note the political purposes for which legal mechanisms are often employed. “While law can be a tool for regulating violence and exposing abuses of power, law is also utilized to obfuscate and legitimate abuses of power.”³⁴

A review of the decision to opt for prosecution in the Rwandan case reveals a multiplicity of motives. The apparently noble purposes of “rendering justice,” promoting rule of law, acknowledging the suffering of victims, encouraging dialogue, and promoting reconciliation lauded by advocates of trials are tempered in the Rwandan case by a desire to divert attention from negligence and human rights abuses. In addition, for the Rwandan government, trials have served as an important means of exerting control over the population. While gacaca may have been influenced by ideas of restorative justice, the decision to prosecute Hutu for even the most minor genocide-related offenses while completely excluding the prosecution of offenses *against* Hutu has effectively intimidated and silenced the Hutu population. Some observers have described the use of legal mechanisms to dominate Rwanda’s population as “lawfare,” the use

³¹ Charles T. Call, “Is Transitional Justice Really Just?” *Brown Journal of International Affairs*, Summer/Fall 2004, 101–111, citation p. 102.

³² *Ibid.*, p. 109.

³³ Bronwyn Anne Leebaw, “The Irreconcilable Goals of Transitional Justice,” *Human Rights Quarterly*, January 2008, 95–118.

³⁴ *Ibid.*

of law as a tool of war.³⁵ In this chapter I contend that, like memorialization and commemoration, trials have served the government of Rwanda as another means of promoting a narrative that stresses the centrality of the genocide and obliterates memory of RPF abuses. In Rwanda, trials have more to do with promoting a particular national narrative and reinforcing the authority of the state and regime than in promoting justice or accountability.

The International Criminal Tribunal for Rwanda

In the aftermath of the 1994 war and genocide, the Rwandan judicial system lay shattered. Not only were many judicial buildings literally in ruins, but the vast majority of judges, magistrates, and lawyers had either been killed or were in exile, some of them implicated in the genocide. Both the international community and leaders of the RPF felt that the genocide was a sufficiently serious atrocity that perpetrators had to be held accountable, yet the Rwandan judicial system was incapable of organizing trials at the time. Furthermore, the vast majority of perpetrators had fled Rwanda as the RPF advanced and were now outside the country and thus outside the reach of Rwandan law. As a result, after the RPF took control of the country, the UN ambassador from Rwanda, which had a seat on the Security Council at the time, formally requested that the Security Council create an international criminal tribunal, like the one recently created for the former Yugoslavia. In August 1994, the Security Council mandated a commission of experts to investigate the case that found that “there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic, and methodical way.”³⁶ On November 8, 1994, the Security Council voted 14 to 1 to amend the statute creating the ICTY to expand its jurisdiction to include crime committed in Rwanda from January 1 to December 31, 1994.³⁷

³⁵ Jens Meierhenrich, *Lawfare: Gacaca Jurisdictions in Rwanda*, unpublished manuscript; Constance Morrill, “Show Business and ‘Lawfare’ in Rwanda: Twelve Years after the Genocide,” *Dissent*, Summer 2006, 14–20.

³⁶ UN Document S/1994/1125 cited in Payam Akhavan, “The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment,” *American Journal of International Law*, 90, no. 3, July 1996, 501–510, citation p. 502.

³⁷ The official name of the ICTR is “the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994.” Akhavan, “The International Criminal Tribunal for Rwanda,” p. 502.

In Chapter 8, I consider how successful the ICTR has been at influencing the process of reconciliation within Rwanda. In this chapter, however, my interest is in how the ICTR contributes to public discourses on justice and history. To approach this topic, considering the motives for creating the ICTR is useful. The Preamble of the Security Council resolution creating the ICTR suggests several of the motives for holding trials discussed above:

Determining that this situation continues to constitute a threat to international peace and security,
 Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,
 Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,
 Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed.³⁸

The resolution indicates goals for the tribunal both in the international community and within Rwanda. At one level, the resolution suggests that the ICTR is needed by the international community to protect against the “threat to international peace and security.” In stating a desire “to put an end to such crimes” and to see that “such violations are halted and effectively redressed,” the resolution seems to refer not only to the specific crimes in Rwanda but to the same sorts of crimes in other contexts, that is, to serve a deterrent function internationally by showing that crimes like those committed in Rwanda will not go unpunished and thereby to fight impunity internationally. At another level, however, the ICTR was clearly intended to assist Rwanda in its rebuilding, as the resolution claims that the Tribunal can, “contribute to the process of national reconciliation and to the restoration and maintenance of peace.” The Rwandan ambassador to the United Nations himself argued during the Security Council debate in favor of the creation of the Tribunal as a means of combating impunity in Rwanda, stating that people “who were taught that it was acceptable to kill as long as the victim was from a different ethnic group or from an opposition party, cannot arrive at national reconciliation unless they learn new values.” This could only occur, he argued, “if equitable justice is established and if the survivors are assured that what has happened will never happen again.”³⁹

³⁸ United Nations Security Council Resolution 955 (1994), adopted November 8, 1994, available at www.un.org/ictt/english/Resolutions/955e.htm, accessed November 7, 2007.

³⁹ Quoted in Akhavan, “The International Criminal Tribunal for Rwanda.”

In addition to the ostensibly noble purposes of fighting impunity internationally and promoting peace and reconciliation within Rwanda, scholars have noted several less laudable goals behind the Security Council's decision to create the ICTR. Having not simply failed to end the genocide but empowered the perpetrators through mischaracterization of and disregard for the violence in international diplomatic contexts and through the withdrawal of both most foreign nationals from Rwanda and the majority of United Nations troops stationed in the country at the time of the genocide, the world powers – particularly the United States – felt the need to atone for their previous failures. Having sent troops initially only to evacuate non-Rwandans from the country, France – which Samantha Power correctly called, “perhaps the least appropriate country to intervene because of its warm relationship with the genocidal Hutu regime”⁴⁰ – sent a contingent of troops into southwest Rwanda in late June 1994 to create a “safe zone,” supposedly to protect the civilian population but in actual fact facilitating the safe withdrawal into Zaire of the genocidal government and army. The United States joined other countries to deploy troops to Eastern Zaire in response to the terrible humanitarian crisis created by the flight of over a million Rwandan refugees across the border in advance of the RPF seizure of power.⁴¹ These interventions, however, merely reinforced the perception of the international community's failure to protect Rwanda's Tutsi minority during the genocide. In supporting the creation of the ICTR, the United States and other international actors could appear to be taking the strong action that they had failed to take when the genocide was actually underway. Support for the ICTR seems to have been motivated both by sincere remorse over the failure to stop the genocide and by a political interest in concealing this major policy failure.⁴²

Despite having initially called for the creation of the ICTR, Rwanda ultimately cast the sole dissenting vote in the Security Council against the ICTR resolution, and relations between the ICTR and the Government of Rwanda were publicly antagonistic ever after. The Rwandan government objected to the primacy given to the tribunal over Rwandan courts, the decision to locate the tribunal outside Rwanda, and the absence of the death penalty in the ICTR statute. More broadly, however, as Victor

⁴⁰ Samantha Power, *A Problem from Hell: The United States in the Age of Genocide*, New York: Basic Books, 2002, p. 380.

⁴¹ Des Forges, *Leave None to Tell the Story*, pp. 668–690; Power, *A Problem from Hell*, p. 381.

⁴² My own conversations in November 2001 with officials who were in the State Department at the time of the Rwandan genocide confirms Power's assessment of the Clinton administration's failed policy process but also indicates a widespread awareness on the part of both foreign service officers and politicians of the Rwandan genocide representing a major policy failure.

Peskin stated, “The central political dispute concerns the United Nations’ failure to intervene to stop the genocide.”⁴³ Since the international community had failed to stop the genocide, the Government of Rwanda resented their intervention, even as they needed substantial financial and logistical support not just to rebuild their country, but also to guarantee that those responsible for the genocide would be held accountable. The fact that most of the main perpetrators of the genocide were outside Rwanda made the ICTR necessary, but despite having called for the ICTR’s creation, the RPF leadership begrudged what they perceived as the arrogance of the international community, particularly in claiming judicial primacy over Rwandan courts.⁴⁴ After the ICTR’s creation, President Kagame and others regularly criticized the court in public settings, particularly over the amount of money being expended on the ICTR given its relatively small number of cases when compared to the national courts of Rwanda.⁴⁵ Gerald Gahima, then the Attorney General, told me in an interview, “When we look at the resources the international community provides to the Tribunal, and that money is intended to promote rule of law in Rwanda, they are not getting their money’s worth.”⁴⁶

Certainly many of the criticisms leveled by the Rwandan government have merit. I have elsewhere discussed the substantial problems that plagued the operations of the ICTR – ranging from inadequate finances and personnel to bad management to the lack of a prosecutorial strategy.⁴⁷ Nevertheless, I would contend that the government’s public condemnations of the ICTR were a form of political theater. In practice, the government allowed the ICTR to operate freely within Rwanda and generally cooperated on the

⁴³ Victor Peskin, “International Justice and Domestic Rebuilding: An Analysis of the Role of the International Tribunal for Rwanda,” *The Journal of Humanitarian Assistance*, October 1999.

⁴⁴ On the issue of primacy, see Madeleine H. Morris, “The Trials of Concurrent Jurisdiction: The Case of Rwanda,” Special Symposium on Justice in Cataclysm: Criminal Trials in the Wake of Mass Violence, *Duke Journal of Comparative and International Law*, Spring 1997, 349–374.

⁴⁵ C.f., Government of Rwanda, “The position of the government of the Republic of Rwanda on the International Criminal Tribunal for Rwanda (ICTR),” With: originally published on the website of the Rwandan Embassy to the US, now available at www.metafro.be/grandslacs/grandslacsdir600/0608.pdf, 1997. The ICTR was also regularly criticized on the official radio station, Radio Rwanda, in the Evening News on Radio Rwanda, July 24, 2002; August 15, 2002; August 20, 2002; November 20, 2002; December 13, 2002. On December 4, 2002 Evening News on Radio Rwanda reported that the government representative at the ICTR, Martin Ngoga, “said that the government of Rwanda has always criticized the fashion in which Madame [Chief Prosecutor] Karla Del Ponte has worked.”

⁴⁶ Interview in Kigali, August 27, 2002.

⁴⁷ Des Forges and Longman, “Legal Responses to Genocide in Rwanda.”

prosecution of cases. The public hostility was calculated to play on guilt in the international community for its failures in the genocide and thereby to shame donors into continuing to provide financial assistance to the Rwandan judicial system and other government programs. Highlighting the failures of the ICTR undermined the legitimacy of the international community in criticizing the Rwandan government for its ongoing human rights abuses. Finally, significantly, the antagonism from the RPF effectively prevented the ICTR from pursuing criminal cases against the RPF.

Despite the tensions between the Government of Rwanda and the ICTR – in fact, in part because of them – by avoiding pursuing cases against the RPF, the ICTR actually contributed to the vision of justice promulgated by the RPF. The mandate of the ICTR was to prosecute those responsible for “genocide and other serious violations of humanitarian law.” This mandate included crimes committed by the RPF. While the attacks on Kibeho in early 1995 and on the refugee camps in Zaire in 1996 fell outside the timeframe of the ICTR mandate, RPF attacks on civilians as the troops advanced across Rwanda during the genocide and summary executions, revenge attacks, and other violations immediately after the RPF took power fell clearly within the mandate. Nevertheless, no charges were ever brought by the ICTR prosecutors against any figures in the RPF. The RPF leadership strongly condemned suggestions that its members should face prosecution at the ICTR as an attempt to equate the behavior of those who orchestrated the genocide with the RPF. The first two Chief Prosecutors, Richard Goldstone and Louise Arbour, both discussed bringing charges against the RPF but left office before any indictments were announced. When the third Chief Prosecutor, Carla Del Ponte, sought to initiate investigations of RPF officials in 2003, the Government of Rwanda pressured the United Nations into reorganizing the ICTR, removing Del Ponte’s responsibility over the ICTR and setting up a separate prosecutor. President Kagame argued forcefully at the time against the ICTR pursuing cases against the RPF. “What’s done in this Tribunal is politics, rather than rendering justice. It is unimaginable to compare crimes of vengeance and reprisal committed by individual members of the RPF, who have faced severe punishment, with the genocide.”⁴⁸ Del Ponte’s replacement, the Gambian judge Hassan Jallow, showed no interest in pursuing prosecution of RPF officials.⁴⁹

⁴⁸ President Paul Kagame, Press Conference broadcast on Radio Rwanda, July 2, 2002.

⁴⁹ “Prosecutor Loses Rwanda Role,” London: BBC News, August 28, 2003, <http://news.bbc.co.uk/2/hi/africa/3189045.stm>; “New Rwandan Prosecutor Named,” London: BBC News, August 29, 2003, www.newsvote.bbc.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/af/3190833.stm; Integrated Regional Information Networks, “Rwanda: Focus on UN Tribunal,” OCHA, Dar es Salaam, February 3, 2004.

Despite its weak beginning, the initially very slow pace of trials, and the flaws in the prosecution of many of the cases,⁵⁰ the ICTR ultimately built an impressive judicial record. In contrast to the ICTY, where few of the chief organizers of the violence were available for prosecution, countries around the world apprehended most of those sought by the ICTR, allowing the tribunal to pursue cases against a wide range of those responsible for the genocide – military leaders, government ministers, the media, businesspeople, religious leaders, and officials from the various regions of the country. The ICTR made important contributions to international law, bringing the first conviction of an individual for genocide and the first conviction of sexual violence as a form of genocide. The ICTR indictments and prosecutions also contributed to the international isolation of Rwanda's deposed government, preventing the former leaders from establishing an effective government in exile to mount a serious challenge to the new regime.⁵¹

Yet in failing to bring any indictments against RPF officials, the ICTR contributed to an unbalanced application of justice. While the RPF has vociferously rejected parallels between their own actions and those of the *genocidaires*, they did use extensive violence against the civilian population, particularly as they took control of the country and in the first years of their rule. The RPF has deflected criticism by characterizing their own violence as the result of rogue agents or as necessary to establish order and understandable *because of the genocide*. In fact, while the RPF did not engage in killings as systematic or as extensive as the genocide, as HRW asserted, "The Rwandan Patriotic Army murdered thousands in 1994, committing war crimes and crimes against humanity,"⁵² for which they have not been held accountable. ICTR and ICTY adviser Payam Akhavan argued that in addition to isolating the perpetrators of the genocide:

The ICTR's other key role in postconflict peace building is in moderating Tutsi revenge killings against Hutu. Although the fighting in the DRC has claimed many more civilian lives, international accountability has made the Tutsi government more cautious about violent anti-Hutu reprisals. In effect, the international recognition of the Tutsi's status as victims of genocide has made moral credibility

⁵⁰ For critiques of the ICTR, see International Crisis Group, "International Criminal Tribunal for Rwanda: Justice Delayed," Brussels: International Crisis Group, June 7, 2001; International Crisis Group, "Tribunal Penal International pour le Rwanda: Pragmatisme de Rigueur," Brussels: International Crisis Group, September 26, 2003.

⁵¹ Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *The American Journal of International Law*, 95, no. 7, January 2001, 7–31.

⁵² Human Rights Watch, "Rwanda: Deliver Justice for Victims of Both Sides," New York: Human Rights Watch, August 12, 2002.

a valuable political asset for the present regime and increased the costs of anti-Hutu revanchism. The interests of the Tutsi government are clearly served by distinguishing itself from the previous rulers of Rwanda and avoiding any suggestion of moral parity.⁵³

I find no evidence for Akhavan's assertion that the ICTR prosecutions have constrained the RPF. Instead, as Thierry Cruvellier effectively argues, the RPF actively used and manipulated the ICTR for its own political purposes.⁵⁴ The lack of accountability for RPF crimes seems to have promoted impunity. My own research confirmed RPF involvement in massacres of thousands in the DRC in both Congolese civil wars. In 1996, the RPF bombed the Rwandan refugee camps along the border, ordered the refugees to return to Rwanda, then systematically hunted down those who fled further into Congo.⁵⁵ The RPF also participated in attacks on civilians and other war crimes and crimes against humanity during the second war in Congo, which began in 1998.⁵⁶ Further, by failing to hold RPF soldiers accountable for any human rights abuses, the ICTR has contributed to the discourse that regards the genocide as the only politically and legally important crime and uses the genocide to excuse other abuses. For serious crimes other than genocide, the ICTR actually promoted impunity. Drawing on the lessons of Rwanda, activists working on Darfur spent much energy trying to prove that the violence there was genocide precisely because genocide has become the only crime that the international community seems committed to ending.⁵⁷

Trials as Tools of Reconciliation

While the ICTR prosecuted the most important leaders of the genocide, it tried fewer than 100 individuals by the time it officially closed in 2015. By contrast, courts inside Rwanda have tried tens of thousands

⁵³ Akhavan, "Beyond Impunity," p. 25.

⁵⁴ Thierry Cruvellier, *Court of Remorse: Inside the International Criminal Tribunal for Rwanda*, Madison, University of Wisconsin Press, 2006.

⁵⁵ Timothy Longman and Alison Des Forges, "Attacked by All Sides: Civilians and the War in Eastern Zaire," New York: Human Rights Watch; Paris: FIDH, March 1997.

⁵⁶ Timothy Longman, "Eastern Congo Ravaged," New York: Human Rights Watch, May 2000; Timothy Longman, "The Complex Reasons for Rwanda's Engagement in Congo," in John F. Clark, ed., *The Continental Stakes in the Congo War*, New York: Palgrave, 2002, pp. 129–144.

⁵⁷ Although a number of scholars – such as Gerard Prunier, *Darfur: The Ambiguous Genocide*, Ithaca: Cornell University Press, 2005, as well as Amnesty International and Human Rights Watch – have not found that the violence in Darfur constitutes genocide, even though they say it represents serious violations of human rights and must be stopped, at conferences and advocacy meetings on Darfur, anyone who challenges the idea that the violence is genocide is denounced, because of the recognition that only genocide gains sufficient international attention.

of cases. Within five years after taking power, the Rwandan authorities had detained over 120,000 individuals on genocide charges. Both the Rwandan government and the international community committed considerable attention and resources to rebuilding the domestic judicial system, building new court facilities and expanding prisons, training judges, lawyers, and other judicial personnel, and revising the legal codes, including adopting a genocide law to serve as a basis for prosecution and establishing special genocide courts.⁵⁸ The first genocide trials began in December 1996, amid considerable criticism for their failure to respect fair trial standards.⁵⁹ Groups were tried together, many defendants lacked access to defense attorneys, trials were sometimes carried out in a language that defendants did not understand without translation, and defense witnesses were sometimes intimidated into withholding testimony.⁶⁰ The Rwandan government gained additional criticism when, on April 24, 1998, Rwanda carried out the public execution of twenty-three people in several stadiums around the country.⁶¹

Over time, however, some of the human rights concerns related to Rwanda's legal system were mitigated. Observers reported that trial standards did improve, in part because judges, magistrates, and others gained experience.⁶² Furthermore, no additional executions took place, and in 2007, in response to negotiations with the ICTR on extradition of suspects, Rwanda adopted a law abolishing the death penalty.⁶³ However, the extraordinary number of people detained on genocide charges created a massive backlog of cases that posed a major challenge to the right to a speedy trial.⁶⁴ Maintaining such a large number of people in prison drained government resources, and even after the construction and expansion of prisons, facilities were not adequate to the needs, creating overcrowding and sanitation problems. Most of the

⁵⁸ Human Rights Watch, "Rwanda," *World Report 1999*, New York: Human Rights Watch, 1998, reports that the international community gave \$30 million for development of Rwanda's judicial sector by 1999.

⁵⁹ "First Trial in Rwanda of Suspects of '94 Killing," *New York Times*, December 28, 1996.

⁶⁰ Lawyers Committee for Human Rights, "Prosecuting Genocide in Rwanda: A Lawyers Committee report on the ICTR and National Trials," New York, 1997.

⁶¹ Amnesty International, "Rwanda: 23 Public Executions Will Harm Hope of Reconciliation," London, April 23, 1998.

⁶² Centre de Documentation et d'Information sur les Procès de Génocide (CDIPG), *Quatre Ans de Procès de Génocide: Quelle Base pour les "Juridictions Gacaca?"* Kigali: LIPRODHOR: July 2001, pp. 36–38.

⁶³ Amnesty International, "Rwanda Abolishes the Death Penalty," London: Amnesty International, August 2, 2007.

⁶⁴ The right to a speedy trial is guaranteed in the International Covenant on Civil and Political Rights, available online at www2.ohchr.org/english/law/ccpr.htm. Article 14c states that all people accused of a crime have a right, "To be tried without undue delay."

prisoners were men who might otherwise be working their farms or otherwise contributing to the national economy, and their detention created a burden on their families, with thousands of women left as head of household and thousands of families deprived of their main income earner.

The idea to adapt *gacaca*, Rwanda's historic local conflict resolution mechanism, into a modern judicial instrument to try genocide suspects within their communities was first discussed immediately after the genocide.⁶⁵ The specific proposal to create the *gacaca* court system, however, emerged from the 1998–1999 Village Urugwiro meetings. The prime initial motivation for creating *gacaca* was the interest in speeding up the prosecution and release of the prisoners, though other justifications were subsequently promoted as well.⁶⁶ The official website for the *gacaca* courts stated that, “The classic justice didn't meet expectations because after approximately a five years period only 6,000 files out of 120,000 detainees [*sic*] were tried. At this working speed, it would take more than a century (+ 100 years) to try these detainees.”⁶⁷

Gacaca literally means “small grass,” after the lawns where community elders historically gathered to settle conflicts in their communities. In contrast to more official dispute resolution mechanisms, like the *Bashingantahe* system in neighboring Burundi, in which the position of judges was more permanent and more formally integrated into the legal structure of the court,⁶⁸ the position of *gacaca* judges, *Inyangamugayo*, literally “those who detest dishonesty,” was less established and the institution itself less formal. In *gacaca*, respected elders in a community came together when necessary to settle disputes over stolen property, contested dowries, and other issues. When the colonial regime established formal Western-style courts, *gacaca* continued but was limited to settling smaller disputes within families or between community members. In the 1980s, Filip Reyntjens observed *gacaca* meetings in southern Rwanda and found that they received informal support from both public authorities and the formal courts.⁶⁹

⁶⁵ As early as 1995, when I was based in Butare, my colleague at Human Rights Watch, historian Michelle Wagner, was in conversations with professors at the university there about the possibilities of adapting *gacaca*.

⁶⁶ Alice Karekezi, “Juridictions *Gacaca*: Lutte contre l'Impunité et Promotion de la Réconciliation Nationale,” *Cahiers du Centre de Gestion des Conflits*, no. 3, May 2001, 9–96.

⁶⁷ www.inkiko-gacaca.gov.rw/En/Generaties.htm.

⁶⁸ Philemone Ntahombaye, A. Ntabona, Joseph Gahama, and L. Kagabo, *L'Institution des Bashingantahe au Burundi: Etudes Pluridisciplinaire*, Bujumbura, 1999.

⁶⁹ Filip Reyntjens, “Le *gacaca* ou la justice du gazon au Rwanda,” *Politique Africaine*, no. 40, December 1990, 31–41.

The new system of gacaca courts represented a compromise between traditional gacaca and modern Western courts. As a justice of the Sixth Chamber of the Supreme Court charged with overseeing gacaca told me, “Gacaca is composed of traditional [Rwandan] ways, but also classical judicial ways, of solving social problems. Before, gacaca was never written down, but now we have a law governing gacaca jurisdictions in place.”⁷⁰ Like traditional gacaca, the new gacaca courts were made up of non-professional jurists, but in the new system, the *Inyangamugayo* were formally elected and could include women and young people. Whereas traditional gacaca was a grassroots institution organized by the community, the new gacaca courts were created by the national government and charged with enforcing national law. The rules that governed the gacaca courts themselves were spelled out by law.⁷¹ Recognizing the differences with traditional gacaca, the new system was known as *Inkiko gacaca*, “gacaca courts.”⁷²

An ad hoc committee under the direction of the Minister of Justice developed the formal proposal for gacaca courts for the Village Urugwiro meetings, where it gained approval from the entire gathering. Within a year, on October 12, 2000, the Transitional National Assembly adopted a new organic law for gacaca, and in October 2001, each of the country’s smallest political units, the cell, of which there were 9,001, elected nineteen *Inyangamugayo*. Judges from the cell level selected representatives for the next highest level, the country’s 1,545 sectors, who in turn selected judges for the 106 districts. In total, more than 250,000 judges were selected for the gacaca courts throughout Rwanda.⁷³ The genocide law of August 30, 1996, established four categories of genocide crimes, and the gacaca law gave gacaca courts jurisdiction over all but the most serious cases, category one crimes – those accused of organizing the genocide, participating with particular vigor, or participating in rape. Reacting to pressure from human rights groups and the international community, the government launched the gacaca process in a trial phase in one sector

⁷⁰ Interview in Kigali, May 31, 2002.

⁷¹ The October 2000 law creating gacaca was known as the “Organic Law concerning the creation of Gacaca Courts and organization of pursuit of infractions constituting genocide or crimes against humanity, committed between 1 October 1990 and 31 December 1994.” In response to criticisms from human rights organizations and others, a law modifying the original law was adopted in June 2001. Numerous additional revisions were subsequently adopted.

⁷² Karekezi, “Juridictions Gacaca.”

⁷³ The organization of the courts was revised several times, with district-level gacaca courts replaced by courts of appeal. After the trial phase of gacaca, the number of judges was reduced to seven, with two alternates. See the Organic Laws numbers 28/2006 of June 27, 2006, 10/2007 of March 1, 2007, and 13/2008, May 19, 2008.

in each of the eleven provinces in June 2002. Gacaca was then revised and expanded to one sector in each district in the country in November 2002.⁷⁴ The government suspended gacaca proceedings in 2003 during the electoral process. The suspension continued throughout 2004, while revisions to the gacaca law were undertaken, then, on January 15, 2005, gacaca was formally launched throughout the country.⁷⁵

The gacaca courts were established as a participatory system, involving weekly community meetings to process genocide cases. Attendance was initially optional, with a quorum of one hundred in each community, but after problems with low participation arose in the test phase, the revised gacaca law required attendance and the quorum requirements were dropped but attendance was required. The Gacaca court proceedings involved several stages. In the first part of the process, the information gathering stage, the community drew up a list of all of the crimes that occurred in the community and a list of all those who died in the genocide. People had an opportunity to confess to having committed genocide crimes, and the community then put together a list of those accused of participating in the genocide, categorizing their alleged crimes into one of the four categories. The cell-level gacaca then moved into the trial phase, adjudicating category four cases, property crimes, while the sector-level gacaca courts dealt with category three cases, bodily injury, and district-level gacaca courts dealt with category two cases, participating in killing but not organizing the genocide. Subsequent revisions to the gacaca law reorganized and consolidated the courts, expanding the jurisdiction of the lower-level bodies.⁷⁶

The explicit reasons that leaders of the RPF opted to make trials the centerpiece of the country's social reconstruction reflect the diverse goals for trials articulated in the transitional justice literature. The theme of preventing ethnic violence by fighting impunity and building rule of law has been central to official discussions of post-genocide justice. In a 2002 *Washington Post* editorial, the Rwandan ambassador to Washington made this point clear:

⁷⁴ Marco Domeniconi, "Gacaca Takes off Slowly," Foundation Hirondelle, October 14, 2002.

⁷⁵ Timothy Longman, "Justice at the Grassroots? Gacaca Trials in Rwanda," in Naomi Roht-Arriaza and Javier Mariezcurrena, eds., *Beyond Truth Versus Justice: Transitional Justice in the New Millennium*, Cambridge University Press, 2006.

⁷⁶ Allison Corey and Sandra F. Joireman, "Retributive Justice: The Gacaca Courts in Rwanda," *African Affairs*, 2004, no. 103, 73–89; Bert Ingelaere, "'Does the Truth Pass Across the Fire Without Burning?' Locating the Short Circuit in Rwanda's Gacaca Courts," *Journal of Modern African Studies*, 2009; Peter Uvin and Charles Mironko, "Western and Local Approaches to Justice in Rwanda," *Global Governance*, April–June 2003, 9, no. 2, 219–231, on gacaca see 226–228.

To say we faced moral dilemmas in our quest for justice would be the ultimate understatement. On the one hand, Rwandan President Paul Kagame had made clear that revenge killings were not an option. On the other, the justice system had been completely destroyed in 1994... Furthermore, during Rwanda's history, successive regimes had promoted people, even in the justice system, who had been the most zealous during the anti-Tutsi pogroms of 1959, 1963, 1967, 1973, and 1992. To prevent a repeat of the genocide, we had to eradicate the idea that people could kill with impunity.⁷⁷

In his editorial, the ambassador endorsed trials for two main reasons. First he saw trials as a means of fighting impunity – of creating negative consequences for engaging in ethnic violence that will dissuade people from participating in the future. Second, like Minow, the ambassador argued that using trials “cools vengeance into retribution,”⁷⁸ allowing the targets of the violence – Tutsi – to feel that justice had been done so that they would not feel a need to seek revenge and take justice into their own hands in ways that might undermine rule of law and perpetuate a cycle of violence.⁷⁹ Kagame himself has made similar arguments about the need to fight impunity, build rule of law, and divert vengeance into justice. In a 2004 speech at the Woodrow Wilson Center, he saw the failure to punish perpetrators of ethnic violence in the past as one of the key causes of the genocide. “[T]here was a culture of impunity to the extent that the criminals who killed were rewarded.”⁸⁰ He went on to claim that promoting justice helped to establish rule of law in Rwanda. “After genocide, law and order had completely broken down, but we have managed to restore peace and stability in the whole country. We not only reformed our legal system, we have also restored public trust in it, and the Rwandan people now know and enjoy their fundamental rights.”⁸¹ Holding trials, he suggests, has not simply helped to prevent future ethnic violence but has also built respect for the law and for legal institutions more generally. In his speech at the inauguration of the trial phase of *gacaca*, Kagame similarly argued that *gacaca* is intended, “to uproot the culture of impunity.”⁸² The official *gacaca*

⁷⁷ Richard Sezibera, “The Only Way to Bring Justice to Rwanda,” *Washington Post*, April 7, 2002.

⁷⁸ Minow, *Between Vengeance and Forgiveness*, p. 26.

⁷⁹ According to news reports, a similar argument was made in 1997 by the minister of justice. “Rwanda will never see real peace until the guilty are punished for the genocide of 1994, the country’s Justice Minister Faustin Nteziryayo told the U.N. Human Rights Commission...” “Rwanda Minister: No Peace Until the Guilty are Punished,” *Deutsche Presse-Agentur*, March 12, 1997.

⁸⁰ Paul Kagame, “Speech to the Woodrow Wilson International Center for Scholars,” Washington, DC, April 21, 2004.

⁸¹ *Ibid.*

⁸² Paul Kagame, speech given on the occasion of the official launching of the *gacaca* process, Kigali, June 18, 2002. Printed in *Penal Reform International*, Klaas de Jonge,

court website also lists eradicating the culture of impunity as one of the five objectives of gacaca:

In their cells, the citizens will play an important role in the reconstruction of the facts and in the accusation of those who perpetrated them. None of those who took part in them will escape punishment. Thus, people will understand that the infringement implies the punishment for the criminal without exception.⁸³

In addition to building rule of law, Rwanda's leaders believed that trials could contribute to reconciliation by helping to demonstrate that justice had been done and by establishing the truth about the genocide. They regarded gacaca as even more effective for promoting reconciliation than courtroom trials. In a speech officially inaugurating the gacaca courts, Kagame argued that gacaca would, "unify Rwandans on a basis of justice while reinforcing unity and reconciliation" and would "demonstrate the capacity of the Rwandan family to resolve its own problems."⁸⁴ Then Attorney General Gahima told me that, "Gacaca is a process to promote rule of law but also to promote reconciliation and bringing people together... Our justice is not justice for the sake of implementing the law alone but is a justice that is intended to accomplish certain political goals as well."⁸⁵ The National Authority for Gacaca Jurisdictions asserted that, "In relation to genocide, the gacaca process is a cornerstone for reconciliation among Rwandans."⁸⁶

While gacaca was initially viewed as an expedient solution to the problems of prison overcrowding, delayed justice, and economic costs,⁸⁷ many officials and other advocates of gacaca came to regard it as providing a different type of justice than classic trials, one more adapted to promoting reconciliation. Whereas courtroom trials provide retributive justice, focused on punishing people for offenses, gacaca was regarded as providing restorative justice, an increasingly popular approach to justice that brings victims, perpetrators, and

"PRI Research Team on *Gacaca* Report III: April–June 2002," Kigali: Penal Reform International, July 2002.

⁸³ National Service of Gacaca Jurisdictions, www.inkiko-gacaca.gov.rw/En/EnObjectives.htm.

⁸⁴ Kagame, speech on the occasion of the official launching of gacaca.

⁸⁵ Interview in Kigali, August 27, 2002.

⁸⁶ National Service of Gacaca Jurisdictions, "Gacaca Jurisdictions: Achievements, Problems, and Future Prospects," www.inkiko-gacaca.gov.rw/En/EnObjectives.htm.

⁸⁷ The second purpose for gacaca listed by the National Service of Gacaca Jurisdictions is "To speed up the genocide trials." National Service of Gacaca Jurisdictions, www.inkiko-gacaca.gov.rw/En/EnObjectives.htm.

communities together to resolve criminal issues rather than leaving justice exclusively to the state.⁸⁸ The work of South Africa's TRC raised the profile of alternative means of seeking justice, often called restorative justice. Rwandan leaders initially rejected the idea of a TRC because of the need to provide justice in the face of the genocide,⁸⁹ but as *gacaca* was being developed, many pointed out resemblances to South Africa's TRC. In early discussions in 1996 about the possibility of adapting *gacaca* to deal with the genocide, the Minister of Justice reportedly told members of parliament that the new courts could help in "establishing the truth on the number and identity of the victims as well as their lost possessions."⁹⁰ The first purpose that President Kagame listed for *gacaca* was, "To make known the truth about what happened."⁹¹ The National Service of the *Gacaca* Jurisdictions directly linked establishing truth to the process of reconciliation. "The unity and reconciliation of the Rwandans that are targeted [*sic*] are based on justice for all. But, this justice can become true only if the truth about the events is established."⁹²

Like the TRC, *gacaca* trials also involved large public community gatherings where victims and perpetrators had an opportunity to confront one another. As in the TRC, where perpetrators of human rights abuses were granted immunity in exchange for their testimonies,⁹³ *gacaca* relied heavily on confession, offering reduced sentences and the possibility of community service replacing prison time to lower-level perpetrators who would admit their participation in the genocide, testify in *gacaca* hearings, and implicate others. For early advocates of *gacaca*, the benefits of public confrontation and conversation about the genocide were closely tied with the elimination of collective guilt made possible by identifying

⁸⁸ On restorative justice, see Gordon Brazemore, "Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration," *American Behavioral Scientist* 41, no. 6, 1998, 768–814; 34, no. 3 1995, 228–249; M. Umbreit, *Victim Meets Offender: The Impact of Restorative Justice and Mediation*, Monsey, NY: Criminal Justice Press, 1994; Howard Zehr, "Restorative Justice: The Concept: Movement Sweeping Criminal Justice Field Focuses on Harm and Responsibility," *Corrections Today*, December 1997, 68–70.

⁸⁹ Jeremy Sarkin, "The Necessity and Challenges of Establishing a Truth and Reconciliation Commission in Rwanda," *Human Rights Quarterly*, 21, no. 3, 1999, 767–823.

⁹⁰ Reported in Jacques Fierens, "Gacaca Courts: Between Fantasy and Reality," *Journal of International Criminal Justice*, 2005, no. 3, 896–919, citation p. 901.

⁹¹ Kagame, speech on the occasion of the official launching of *gacaca*, Radio Rwanda, January 2005.

⁹² National Service of *Gacaca* Jurisdictions, www.inkiko-gacaca.gov.rw/En/EnObjectives.htm.

⁹³ On the TRC see Graybill, *Truth and Reconciliation in South Africa*; Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, Cambridge: Cambridge University Press, 2001.

those who were actually culpable in the genocide. As the National Service of Gacaca Jurisdictions claimed:

The Gacaca Courts system will allow the population of the same Cell, the same Sector to work together in order to judge those who have participated in the genocide, identify the victims and rehabilitate the innocents. The Gacaca Courts system will thus become the basis of collaboration and unity, mainly because when the truth will be known, there will be no more suspicion, the author will be punished, justice will be done to the victim and to the innocent prisoner who will be reintegrated in the Rwandan society.⁹⁴

The Tyranny of False Accusations

“Aloysie” came to me for help when I was the head of the Rwanda office for HRW and FIDH in Butare. Before the genocide, Aloysie had been a teacher, and one of her former primary school students sent her to me. Aloysie came to ask for assistance in negotiating a delicate situation where she needed support from government officials. In July 1994, as the RPF approached her community, she and her family had fled to the “Zone Turquoise.” Along with thousands of others, Aloysie and her family gathered at the camp for the displaced at Kibeho until RPF soldiers forcibly closed the camp in April 1995. In the violence that surrounded the camp closure, the family became divided. Aloysie’s husband made it back to their home community just across the border from Burundi before his wife, but he found that the family house had been taken over by a neighboring family of Tutsi genocide survivors. He went to stay with a relative, but when word came of his return, the new occupant of his home went to the police to accuse him of being involved in the genocide. He decided to flee across the border into Burundi, but he never returned. According to reports that Aloysie heard, he was arrested across the border, returned to Rwanda, and turned over to RPF soldiers who summarily executed him. When news came of her husband’s disappearance, Aloysie chose not to return to her community. Her home had been occupied by the family of survivors ever since.

Before 1994, Aloysie and her husband had built a nice home and acquired a sizable amount of land. For over a year, Aloysie had been living in another part of Butare Province with a friend. She had found employment and had no intentions of returning permanently to her home, but now she was faced with a problem. Her adult daughter had returned to their home commune and needed land to cultivate. Realizing that she

⁹⁴ National Service of Gacaca Jurisdictions, www.inkiko-gacaca.gov.rw/En/EnObjectives.htm.

could not lay claim to her old home without facing retribution, Aloysie hoped that she could at least secure the right for her daughter to once again farm the family's land – even a small portion of it. The family of survivors occupying the house and land had no legal right to it. They were not, as was the case in some property disputes at the time, former refugees who had abandoned the land when they fled the country and were reclaiming it upon their return. In fact, the family had never had claims to this land, but had merely taken advantage of the owners' absence in the months after the genocide to grab their land and their home. While they had no legal right to the land, as survivors, they enjoyed a certain moral authority in the community that discouraged authorities from intervening. More significantly, the father in the family of survivors held a political office, having been named the councilor for the sector. Because of his position, Aloysie did not feel that she could ask him to vacate the house, despite her legal right to do so. Instead, she had met with the man to ask whether he would allow her daughter to farm some of the land. He had refused outright.

Aloysie came to me hoping that I could help her to intervene on this matter. She wanted to meet with the burgomaster, the top political leader of the commune, to ask him to grant her rights to the land. But she was afraid of returning to the community, fearing what might happen to her. She wanted me to accompany her, to help add weight to her claims with the burgomaster, but also to provide protection, so that nothing bad could befall her. While I was reluctant, doubting that I could be of much use, she insisted, and my interpreter – her former student – asked that I go as a favor to him.

The three of us thus set out late on a Friday morning to drive down to her community, about forty-five minutes from Butare. We stopped first at the office of the commune to meet with the burgomaster. Aloysie had scheduled an appointment, but the burgomaster was not in the office when we arrived, so we went to a nearby parish to speak with the priest to see whether he could use his influence in the case. A Hutu who himself felt vulnerable, he was polite but demurred that there was little he could do. After stopping for sodas at a small kiosk not far from the communal office, we finally saw the burgomaster's car returning to the office, so we headed there for a meeting. Aloysie filled him in on her situation and her request to gain access to some of her land. After listening to her story, the burgomaster told her that she had to go through the appropriate channels. She needed an official request signed by the councilor of her sector – who was, of course, the man occupying her home and land. The burgomaster said that she needed to at least attempt to get his signature and that, if she was not successful, she should come back to make a formal appeal to him, and he would then grant the request. It was, however,

important, he told us, to go through the appropriate steps so that no one could challenge the final decision.

Aloysie's former home was some distance from the office of the burgomaster on poorly maintained roads, so the afternoon was already late by the time we arrived at her house. We parked in front of the house and sent for the counselor. He had been a poor farmer before the genocide, poorer certainly than Aloysie and her family. As Aloysie explained, because of the proximity of the community to Burundi, he and all of his family had been able to flee into Burundi before the violence spread into their commune. As a Tutsi who had lived in Rwanda at the time of the genocide, he was known by the term "survivor," but his experience was much more fortunate than that of most survivors. The man arrived a short time later. A tall, thin man in a shabby suit jacket with graying hair, he looked quite old but was probably only in his fifties. When he arrived, it was obvious that he was quite drunk, his gait unsteady, his eyes deeply bloodshot. Aloysie demurely approached him and greeted him. He did not greet us, nor invite us into his compound, nor offer us anywhere to sit, as Rwandan custom would dictate. Aloysie began to explain her request and her need for his signature. He interrupted her and began to shout. He condemned her for coming to harass him. Pointing at me, he accused her of bringing foreign spies into the community. He demanded that we leave and then went into his house.

We got back into the truck and headed back to Butare. By this time, it was too late to go back to the communal office. Aloysie said that she would return the next week and speak to the burgomaster. I offered to go with her again, but she said that she would be fine. Unfortunately, she was mistaken. As my interpreter later told me, when Aloysie returned to the communal office the next Tuesday, she was promptly arrested. The councilor, who was in Burundi when the violence in his community began, had lodged charges against her for participating in the genocide, so she was thrown into the communal jail. I returned to the commune and spoke to the burgomaster a week later, but he said that there was nothing that he could do; the justice system would simply have to sort it out. He would not even allow us to visit her, since our government authorization to visit prisons did not specify that we could visit communal jails. When I left Rwanda five months later, Aloysie was still sitting in the jail awaiting formal charges but with no prospect of a trial in the near future, one of thousands imprisoned in Rwanda on false charges.

Trials as Instruments of Control

The objectives that officials in Rwanda publicly articulated for holding genocide trials are laudable. Building rule of law, promoting justice,

advancing reconciliation, establishing a truthful account of the past, encouraging dialogue, and avoiding collective guilt by identifying specific guilty individuals are all goals described in the literature on transitional justice. Yet these widely lauded goals, as much as they may have sincerely motivated Rwanda's leaders, have not been the only factors driving the policy of genocide prosecutions. Other less openly articulated objectives have been at least as influential in shaping judicial policy. They have little to do with justice and much more to do with political power and control.

After coming to power in July 1994, the RPF opted to pursue a policy of aggressively arresting and prosecuting individuals facing genocide accusations. By their nature, the trials that were undertaken in Rwanda were punitive. Like trials everywhere, they were part of a legal system that exercised the coercive force of the state. Even the gacaca courts were ultimately part of a retributive judicial system, since despite the discussion of restorative justice, gacaca courts were able to sentence those found guilty to prison terms as long as life in prison.⁹⁵ Setting aside arguments that challenge the ability of trials to contribute to reconciliation,⁹⁶ the punitive nature of the trials in Rwanda would not, in itself, raise concerns about their ability to contribute to social reconstruction. After all, many advocates of trials argue that punishment of perpetrators of atrocities is essential to achieving justice, fighting impunity, and building rule of law in the aftermath of mass violence, factors considered essential as a basis for sustained peace and reconciliation.⁹⁷ Yet the transitional justice literature pays little attention to the authority overseeing trials, assuming that trials are conducted from a position of neutrality with a goal of promoting recovery from conflict. In post-genocide Rwanda, however, such neutrality cannot be assumed. As I discuss in the next chapter, despite government rhetoric that denied the significance of ethnicity and embraced democracy, Rwanda remained an authoritarian state where identity politics were highly salient. The judicial system was used to promote both the control of those in power and the interests of a specific social group. The point that I want to demonstrate in the remainder of this chapter is that the ability of genocide trials in Rwanda to contribute to reconciliation was tempered by the fact that the judicial system was an important tool of political domination by a specific social group.

The political use of the judicial system was most obvious in the first years of RPF rule. When the RPF took power in 1994, much of the

⁹⁵ Corey and Joireman, "Retributive Justice."

⁹⁶ Fletcher and Weinstein, "Violence and Social Repair"; Call, "Is Transitional Justice Really Just?"

⁹⁷ C.f., Neier, *War Crimes*; Roht-Arriaza, "State Responsibility to Investigate and Prosecute"; Mendez, "Accountability for Past Abuses."

population remaining in Rwanda was open to supporting the new regime. The RPF leadership, however, decided to impose their authority with force. Arresting large numbers of people on genocide charges was one way that the RPF established its authority. The RPF opted for large-scale arrests even though the majority of *genocidaires* had fled the country as the RPF advanced and those left in Rwanda were a few low-level perpetrators and many people who had not participated in the genocide. The decision to begin widespread arrests was particularly troubling because of the sad state of Rwanda's judicial system. Much of the judicial personnel was killed in the genocide or fled the country, with one government source reporting that by November 1994, the number of prosecutors in Rwanda had declined from 70 before the genocide to 12, while the number of judges had dropped from 758 to 244.⁹⁸ As a result, arrest on a genocide charge was tantamount to a conviction to a long prison term, since the first trials did not begin until two years after the RPF came to power, and the pace of trials remained extremely slow. Those accused had no opportunity to defend themselves, even when the charges against them were extremely weak. When I visited a number of prisons for HRW and FIDH in 1995 and 1996, police investigators and prison officials openly admitted that a majority of prisoners had no formal case files; in some instances, even the formal charges that had led to the arrest of an individual were not known. Thousands of people were, thus, in prison indefinitely, often not knowing the charges against them, with no opportunity to defend themselves in a court of law or to otherwise gain release.

Between July 1994 and October 1996, when RPF attacks on the camps in the DRC forced thousands of people back into Rwanda, including many of the *genocidaires*, the government arrested over 83,000 people.⁹⁹ During 1995, the rate of incarceration was 1,500 people per week.¹⁰⁰ Since most of the *genocidaires* were outside Rwanda and most of those arrested would not stand trial in the foreseeable future, arresting such large numbers of people in the immediate aftermath of the genocide had little to do with a sincere desire to see justice done. The massive number

⁹⁸ National Service of Gacaca Jurisdictions, "Gacaca Jurisdictions: Achievements, Problems, and Future Prospects," p. 4.

⁹⁹ Human Rights Watch, "Rwanda," *World Report 1997*, New York: Human Rights Watch, December 1996. James C. McKinley, "76,000 Still in Jail in Rwanda Awaiting Trial in '94 Slayings," *New York Times*, June 24, 1996, put the figure of those in jail in June 1996 at 76,000, though he concurs with the rate of new arrests at 4,000 per month. His slightly lower figure seems to include only those in the country's fourteen prisons and does not include the thousands detained in jails and other smaller facilities.

¹⁰⁰ Human Rights Watch reported in its annual report that the number of people detained on genocide charges had increased from 15,000 at the beginning of 1995 to more than 57,000 at the end of the year. Human Rights Watch, "Rwanda," *World Report 1996*, New York: Human Rights Watch, December 1995.

of arrests had much more to do with the new regime's desire to consolidate its control over the Rwandan population. The regime used arrest in part as a means of eliminating those who challenged its authority. Furthermore, with little possibility of a trial and with extraordinary overcrowding contributing to terrible prison conditions, the mere threat of imprisonment was enough to pressure individuals to cease political activities or even flee the country.¹⁰¹

In the office of Human Rights Watch and the International Federation of Human Rights where I worked from 1995 to 1996, I found myself dealing on a weekly basis with people facing accusations that they claimed were false. In many cases, the evidence suggested that they were being sincere. A prosecutor in Nyanza who had ordered the release of prisoners who lacked charges against them was himself arrested on genocide charges that my investigations in his home community in Gitarama proved could not be true. A judge on the Supreme Court in Kigali who had criticized fair trial standards was denounced on the radio as a *genocidaire* and contacted me worried not simply about arrest but fearing for his life after several attacks on his home. The moderate leader of a human rights group was accused of participation in the genocide; fearing arrest and with no means to defend himself, he and his wife eventually fled the country. While the cases like these that I encountered in my work are only impressionistic, they are consistent with findings by other observers and suggest a troubling pattern of using genocide accusations for political purposes.¹⁰²

The government was not alone in using accusations of participation in the genocide for purposes other than promoting justice. There were numerous cases like that of Aloysie Niyonshuti where individuals were imprisoned under false accusations because someone wanted their house or wanted to eliminate them as a business rival or merely wanted to settle an old score. When I worked for HRW and FIDH, I learned of several individuals blackmailing others by threatening to lodge genocide charges against them; the victims of the extortion scheme paid handsomely to

¹⁰¹ There were numerous reports in 1995–1996 about the terrible conditions in Rwanda's prisons. As early as November 1994, Robert M. Press, "In Rwanda's 'Slave Ship' Prisons, Life Is Grim for Suspected Killers," *The Christian Science Monitor*, November 18, 1994, reported, "More than 15,000 adults and children accused by the Tutsi-led government of genocide languish in overcrowded cells. EXCEPT for lack of chains, the tightly packed prison cell, with three tiers of wooden bunks, looks like the hold of an 18th-century slave ship."

¹⁰² Roland Sieglhoff, "Rwanda's Legal System Facing Paralysis over Backlog of Genocide Trials," *Deutsche Presse-Agentur*, March 8, 1997, writes that, "The innocent in Kigali's central jail are locked up along with the condemned ... 8,024 have been waiting in the brick building for almost three years since the massacres to face trial on genocide charges. Many could be innocent, as government officials acknowledge."

avoid being condemned to prison. There were also stories in a number of cities of individual genocide survivors who sent hundreds of Hutu to prison on false accusations not for personal gain but as a means of exacting vengeance on Hutu as a group, particularly those who emerged from the genocide relatively unscathed and still benefited from family and employment while the survivors themselves had lost their families and their homes and lived in poverty.

While no statistics are available on the number of people imprisoned under false charges,¹⁰³ the evidence shows that RPF officials used arrest as a means to demonstrate their power. They kept people in prison despite the efforts of some civilian authorities to apply human rights standards. A human rights report in early 1995 documented efforts by prosecutors and others to seek the release of individuals against whom there were no formal charges but reported that “the military blocks the release of detainees.”¹⁰⁴ The government chose to begin its prosecutions by starting not with the people who seemed to be most likely falsely detained but with “the worst cases,” prominent *genocidaires* who were more easily proven guilty.¹⁰⁵ The government itself ultimately seemed to acknowledge the problem with a growing emphasis on speeding the release of prisoners beginning in early 1997, when a few thousand children, elderly, and sick prisoners were released from detention.¹⁰⁶ The problem of prisoners unjustly in prison was one of the reasons that Village Urugwiro participants supported the idea of gacaca courts to speed up trials. In fact, the first action in the gacaca process was a “pre-gacaca” exercise, where prisoners without case files were presented to their communities and, if no one had any accusations against them, released on the spot.¹⁰⁷ Prisoners who confessed to all but the most serious crimes were also eligible for provisional release.

Despite the emphasis on using gacaca to release prisoners and the discussion of gacaca as a type of restorative justice, in practice, gacaca was

¹⁰³ In a conversation in March 1996 with two friends who were Tutsi genocide survivors, they estimated that as many as 80 percent of those in prison at the time were innocent. Conversations I had with several human rights activists at the time concurred with this estimation.

¹⁰⁴ Alison Des Forges and Eric Gillet, “Rwanda: The Crisis Continues,” New York: Human Rights Watch, 7, no. 1, and Paris: FIDH, April 1995. This report was published before I began working for the two organizations.

¹⁰⁵ Siegleff, “Rwanda’s Legal System Facing Paralysis,” reports that, “The legal system, itself bled dry by the civil war, has started with the worst cases. The Justice Minister estimates that around 1,500 people guilty of crimes against humanity fall into this category.”

¹⁰⁶ “Protests as Rwandan Government Frees Detainees,” *Business Day*, February 12, 1997.

¹⁰⁷ George S. Yacoubian, “Releasing Accused Genocidal Perpetrators in Rwanda: The Displacement of Preventive Justice,” *Loyola University Chicago International Law Review*, Fall–Winter 2005, 3, no. 21, 21–39.

an even more effective and far-reaching instrument for exercising state power than classical courtroom trials. Gacaca had elements of restorative justice, in that it engaged the community and allowed confrontation between victims and perpetrators, but it also involved harsh sentencing guidelines that included long prison terms. Only prisoners who confessed were eligible for provisional release and community service in place of prison time; those who wanted to prove their innocence had to languish in prison until they could defend themselves in front of a gacaca trial. Furthermore, community service was available only for people who had already served time in prison. Mere confession was also not sufficient to gain provisional release; gacaca courts had the discretion to reject confessions that were too limited or implicated too few individuals. The more new names that prisoners could add to the list of the accused, the more likely they would be granted a reduced sentence.¹⁰⁸

One important aspect of both the courtroom trials and gacaca courts was the strict limitation of their focus on genocide crimes. When challenged on whether RPF soldiers would be tried for war crimes or other abuses, government officials denied any equivalency between RPF abuses and the genocide, asserting that offenses by the RPF were not the result of policy but the action of rogue soldiers, and that they were rare and not systematic. They also claimed that, since they were not extraordinary, such cases could be dealt with in regular courts or military courts – and that all reported abuses had in fact been dealt with.¹⁰⁹ If it is true that RPF soldiers have been tried for human rights abuses, then their cases have been kept very quiet indeed and are little known by the Rwandan public.¹¹⁰ In one of the few cases of this sort, the commander of RPF troops that opened fire in April 1995 in the camp Kibeho, killing as many as 8,000, was tried in a military court and acquitted of personal responsibility but found guilty of failure to stop the violence; he was released for time supposedly already served after paying a \$30 fine.¹¹¹

Gacaca has also been focused exclusively on crimes related to the genocide. The law defining gacaca courts asserts that they are “charged with prosecuting and trying the perpetrators of the crime of genocide *and other crimes against humanity* committed between October 1, 1990 and

¹⁰⁸ Ingelaere, “Does the Truth Pass Across the Fire Without Burning?”

¹⁰⁹ See, for example, President Kagame’s response to a question about RPF abuses raised at his Commonwealth Club speech in 2003.

¹¹⁰ Human Rights Watch, *World Report 1999*, mentions that a number of soldiers were tried in military courts for common criminality, but “few of the accused were brought to trial or seriously punished for human rights abuses in the course of military operations.”

¹¹¹ Human Rights Watch, “Rwanda,” *World Report 1998*, New York: Human Rights Watch, December 1997.

December 31, 1994.”¹¹² This left open the possibility of trying Rwandan Patriotic Army (RPA) soldiers or others involved in massacres of civilians, summary executions, and other crimes perpetrated during the RPF advance and in the first months of RPF rule. Yet the government made clear as it initiated the gacaca system that the trials would focus solely on the genocide and would exclude crimes committed by the RPF. The specific focus of gacaca was made clear in the training of the *Inyangamugayo* and reiterated regularly by officials overseeing gacaca. The manual used for training gacaca judges in 2002 explains that those who confess must be asked whether they killed victims because of their ethnic identity or political party. Only *itsemba bwoko* and *itsemba tsemba* were included.¹¹³ As one lawyer who served as a gacaca trainer explained, “Those killed not for ethnicity or ideology would be judged in regular courts. The local population doesn’t know the [RPF] soldiers [who carried out massacres].”¹¹⁴ The first phase of gacaca called on communities to make lists of those killed in 1994, but when people attempted to list community members killed by the RPF either in the community or later during the 1996 RPF invasion of Congo, officials intervened to insist that those deaths were not germane to gacaca. Since many people were killed away from their homes, sorting out who died in the genocide and who died at the hands of the RPF was not always easy.

Given the one-sided nature of the trials since 1994, they have, I contend, been less concerned with making “known the truth about what happened,” as President Kagame asserted, than promoting a particular version of the past that serves the interests of those in power. The rhetorical and institutional strategies utilized by the regime have sought to promote a specific narrative about the genocide and war. Like the memorials and commemorations, legal processes have sought to emphasize the centrality and importance of the genocide and to negate the significance of RPF crimes. The national leadership used trials to develop as complete an account as possible of crimes related to the genocide, bolstering their claims of the extent and brutality of the crimes committed. At the same time, the strict refusal to allow any discussion of crimes committed by the RPF reinforced the idea that these crimes were

¹¹² Government of Rwanda, “Organic Law no. 13/2008 of 19/05/2008 modifying and complementing Organic Law no. 16/2004 of 19/06/2004, Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and other Crimes Against Humanity Committed between October 1, 1990 and December 31, 1994 as Modified and Complemented to Date,” *Official Gazette of the Republic of Rwanda*, 47, no. 11, June 1, 2008. Emphasis added.

¹¹³ Official Training Manual for Gacaca Judges, consulted in 2002.

¹¹⁴ Interview in Kigali, June 16, 2002.

rare and insignificant, making trials sites of forgetting. Government officials were swift to condemn any efforts to call for accountability for RPF crimes as an attempt to diminish or deny the genocide by equating it with other violence. A circular logic prevails: officials deny the need for trials for RPF crimes because of their supposedly limited extent and historically insignificant nature, while the absence of trials for RPF crimes reinforces the idea that these crimes were limited and insignificant.

The framing of the various trials not only added to the erasure of RPF crimes, but also helped to shape perceptions of the genocide itself by obscuring the degree to which RPF action influenced the conduct of anti-Tutsi violence in Rwanda. The 1994 genocide is best understood as the culmination of a process of ethnic exclusion and violence that began in 1990. The first massacres of Tutsi in nearly twenty years occurred in Rwanda after the RPF attack in October 1990, and massacres occurred repeatedly in 1991–1993. These attacks were organized with government support,¹¹⁵ and they served as a blueprint for how to carry out the genocide, innovating, for example, on the use of radio to incite violence.¹¹⁶ Including the entire 1990–1994 period in genocide prosecutions would thus make sense, and officially the genocide laws, including the *gacaca* laws, gave the courts jurisdiction over crimes committed from 1990 through 1994.¹¹⁷ To approach the genocide in this fashion, however, would have drawn attention to the role the RPF's invasion of Rwanda played in inciting the population to anti-Tutsi violence. The War of October was a primary feature of the anti-Tutsi ideology promoted by supporters of the Habyarimana regime beginning after the 1990 attack. Habyarimana had lost considerable popularity among Hutu, but the repeated and increasingly successful RPF attacks on Rwanda fanned popular anti-Tutsi sentiments. Reports of RPF attacks on civilians created substantial anger in the population.¹¹⁸ The idea that Tutsi were seeking to re-establish dominance over the Hutu masses was only credible in the context of the RPF invasion. This is not to blame the RPF for the genocide, since clearly members of the regime then in power bear responsibility, but it does raise questions about the RPF's decision to

¹¹⁵ A 1993 international human rights mission to Rwanda uncovered convincing evidence of government complicity in the 1990–1992 attacks. Africa Watch, FIDH, et al., "Rapport de la Commission Internationale."

¹¹⁶ Des Forges, *Leave None to Tell the Story*, pp. 87–91.

¹¹⁷ Alice Karekezi, "Juridictions Gacaca: Lutte contre l'Impunité et Promotion de la Réconciliation Nationale." *Cahiers du Centre de Gestion des Conflits*, 3, May 2001: 9–96.

¹¹⁸ Living in Rwanda at the time, I can attest to the impact on the population of the February 1993 attack that drove more than one million people from their homes, which was filled with fear over what the RPF would do if they took power. I remember students whose families were displaced struggling to find news of their loved ones and fearing that they might have been killed by the RPF.

pursue combat in a context where they knew the impact it could have on Tutsi within Rwanda. Some critics of the RPF, including some survivors I have interviewed, believe that, contrary to the way they portray themselves, the RPF leaders were not primarily interested in saving Rwanda's Tutsi or bringing democracy but instead were greedy for power. Yet by limiting the focus of the special genocide courts and gacaca courts to the period from April to July 1994, the relationship of RPF attacks on Rwanda to anti-Tutsi violence within Rwanda from 1990 to 1993 was suppressed. The RPF thereby preserved its image as the savior of the Tutsi within Rwanda rather than having crassly determined to ignore the fate of their Tutsi brethren and pursue war no matter the cost.¹¹⁹

Rwanda's genocide trials contradicted the public rhetoric of the regime in another important way. Although the rejection of ethnicity was a central component of the RPF's public rhetoric, the genocide trials actually served to reinforce the centrality of ethnicity within Rwandan public life. The crime of genocide is defined as an attacked on individuals because of their perceived membership in an identity group.¹²⁰ In the Rwandan case, the victims of the genocide were Tutsi, defined by their perceived ethnic identity. By contrast, most of the victims of RPF violence were Hutu. The regime claimed that these victims were not targeted because of their ethnic identity but rather were killed in revenge attacks or because they were seen as a security threat, and my research provides no reason to doubt these claims. To be clear, I reject the assertions that some people have made of a "double genocide."¹²¹ However, excluding RPF attacks from judicial consideration and focusing solely on crimes of genocide made ethnicity the defining characteristic for determining which crimes were to be adjudicated and which were to be excluded. In effect, Hutu who committed crimes against Tutsi were to be held accountable, while Tutsi who committed crimes against Hutu were unlikely ever to face judgment. The crimes related to the genocide were

¹¹⁹ Alan J. Kuperman, "Provoking Genocide: A Revised History of the Rwandan Patriotic Front," *Journal of Genocide Research*, 6, no. 1, 2004.

¹²⁰ United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide," Office of the High Commissioner of Human Rights, approved 1948, www2.ohchr.org/english/law/genocide.htm; Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide: Analyses and Case Studies*, New Haven: Yale University Press, 1990, 8–32; and Helen Fein, *Genocide: A Sociological Perspective*, London and Newbury Park: SAGE, 1993, 8–31.

¹²¹ Christian Davenport and Allan Stam, "What Really Happened in Rwanda," *Truthout*, October 6, 2009, www.truthout.org/10070911, present a highly controversial academic defense of the double genocide hypothesis, while Philip Verwimp, "Testing the Double-Genocide Thesis for Central and Southern Rwanda," *The Journal of Conflict Resolution*, 47, no. 4, August 2003, 423–442 convincingly disproves the hypothesis. See also Lemarchand, "Genocide in the Great Lakes."

not merely considered more important and more demanding of judicial action – a reasonable assertion, given the brutal nature of the genocide and its extent. Instead, since there was no effort whatsoever to seek justice for Hutu who suffered at the hands of the RPF, the trials served to broadcast a clear message that these crimes did not matter, at least not to the current regime. The decision to ignore RPF crimes was not dictated by any principles of justice and could not be justified on the basis of human rights law. Instead, the exclusion of RPF crimes from judicial consideration seems to be a political decision driven by the interests of those in power with preserving their own authority and with dominating the population.¹²² The claims that trials served to build rule of law and fight impunity were undermined by the reality that military officers and government officials then in power faced no consequences for their own actions during the war, no matter how many civilians were killed.

The reality that trials in post-genocide Rwanda focused only on some crimes – those committed against Tutsi – committed by one ethnic group – Hutu – undermined the ability of trials to promote justice and reconciliation. While advocates of trials after mass atrocity claim that they help to individualize guilt and thereby prevent the imputation of collective guilt,¹²³ the organization of Rwandan trials in fact helped to promote a generalization of guilt for the Hutu population. The regime has regularly maintained that participation in the genocide was extremely widespread, a line that many scholars sympathetic to the RPF regime embraced.¹²⁴ Focused as they were exclusively on Hutu attacks on Tutsi, gacaca courts were organized in every community in the country, even in communities that were occupied by the RPF, where the only massacres that occurred were carried out by the RPF against Hutu. The gacaca trials pushed communities to identify as many suspects as possible. Prisoners were offered diminished sentences if they confessed to crimes, but those who confessed were required to name others who participated to gain the preferential treatment. Over time, accusations were made against more and more people. In some cases long-detained prisoners

¹²² Corey and Joireman, “Retributive Justice,” 89.

¹²³ Nicole Fritz and Alison Smith, “Current Apathy for Coming Anarchy: Building the Special Court for Sierra Leone,” *Fordham International Law Journal*, 25, December 2001, 391, arguing for the Special Court in Sierra Leone, claimed that, “Criminal trials in the wake of mass atrocity are valuable, not least because they individualize guilt and militate against demonization of whole groups.” See also, Michael P. Scharf, “The Prosecutor v. Dusko Tadic: An Appraisal of the First International War Crimes Trial Since Nuremberg,” Paper presented on the panel, “Conceptualizing Violence: Present and Future Developments in International Law,” *Adjudicating Violence: Problems Confronting International Law and Policy on War Crimes and Crimes Against Humanity*, *Albany Law Review*, 1997, 60, 861, 874.

¹²⁴ C.f., Gourevitch, *We Wish to Inform You*, and Mamdani, *When Victims Become Killers*.

were angry with those on the outside who had remained free and used *gacaca* to get revenge and get others imprisoned.

The government encouraged widespread accusations not only through their exhortations for confession, but in public speculations about the massive numbers involved in genocide crimes.¹²⁵ Attorney General Gahima told me, “If one million people died, easily another two or three million were involved in the crimes. If you implement the law strictly, hundreds of thousands of people would be harmed and shot.” He went on to assert that *gacaca* provided an alternative to retributive justice, claiming that, “A genocide in which a large number of people participated is not something you can deal with just through trials.”¹²⁶ In practice, *gacaca* was used to reinforce his initial point about the massive number of guilty Hutu. At the time of the genocide, Rwanda had 7.7 million people, around 7 million of whom were Hutu. Since over half were too young to be criminally culpable and half of those remaining were women, and thus rarely the focus of genocide charges, the claim that one million would be tried suggested that more than half of Hutu men who were adults at the time would face judgment in *gacaca* courts. Gahima’s claim that as many as three million participated suggested that virtually all adult Hutu women and men participated.¹²⁷

Having carefully studied the development of the genocide in a number of communes in Butare, Gikongoro, Kibuye, and Byumba prefectures for the HRW/FIDH book, *Leave None to Tell the Story*, and for my own research, I find the widely held argument of mass participation to be exaggerated. In fact, the vast majority of Tutsi were killed in the initial massacres, which were carried out by relatively small groups of militia members, soldiers, and police.¹²⁸ Although the government forced nearly all adult men to participate in patrols and manning barricades, and these patrols and barricades finished off many of the survivors of the initial attacks, the mere fact of participating in the patrols and barricades did not mean that all participants joined in killings. Since every community had militia groups under government control, thousands of people were certainly involved in the killing, but the implication that one million were involved is simply baseless, while the claim that two-to-three million

¹²⁵ Andrew Meldrum, “One Million Rwandans to Face Killing Charges in Village Courts,” *The Manchester Guardian*, January 15, 2005, reported that the executive secretary of the *gacaca* courts, Domatila Mukantanzwa, asserted the claim that one million could be tried in *gacaca*.

¹²⁶ Interview in Kigali, August 27, 2002.

¹²⁷ Scott Straus, “How Many Perpetrators Were There in the Rwandan Genocide: An Estimate,” *Journal of Genocide Research*, 6, no 1, March 2004 estimate 175,000 to 210,000 participants in the Rwandan genocide.

¹²⁸ Des Forges, *Leave None to Tell the Story*, clearly explains the modalities of the genocide.

were involved borders on the ludicrous – though it serves the government effort to generalize guilt to all Hutu (or at least all Hutu men). Yet whatever the realities of participation in the genocide, in the end, nearly two million cases were tried in gacaca courts against more than one million individuals.¹²⁹

While generalizing Hutu guilt, the gacaca courts still allowed the RPF to promote the image of itself as a populist, multi-ethnic movement, while securing government control over the population. By requiring the entire population to participate in the gacaca meetings, every Rwandan citizen became implicated in the process of judging those who participated in the genocide – and also ignoring RPF abuses. The RPF, meanwhile, gained credit for offering provisional release to prisoners, giving diminished sentences, and involving the population in the process of dealing with the genocide (something which is, in fact, worthy of praise!).¹³⁰ Yet at the same time, the RPF maintained strict control over what is discussed in gacaca sessions and quickly quashed anything that incriminated the RPF. Participants in gacaca became vested in the government's project – regardless of what their personal opinions may have been before their participation. Meanwhile, the accused were offered incentive to buy into the RPF's project by admitting guilt (whether or not they were guilty) in exchange for the opportunity to leave prison and rejoin their communities. Without ever discussing ethnicity explicitly, the gacaca process encouraged people to admit their fault in embracing an ethnic ideology and instead to buy into a nationalist ideology where ethnicity has no significance – though the trials themselves were defined by ethnicity. By seeking to implicate the largest number of Hutu possible for even the most minor offenses committed against Tutsi – the looting of property, for example – while completely ignoring even the most serious of crimes committed by Tutsi against Hutu – the RPF slaughter of tens of thousands of unarmed civilians in eastern Congo¹³¹ – the genocide courts, gacaca courts in particular, effectively defined all Tutsi as victims and all Hutu as genocidaires. If, as I contended earlier, nearly all positions in the administration, business, higher education, civil society groups, and other areas of social and economic advancement are occupied by Tutsi

¹²⁹ Integrated Regional Information Networks, "Jury Still Out on Effectiveness of 'Gacaca' Courts," United Nations Office for the Coordination of Humanitarian Affairs, June 23, 2009; Faith Karimi, "Rwandan Genocide Survivor Finds Solace in Gacacas," CNN.com, July 27, 2009.

¹³⁰ In Longman, "Justice at the Grassroots," I explain why I think gacaca in principle had much potential, while I was worried about the degree to which it may be susceptible to political manipulation.

¹³¹ Longman and Des Forges, "Attacked by All Sides"; Longman, "Eastern Congo Ravaged."

returnees today, this is not, according to the logic of the regime, directly because of ethnic discrimination but rather because the entire generation of Hutu adults disqualified themselves from social advancement through their implication in the genocide.

As I learned at Gisovu Prison, the interest of the regime in preserving its power was certainly not the only factor undermining the administration of justice in post-genocide Rwanda. As the assistant warden at the prison told me, "All the important people, all those with influence, they have been released ... So it is only the poor and powerless who are left." By the end of the first decade after the genocide, most of those who could afford to pay a bribe or who had the right connections had gained their release, while the poor languished in prison. Even the Attorney General admitted that corruption in courts was a problem. As he told me, "Just because you've changed the law, you do not translate the intent of the law into the values of the judges. Important people try to influence the process."¹³² Those Hutu who had been powerful individuals before the genocide and gained their release through bribery or other means were tainted and diminished by their time in prison and no longer posed a threat to the regime. Because of their association with the genocide and the reality that they could be imprisoned again at any time, they must be careful to keep a low profile. They cannot aspire to positions of prominence in the new Rwanda but might hope to occupy more modest positions as a teacher rather than a principle, a doctor rather than a hospital director, an assistant pastor rather than a regional minister. The justice system was used effectively to neutralize them as community leaders, which allowed Tutsi, particularly the former refugee population, to occupy their posts.

Corruption is not generally as serious a challenge in Rwanda as in other countries in the region, such as Kenya and the DRC, but the cases that I encountered of false accusation and arrest at the front end of the judicial process and of purchased release at the back end of the process are sufficiently abundant to raise serious concerns about the degree to which corruption may have compromised the judicial process. People like Aloysie, having lost her husband at the hands of the RPF, having herself been imprisoned on obviously invented charges, are unlikely to feel that the genocide courts in Rwanda have anything to do with justice. As I discuss in Chapter 8, the plan for gacaca courts was initially popular with the population, because it implied that they could take justice away from political intrigue and into their own hands. In practice, however, as gacaca was manipulated by those who sought to use gacaca to implicate

¹³² Interview in Kigali, August 27, 2002.

the largest possible number of people, popular support waned. Nearly every Hutu I have ever worked with in Rwanda – human rights activists, university professors, civil society organizers, church workers, students, most of them moderate people, supportive of democracy and opposed to ethnic discrimination, having been critics of the pre-genocide government (often at the risk of their lives) and appalled by the genocide – was charged in gacaca courts for participating in the genocide. Many of these Hutu now live in exile, having been harassed and threatened by the current regime. Most of the others who remained in Rwanda were imprisoned.

Some cases of miscarried justice were so egregiously unreasonable that they gained international attention. Guy Theunis, a priest from the White Father order, had been an outspoken critic of the Habyarimana regime and a founding member of a major Rwandan human rights organization, having used his position with the Catholic monthly *Dialogue* to promote democracy and condemn ethnic violence. On a return visit to Rwanda in 2005, he was charged in a gacaca court and detained in a Rwandan prison for several months before being released into Belgian custody for a review of his case.¹³³ François-Xavier Byuma, longtime leader of the Rwandan League for the Promotion and Defense of Human Rights (*Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme*, LIPRODHOR), gained condemnation from many for supporting the government effort in 2004 to purge the membership of LIPRODHOR, Rwanda's last independent human rights organization, by accusing its members of either having participated in the genocide or supporting a "genocidal ideology."¹³⁴ A list of accused LIPRODHOR activists was published, and most fled abroad. Several of those accused told me at the time that Byuma was only trying to protect his own skin. Yet ironically, he was himself accused in 2007 and convicted of genocide crimes in a gacaca court in the district where he lived during the genocide in Kigali. The case was so obviously fabricated and the publicity surrounding it so negative that the National Service of Gacaca Jurisdictions felt it necessary to issue a press release defending the case.¹³⁵

Over time, the punitive possibilities of the gacaca courts became more prominent, while their potential to promote reconciliation was de-emphasized. Rhetoric claiming that many gacaca judges themselves were guilty of genocide crimes created a climate of intimidation in which the

¹³³ Reporters without Borders, "Rwanda, the Arrest of Father Guy Theunis: An Investigation of the Charges, the Legal Action, and Possible Reasons," Brussels: Reporters without Borders, November 2005.

¹³⁴ I discuss this attack on LIPRODHOR in greater detail in Chapter 5. See Lars Waldorf, "Censorship and Propaganda in Post-Genocide Rwanda," International Development Research Center, 2006.

¹³⁵ Domatilla Mutakaganzwa, "Byuma Francois Xavier's Case," Kigali: National Service of Gacaca Jurisdictions, June 12, 2007.

judges worried that leniency against the accused might be taken as evidence of their own complicity.¹³⁶ Even the goal of using gacaca to speed up prosecutions became secondary, as the regime introduced numerous delays, particularly surrounding the 2003 elections that solidified the RPF hold on power. Before being allowed to return to their communities, confessed genocidaires released provisionally from prison were required to attend *ingando* re-education camps in which the RPF combined lessons in its official historical narrative with paramilitary training intended to integrate the former prisoners into a pro-RPF reserve militia. The entire judicial process, thus, contributed to a climate of intimidation and fear in which people did not feel free to openly discuss the past but rather felt constrained to repeat the official rhetoric and to participate in the conviction of their neighbors, regardless of the actual dictates of justice.

Bonaventure Bizumuremyi, a Tutsi genocide survivor who edited the paper *Umuco*, expressed disappointment with gacaca in late 2005:

I was hoping to finally understand why people had attacked my poor family. Above all, I was hoping that these people would express their regrets and I wanted to be reassured that the same thing would never happen to us again. I am not so optimistic anymore. Gacaca has become a very repressive form of justice. For the accused, it's a matter of defending themselves through all means possible in order to get the minimum sentence or be acquitted. At the same time, there has been a major push to get people to turn in suspects, and people are being encouraged, sometimes even forced, to plead guilty and to testify against as many neighbors as possible. So much for the truth!¹³⁷

As if to reinforce the point that judicial processes in Rwanda were used more for social control than for promoting rule of law and justice, Bizumuremyi was charged with defamation in 2008 and forced to flee Rwanda.

Conclusion

Institutions, including states, are never fully coherent, since whatever their relative autonomy and whatever constraints they place on office-holders, they are composed of individuals with diverse perceptions, abilities, and motivations. To suggest that trials have been used to exercise

¹³⁶ Speeches on the eighth anniversary of the genocide in 2002 by the head of the survivors' organization Ibuka and by President Kagame. Paul Kagame, "Discourse of the President of the Republic on the 8th Anniversary in the Memory of the Genocide and the Massacres of 1994," Nyakibanda, April 7, 2002.

¹³⁷ International Justice Tribune, "Questions Pile up for Swamped Gacaca," Radio Netherlands Worldwide, www.rnw.nl, October 23, 2005.

the power of the regime and to promote a particular narrative of the past is not to deny that officials who have supported trials have also been motivated by the desire to see justice done and promote reconciliation. The leaders of the country are driven by varied and competing – often contradictory – concerns, and different leaders are driven by different concerns to varying degrees. The desires to build rule of law, to avoid future ethnic violence by reforming the mentality of the population, and to stay in power by intimidating the population into submission all function simultaneously.

The contradictions in the post-genocide judicial initiatives in Rwanda are the central contradictions at the heart of the Government of Rwanda's project of social reconstruction. In post-genocide Rwanda, justice in the face of atrocities was demanded – but only a selective justice was implemented and only for some atrocities. The truth about the past was required, but only a partial accounting of the past was allowed, while other truths were suppressed. The reality of ethnicity was denied even as in practice the impact of ethnicity as a lived reality was reinforced. To understand what impact the contradictory programs of the regime have had on the population requires looking in depth at the processes of social reconstruction within Rwandan communities. In the final part of the book, I turn to this task, focusing on three communities in different parts of the country. Looking at how the population in these communities has reacted to political reform, memorialization, trials, and other programs, I find that the regime has effectively asserted control, pushing the population into compliance, and their policies have shaped popular discourse to an extent. At the same time, the government has not been able to dictate a collective memory and create a unified national Rwandan identity. The inconsistencies between the official narrative and people's lived experience have left "average citizens cynical and alienated."¹³⁸ As the review of their impact will demonstrate, the extensive transitional justice initiatives implemented in Rwanda have actually exacerbated social divisions and increased tensions. Rwanda stands as a warning about the limitations – or even the dangers – of transitional justice.

¹³⁸ Koonz, "Between Memory and Oblivion," p. 258.