



COMPARATIVE STUDY OF TRANSITIONAL JUSTICE IN AFRICA

# RWANDA

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DRAFT - Not for Further Circulation

# Transitional Justice and Rwanda

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## Introduction

The Rwandan state was a 'model' African state in the decades following independence in 1962. By the 1980's, Rwanda had high rates of economic growth, high literacy levels, reliable and widespread water and electricity provision, a government that reportedly had relatively low levels of corruption, as well as a burgeoning public health system.<sup>2</sup> This tiny, land-locked country was seen by donors and the international community as the 'Switzerland of Africa.'<sup>3</sup> Yet by the early 1990s, Rwanda was facing a series of internal and external crises – including a devastating civil war. April of 1994 saw one of the greatest human tragedies of the twentieth century, one in which nearly a million people were killed in a horrific campaign of state-sponsored mass violence.<sup>4</sup> The subsequent government quickly rebuilt the country's shattered economy and infrastructure, aiming to forge a new Rwandan identity for the people and heal the wounds in the psyche of a nation. Despite the many achievements of the current government – including conducting the largest grassroots transitional justice mechanism ever rolled out – the administration has exhibited a tendency towards authoritarian rule that has perpetuated ethnic divides, rather than eradicating them. Transitional justice in Rwanda is much studied and is the subject of a vociferous debate amongst policy makers and academics, a debate which is polarised and often polemical. This paper will attempt to give evidence from both sides, and to evaluate the ways in which transitional justice in Rwanda was conceptualised and how its implementation has contributed to state- and nation-building as well as reconciliation, peace and the emergence of a human rights culture. Despite the many positive aspects of the local *gacaca* process adopted by the post-genocide Rwandan government, the politically one-sided process of transitional justice has helped to entrench state authority. Equally, it is probably unrealistic to begin to speak about reconciliation in Rwanda, just 23 years after so many citizens lost family members in a brutal, localised campaign of mass violence. However, the *gacaca* process has been a necessary and important first step in beginning a conversation about communal violence in the country, and in allowing perpetrators to return to their communities and find some accommodation with the families of their victims in order for co-habitation to be the first brick in the road to reconciliation.

## 1. Colonialism in Rwanda

The Rwandan experience of colonialism began with German colonisation in 1897.<sup>5</sup> Pre-colonial Rwandan society was characterised by a highly centralised state built around the royal court, which was supported by a loose network

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<sup>2</sup> Helen M. Hintjens, 'Explaining the 1994 Genocide in Rwanda', *The Journal of Modern African Studies* 37, no. 2 (1999): 244.

<sup>3</sup> Ibid. Hintjens, 244.

<sup>4</sup> The number of people killed in the genocide is disputed, and between 500 000 to a million people are the most quoted statistics but which number is used often depends on the bent of the publication. The UN has settled on 800 000 as the most reliable estimate, though this number includes people who died from other causes than murder. This paper will use the UN expert estimation of 800 000.

<sup>5</sup> A. Walter Dorn and Jonathan Matloff, 'Preventing the Bloodbath: Could the UN Have Predicted and Prevented the Rwandan Genocide?', *Journal of Conflict Studies* 20, no. 1 (1 August 2000): 4. A. Walter Dorn and Jonathan Matloff,

of client-patron relationships.<sup>6</sup> This royal court was surrounded by a hinterland which contained local populations who had not yet been incorporated into the centralised monarchical state, and for whom the distinctions of 'Hutu' and 'Tutsi' were not significant.<sup>7</sup> The pre-colonial system was held together by a complex interdependence of patron-client ties, military service (under the king), clan allegiances and common religious and cultural practices.<sup>8</sup> Society that was under control of the royal court was subject to a semi-fluid form of class stratification; the word "Tutsi" apparently first described the status of an individual as being rich in cattle while the word "Hutu" came to describe the followers (or clients) of a more powerful or wealthy person, which came to refer to the majority of ordinary people.<sup>9</sup> This classification system was somewhat fluid: a person could become wealthier and ascend to Tutsi status or vice versa, whilst she simultaneously could be Hutu in relation to her patrons and Tutsi in relation to her clients.<sup>10</sup> However, despite this reported fluidity, it was often easier to be demoted to being 'Hutu' than it was to ascend to 'Tutsi' status – and these identities hardened as the power of the central court and its military grew. But even within the Rwandan kingdom, there was significant diversity in social relationships: as noted by Newbury (1998), "in some areas, significant numbers of Tutsi and Hutu lived similar lifestyles, keeping cattle and cultivating their fields - many Hutu (but not all) in precolonial Rwanda owned cattle, and many Tutsi (but not all) practiced agriculture."<sup>11</sup> Even prior to colonialism, this fluid social structure had begun to harden as the royal elite entrenched themselves in power; but the interventions of the colonial state would reshape it fundamentally.<sup>12</sup> Colonialism would alter "the reach of the state, the forms of domination, and the nature of political competition."<sup>13</sup> It also introduced homogeneity in social relationships where previously there had been significant heterogeneity, serving to shift and change the social salience of categories. The existing system of social stratification and allegiance to a strong central state would be changed and fortified under the colonial administration, while exclusivist colonial policies and decisions made at the point of decolonisation would help to entrench the grievances that fuelled periodic cycles of communal violence in Rwanda between the 1950s and the 1994 genocide.

### 1.1 Colonial Society

The arrival of European explorers and settlers fundamentally changed the social structure of the *Banyarwanda* (i.e. people of Rwanda). Following the German loss in World War I, the country was stripped of its colonies and Rwanda was made a mandate territory of the League of Nations (the precursor to the United Nations) administered by Belgium. The Belgians administered the territory as Ruanda-Urundi (with Burundi), as part of their broader colonial empire which included the Belgian Congo. In an attempt to subjugate and rule the Rwandan kingdom at as low a cost as possible, the Belgian colonial administration undermined the complex system of patronage and

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<sup>6</sup> 'Preventing the Bloodbath: Could the UN Have Predicted and Prevented the Rwandan Genocide?', *Journal of Conflict Studies* 20, no. 1 (1 August 2000): 4.

<sup>7</sup> Pre-colonial societies in places like Rwanda can be conceived as having a state-like structure but one which had amorphous boundaries in which state authority became much weaker towards the hinterland and was bolstered by concentric circles of patron-client relationship which maintained some level of loyalty to the central state.

<sup>8</sup> Catharine Newbury, 'Ethnicity and the Politics of History in Rwanda', *Africa Today* 45, no. 1 (1998): 10.

<sup>9</sup> *Ibid.*, 28.

<sup>10</sup> Alison Liebhafsky Des Forges, "Leave None to Tell the Story": Genocide in Rwanda' (New York: Human Rights Watch, 1999), 32. Alison Liebhafsky Des Forges, "Leave None to Tell the Story": Genocide in Rwanda' (New York: Human Rights Watch, 1999), 32.

<sup>11</sup> Helen M. Hintjens, 'When Identity Becomes a Knife: Reflecting on the Genocide in Rwanda', *Ethnicities* 1, no. 1 (1 March 2001): 27. Helen M. Hintjens, 'When Identity Becomes a Knife: Reflecting on the Genocide in Rwanda', *Ethnicities* 1, no. 1 (1 March 2001): 27.

<sup>12</sup> Newbury, 'Ethnicity and the Politics of History in Rwanda', 10.

<sup>13</sup> Bert Ingelaere, *Inside Rwanda's Gacaca Courts: Seeking Justice After Genocide* (University of Wisconsin Pres, 2016), 15.

<sup>14</sup> Newbury, 'Ethnicity and the Politics of History in Rwanda', 11.

subordination that had previously governed the various states that would come to comprise Rwanda.<sup>14</sup> Instead of a more fluid state system, the colonial administration centralised power by bringing external Hutu kingdoms under the rule of the central Tutsi monarchy,<sup>15</sup> and dividing people into “chiefdoms” and “sub-chiefdoms” of uniform size which were governed by the Tutsi monarch who was – to a significant degree – accountable to the colonial administration.<sup>16</sup> This exacerbated and extended a trend that had begun in the 19<sup>th</sup> century, with the growing centralisation of the state under a Tutsi king – and the change from a lineage-based land tenure system to one in which all land was vested in the king and access to land was centrally controlled.<sup>17</sup> This annexation of previously autonomous regions and other kingdoms by the Tutsi monarchy – with the assistance of the colonial regime – brought the ‘state’ of Rwanda into existence. The enhanced centralisation under the colonial state allowed some Rwandan elites to accumulate more power and privilege, manipulating both the colonial state and the vestiges of pre-colonial state structures to their advantage and allowing them to extract greater privileges and rents from peasants than had previously been the case. The right of exit (to be able to move and leave the authority of a chief) that had been a key check on the abuse of power under the pre-colonial state was removed as the Belgian colonial administration restricted changes in residences and settlements in villages and the forest, leaving peasants with few choices as to how to evade the increasingly intrusive sub-imperial administration. While the Belgian administration strengthened the powers of these new chiefs – removing the checks and balances that had previously existed<sup>18</sup> – and centralised the state, they also decreed that only Tutsi could be colonial officials. Hutu were removed from positions of power and excluded from higher education which was intended only as preparation for positions in the colonial administration.<sup>19</sup>

The Belgians introduced a compulsory cash crop economy, which undermined the feudal society by negating the barter and gift system, which had been instrumental as a means to provide social cohesion.<sup>20</sup> The cash crop that was introduced in the 1920’s was coffee, intended as a source of foreign exchange and ‘development’ as the colonial regime sought to transform subsistence farmers into commercial agricultural producers.<sup>21</sup> Privileges of education and access to resources were given to the Tutsi whilst the Hutu were largely excluded from public office and positions of influence.<sup>22</sup> These practices adhered existing structures of social stratification with socio-economic stratification, further entrenching the divide between the Hutu and Tutsi, and hardening the notions of difference. The colonial administration imposed a Tutsi monopoly over public life in the 1920s and 1930s that would last well beyond the next generation and would help to drive the resentment that fuelled the genocide. However, not all Tutsi benefitted from this regime – in fact inequalities grew and intra-ethnic class differences were stark. It was, instead, a small politically-connected elite who benefitted most from their association with the governing system.

The strong, centralised state which had existed in pre-colonial Rwanda was extended and expanded under the colonial administration. The state was ever-present and every Rwandan was ‘administered’ by a pyramid-like state structure characterised by rapid and effective methods of communication and implementation from top to

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<sup>14</sup> Johan Pottier, ‘Land Reform for Peace? Rwanda’s 2005 Land Law in Context’, *Journal of Agrarian Change* 6, no. 4 (1 October 2006): 513.

<sup>15</sup> Pottier, 513.

<sup>16</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 33.

<sup>17</sup> Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, First Paperback Printing (Princeton University Press, 2001), 65–66.

<sup>18</sup> Mahmood Mamdani, 91.

<sup>19</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 34. *Ibid.*, 34.

<sup>20</sup> Hintjens, ‘When Identity Becomes a Knife’, 29.

<sup>21</sup> Mahmood Mamdani, *When Victims Become Killers*, 96.

<sup>22</sup> Hintjens, ‘When Identity Becomes a Knife’, 29. *Ibid.*

bottom.<sup>23</sup> At the same time as they refashioned the state, Europeans propagated what were commonly-held myths about the racial superiority of people who were taller in stature and of a fairer complexion,<sup>24</sup> which led to their identification of the Tutsi minority as superior to the Hutu majority.<sup>25</sup> These preconceptions justified and buttressed the incorporation of the Tutsi into colonial structures of power and influence, as the colonisers saw them as more amenable to Western ‘civilisation.’<sup>26</sup> Europeans imported their own understandings of the concepts of ‘tribe’ and ‘race,’ and speculated about the origins of the Tutsi, postulating the so-called ‘Hamitic Hypothesis’<sup>27</sup> – that they were of Ethiopian or Egyptian origin, having invaded and conquered the ‘Bantu’ Hutu people who were indigenous to that region.<sup>28</sup> This myth became widely held and was used in the 1994 genocide as a way to legitimise the slaughter. This belief in the foreign ancestry of the Tutsi has been widely discredited as there is no archaeological or linguistic evidence to support it, although many Rwandans still believe it to be true.<sup>29</sup> Twentieth Century Tutsi rulers were, unsurprisingly, welcoming of the narrative of Tutsi superiority which fed into and reinforced elite beliefs and justified their continued dominance and preferential access to the benefits of the colonial administration.<sup>30</sup> The collaboration between the colonial administration and the elite in this creation of a national ‘history’ produced what Des Forges (1999) terms a “sophisticated and convincing but inaccurate history that simultaneously served Tutsi interests and validated European assumptions.”<sup>31</sup>

The Belgian administration exploited the cleavages between the two strata of people, using the Tutsi minority to control and administer the Hutu and to exact forced labour for colonial infrastructure projects.<sup>32</sup> The Hutu/Tutsi distinction became solidified, particularly following the Belgian introduction of an identity card system that carried the ‘ethnic’ identity of the person. This bureaucratic categorisation removed the possibility for people to move across the Hutu/Tutsi social divide, turning a somewhat fluid socio-economic category into a fixed (patrilinear) ethnic moniker.<sup>33</sup> The co-optation of Tutsi into the colonial system of repression and exploitation led to the Hutu identification of Tutsi elites as the agents of colonial oppression and domination, rather than their Belgian overseers.<sup>34</sup> However, the identification of Tutsi commoners as the ‘enemy’ alongside the elites that had perpetuated inequalities was a political process that occurred later – this corporatisation of ethnic identity was one of the key drivers of later conflicts.<sup>35</sup> In effect, the colonial state manipulated and appropriated traditional leadership structures and used them to administer and rule Rwanda’s colonial subjects. This form of administration by both Germany and Belgium began to rupture the fabric of Rwandan society, undermining social relationships and pitting the Hutu majority against their Tutsi ‘oppressors.’ Although the colonial administration wasn’t

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<sup>23</sup> Filip Reyntjens, ‘Rwanda: Genocide and Beyond’, *Journal of Refugee Studies* 9, no. 3 (1 September 1996): 245.

<sup>24</sup> These myths were common in Europe in the 19th and 20th centuries, and were driven by Darwinist evolutionary theory morphed into social Darwinism and so-called ‘scientific racism.’ See for example Rutledge M. Dennis, ‘Social Darwinism, Scientific Racism, and the Metaphysics of Race’, *The Journal of Negro Education* 64, no. 3 (1995): 243–52.

<sup>25</sup> Hintjens, ‘When Identity Becomes a Knife’, 28; Des Forges, “‘Leave None to Tell the Story’”: Genocide in Rwanda’, 34.

<sup>26</sup> Hintjens, ‘When Identity Becomes a Knife’, 28.

<sup>27</sup> Filip Reyntjens, ‘Rwanda: Genocide and Beyond’, *Journal of Refugee Studies* 9, no. 3 (1 September 1996): 243.

<sup>28</sup> Hintjens, ‘When Identity Becomes a Knife’, 28.

<sup>29</sup> Hintjens, 28.

<sup>30</sup> Des Forges, “‘Leave None to Tell the Story’”: Genocide in Rwanda’, 34.

<sup>31</sup> Des Forges, 34.

<sup>32</sup> Hintjens, ‘When Identity Becomes a Knife’, 29.

<sup>33</sup> Dorn and Matloff, ‘Preventing the Bloodbath’, 6.

<sup>34</sup> Hintjens, ‘When Identity Becomes a Knife’, 30.

<sup>35</sup> Newbury, ‘Ethnicity and the Politics of History in Rwanda’.

responsible for creating the categories of Hutu and Tutsi, but it was fundamental in turning them into highly charged, politically-salient categories.<sup>36</sup> As noted by Newbury:

“Particularly onerous demands of the colonial state and its [Tutsi] chiefs fell most heavily-and in some cases exclusively-on rural cultivators classified as Hutu. This situation accentuated ethnic distinctions and gave them a cultural meaning different from earlier periods.”<sup>37</sup>

This system of indirect rule and the myths propagated by the colonial administration engendered feelings of racial superiority amongst the Tutsi elite, whilst Hutu politicians began to promote the need for unity amongst the majority, centred on the idea of ‘Hutuness.’<sup>38</sup> It is important to note that this polarisation was most evident at the level of the political elite, but it had not really percolated down to the grassroots. This ‘othering’ of people within Rwandan society would later – in the context of land pressures, drought, economic hardship and civil war – lead to the struggle for economic and political dominance amongst people who had been forced to see themselves as different, but who were in fact more similar than disparate. As noted by Hintjens, “since at least the 1950’s, average Bahutu and Batutsi have been identical in the language they speak, their religious beliefs, educational and income levels, the acres they farm and the number of children they bear.”<sup>39</sup> This colonial legacy was to form a crucial part of the post-colonial state, which inherited a society that was deeply stratified along economic and ‘ethnic’ lines. Newbury summarises this period as:

“Colonial rule, then, provided the resources, imposed the structures, and asserted the pressures that helped shape the state-building process in a particular way. A major effect of this process was the propagation of a corporate vision of ethnic groups. Tutsi, Hutu, and Twa came to be viewed as internally homogeneous groups, and their members came to be treated in distinctive ways by the state. This made groups that had previously shown more internal flexibility appear more like biological groups.”<sup>40</sup>

## 1.2 *End of colonialism*

The retraction of the Belgian colonial state did not lead to the unification of Rwandan people or the forging of a common sense of ‘nationhood.’ Belgian support for the Tutsi continued until the 1950s, when pressure for decolonisation began to mount. A Hutu counter-elite and intelligentsia began to push for democratisation, and a group of activists issued a “Hutu Manifesto” in 1957.<sup>41</sup> Although the demands of the Manifesto were relatively moderate, the use of racialized discourse (common at the time) provoked a backlash amongst Tutsi powerholders. As a result, the discourse became highly charged and increasingly polarised, alienating moderates on both sides. As a result of escalating tensions between the Tutsi elite and the Belgian authorities, the administration began to haphazardly open up public life to a minority of Hutus, which was enough to create fears of majority rule amongst Tutsi.<sup>42</sup> Following the death in 1959 of the moderate Tutsi leader, conservative Kigeri Ndahindurwa took over and political moderates lost ground to more extreme parties on both sides of the social divide. Fears and anxieties escalated and violence was sparked off by a Tutsi assault on a Hutu sub-chief, and counter-attacks led to the deaths of several hundred people.<sup>43</sup> Amidst this crisis, widespread rural grievances and escalating tensions, the political and military assistance provided by the departing colonial administration bolstered the ability of a Hutu-nationalist

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<sup>36</sup> Reyntjens, ‘Rwanda’, 243.

<sup>37</sup> Newbury, ‘Ethnicity and the Politics of History in Rwanda’, 11.

<sup>38</sup> Christopher Clapham, ‘Rwanda: The Perils of Peacemaking’, *Journal of Peace Research* 35, no. 2 (1 March 1998): 197.

<sup>39</sup> Hintjens, ‘Explaining the 1994 Genocide in Rwanda’, 247.

<sup>40</sup> Newbury, ‘Ethnicity and the Politics of History in Rwanda’, 11.

<sup>41</sup> Newbury, 12.

<sup>42</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 36.

<sup>43</sup> Des Forges, 36.

political party, the Parmehutu (Parti du mouvement de l'émancipation des Bahutu), to win the elections held in 1960 and 1961. In a subsequent referendum, 80% of the population voted to end the monarchy and confirm the proclamation of Republic issued by the Parmehutu. The Parmehutu party went on to eliminate both their Hutu and Tutsi political rivals and established a repressive one-party state. Although Rwanda didn't fight a war of liberation, the end of the colonial administration and formation of the post-colonial Rwandan state in 1961 was hardly less bloody.

During this period, which became known and dramatized as the 'Hutu revolution,' many Tutsi civilians were killed and many thousands fled Rwanda and entered Tanzania, Uganda and Burundi.<sup>44</sup> Attempts by external Tutsi rebels to overthrow the Hutu government within its first decade were met with violence and reprisals against Tutsi within the country and by the mid-1960s, over 20 000 Tutsi had been killed and 300 000 more had sought refuge in neighbouring states.<sup>45</sup> The Tutsi population of Rwanda declined drastically after independence as Tutsis fled or tried to change their ethnic designation. By 1990, Rwandan Tutsi refugees (and their descendants) had formed a rebel movement – ultimately named the Rwandan Patriotic Army/Front (RPA/F) – which operated from within neighbouring states such as Uganda and Zaire.<sup>46</sup> This military organisation was to undertake armed incursions into Rwanda in the early 1990's, which would precipitate and be used to legitimate the campaign of fear used by the Rwandan state to justify the genocide.<sup>47</sup>

In 1973, a period of economic stagnation led to the Rwandan Minister of Defence, Juvenal Habyarimana, overthrowing Gregoire Kayibanda's unstable and autocratic regime.<sup>48</sup> The new administration was little better than that which had preceded it, establishing an 'authoritarian, nepotist government' dominated by the Mouvement Revolutionnaire National pour le Developpement Party (MRND).<sup>49</sup> Whilst the government was autocratic and the state was subject to one-party rule,<sup>50</sup> the Habyarimana regime largely managed to avoid incurring substantial foreign debt and initially managed the economy relatively well.<sup>51</sup> Levels of inflation and corruption were relatively low, 70% of the population had access to clean drinking water, there was a good road network and the provision of education and health services was widespread.<sup>52</sup> But, in spite of this relatively well-managed system, there were both ethnic and regional quotas imposed on Tutsi participation in the public sector and education (9%), while the government and army were almost entirely Hutu.<sup>53</sup> Northerners felt that there was an over-representation of people from the South of the country, and the Habyarimana regime introduced overlapping regional and ethnic quotas. The Tutsi were made to feel disadvantaged and often reminded that they were erstwhile foreign exploiters who were lucky to be left in peace.<sup>54</sup> Meanwhile, land became increasingly scarce and concentrated in fewer and fewer hands. A land audit conducted in 1984 found that half of the country's productive land was owned by just 15% of the population.<sup>55</sup> Just before the 1994 genocide, just 6.6 per cent of households in Rwanda controlled

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<sup>44</sup> Dorn and Matloff, 'Preventing the Bloodbath', 7.

<sup>45</sup> Dorn and Matloff, 7; Des Forges, "Leave None to Tell the Story": Genocide in Rwanda', 37.

<sup>46</sup> Dorn and Matloff, 'Preventing the Bloodbath', 7.

<sup>47</sup> Dorn and Matloff, 7.

<sup>48</sup> Dorn and Matloff, 7.

<sup>49</sup> Dorn and Matloff, 7.

<sup>50</sup> Takele Bulto, 'The Promises of New Constitutional Engineering in Post-Genocide Rwanda', *African Human Rights Law Journal* 8, no. 1 (2008): 188–206.

<sup>51</sup> Hintjens, 'When Identity Becomes a Knife', 33.

<sup>52</sup> Hintjens, 33.

<sup>53</sup> Hintjens, 33.

<sup>54</sup> Hintjens, 'Explaining the 1994 Genocide in Rwanda', 247.

<sup>55</sup> Pottier, 'Land Reform for Peace?', 514.

approximately a third of all arable land. Land was managed largely as it had been under the colonial state – with poor policy and clientelism determining who was able to gain access to land. As noted by Pottier (2006), since the advent of modern Rwanda, the ‘state has a long tradition of giving land and taking it back,’ a trend that would continue long into the present.<sup>56</sup> Economic insecurity, land scarcity and unemployment collided to create a fragile and volatile socio-economic situation. Newbury notes:

“In some areas population densities exceeded 400 people per square kilometre-over 1000 per square mile. In many parts of the country, the average family had scarcely half a hectare of land, while increasing amounts of land were being taken over by the wealthy. Youths faced a situation where many (perhaps most) had no land, no jobs, little education, and hope for the future. It was increasingly difficult for young men to acquire the wherewithal to get married; hence the path to social adulthood was blocked, for the minimum legal requirement for marriage was that a young man have a house where he and his bride could live.”<sup>57</sup>

Grinding poverty, class polarisation and rural resentment was exacerbated by the economic crisis (explained below) and a coporalised view of ethnic difference – the marginalisation experienced by the urban and rural poor and was exploited by a ruling class who used easy (ethnic) answers to complex social questions in order to try to maintain their privileges.

## 1.2 *Path Dependencies*

Alongside the changing social structure and hardening of social categories, the colonial regime had instituted a system of communal unpaid labour known as *Umuganda* – which was conceived of as ‘work for the public good.’<sup>58</sup> Such work involved repairing roads, digging anti-erosion ditches or clearing brush. This system was maintained under Habyarimana’s regime, and made subject to effective and highly localised structures of communal control which operated at prefecture level. Under Habyarimana, *Umuganda* was supervised by the *nyumbakumi*, a neighbourhood leader in charge of a group of ten households, who was empowered to fine any citizens who failed to report for community work.<sup>59</sup> This system, which existed in some form in pre-colonial Rwanda was changed by the colonial administration and maintained and extended by its successor, would be wielded by the genocidaires to carry out their brutal and deadly ‘work’ in 1994. This was just one of the key vestiges of the colonial administration that would be repurposed by the government in 1994 to carry out the genocide. The centralisation of the state that had occurred under the colonial administration was maintained and deepened by the post-colonial government, and the system of ethnic identification was retained. Together, these vestiges of the colonial regime would enable the murder of hundreds of thousands of people.

## 2. **Conflict Factors**

### 2.1 *Conflict dynamics*

The conflict trigger was the multiple threats (economic, political and military) to the continued existence of a clientelist state monopolised by a small Hutu elite who were determined to retain power despite a growing economic and political crisis. The Rwandan Habyarimana regime was an ‘ethnicised’ form of clientelist state or an ethno-nationalist authoritarian regime with a regional colour. Political clientelism (the practice of favouring one

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<sup>56</sup> Pottier, 515.

<sup>57</sup> Catharine Newbury, ‘Background to Genocide: Rwanda’, *Issue: A Journal of Opinion* 23, no. 2 (1995): 14–15, <https://doi.org/10.2307/1166500>.

<sup>58</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 38.

<sup>59</sup> Des Forges, 39.

group over another and allowing that group greater access to resources and influence)<sup>60</sup> was directed towards North-western Hutu elites from the home region of the president's wife who were privileged by the state whilst Tutsi and ordinary peasants were marginalised. Allen (1995) argues that this form of clientelist politics can result in two state forms, a centralised-bureaucratic state or a state characterised by spoils politics (an extreme version of clientelism).<sup>61</sup> The Rwandan state typified the centralised-bureaucratic form, which leads to the centralisation of power in the hands of the president or a small minority surrounding the president.<sup>62</sup> This was certainly the case in Rwanda, where all power lay in the hands of Habyarimana and the *Akazu* (a small group of men surrounding the president's wife, who controlled and dominated government and the army). The state was governed by an executive presidency that oversaw a one-party system, and human rights abuses committed by the MRND went unpunished due to complicity of the armed forces and the inefficiency of the courts.<sup>63</sup> The courts were underfunded, understaffed and rarely functioned effectively, making impunity a key part of Rwandan political life. The *Akazu* manipulated the state to their own ends – Reyntjens (1996) refers to the *Akazu* as a “political-military-mercantile network”<sup>64</sup> – and were the ultimate designers of the 1994 genocide. According to Des Forges: “by the mid-1980s, Habyarimana’s home prefecture of Gisenyi... had provided the office holders for one-third of the most important jobs in government as well as virtually all the leaders of the army and security service.”<sup>65</sup> This type of ethnicised and regional centralised-bureaucratic state is dangerous as it promotes the sense of marginalisation of an ‘out-group’ which believes itself to be discriminated against. Meanwhile the state is particularly vulnerable to economic forces that may undermine its ability to maintain its clientelist networks which may lead to a crisis of legitimacy.<sup>66</sup> This undermining of the state leads to another clientelist crisis in which the state becomes increasingly corrupt and illegitimate and it must resort to repression to keep a hold on the reins of power.<sup>67</sup> This was the turn of events that led directly to the genocide of 1994.

By the 1990s the Rwandan economy was based almost entirely upon exports of primary agricultural commodities, particularly coffee. With 90% of its labour force engaged in the agricultural sector, the Rwandan economy was vulnerable to fluctuations in global commodity prices.<sup>68</sup> In 1987, the system of quotas established by the International Coffee Agreement (ICA) began to fall apart,<sup>69</sup> which led to decline of 50% in export earnings between 1987 and 1990.<sup>70</sup> As the state earned 80% of its foreign exchange earnings from the coffee industry, this was a massive blow to state finances. This economic disaster and a simultaneous drought in 1989 led to famine, the crumbling of state institutions as well as a growing crisis of state legitimacy. State debt began to climb steadily, which precipitated the intervention of the Bretton Woods institutions. A World Bank mission travelled to Rwanda in 1988 and proposed several structural reforms, linked to conditional loans, which would – in their view – aid economic recovery and help to steer Rwanda towards sustained economic growth. The disastrous implementation of these reforms began in 1990, with a 50% devaluation of the currency (to encourage foreign investment and increase the competitiveness of Rwandan exports) which was implemented a mere 6 weeks after a major incursion

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<sup>60</sup> Chris Allen, ‘Understanding African Politics’, *Review of African Political Economy* 22, no. 65 (1 September 1995): 305.

<sup>61</sup> Allen, 307.

<sup>62</sup> Allen, 305.

<sup>63</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 47.

<sup>64</sup> Reyntjens, ‘Rwanda’, 243.

<sup>65</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 41.

<sup>66</sup> Allen, ‘Understanding African Politics’, 308.

<sup>67</sup> Allen, 305.

<sup>68</sup> <https://www.cia.gov/library/publications/the-world-factbook/print/rw.html>, accessed on 07/05/2009

<sup>69</sup> Michel Chossudovsky, ‘Economic Genocide in Rwanda’, *Economic and Political Weekly* 31, no. 15 (1996): 938.

<sup>70</sup> Chossudovsky, 939.

of the rebel army of the RPF.<sup>71</sup> This devaluation of the currency destabilised the state, triggering inflation and a collapse of real earnings as well as initiating a significant rise in the prices of consumer goods and fuel.<sup>72</sup> At the same time, structural adjustment-mandated increases in the user costs of health and education services placed a further burden on the poor.<sup>73</sup> Other measures imposed by the World Bank and IMF led to further shrinking of coffee revenues and this pushed the entire agricultural sector into crisis.<sup>74</sup> The outcome of the economic crisis and structural adjustment was both increased popular dissatisfaction and the declining capacity of the state to maintain itself and its extensive patronage system.<sup>75</sup>

This, alongside the intensifying RPF invasions and external pressure for democratic reforms from the IMF and World Bank, created a climate of insecurity in 1992 which threatened the survival of the state, and of the *Akazu* within it.<sup>76</sup> In response to the economic and social crisis and civil war with the RPF, intellectuals, journalists and former members of the president's inner circle began to demand reforms and accountability, alongside the return to a multi-party political system.<sup>77</sup> Protest and popular disobedience increased from the end of the 1980s.<sup>78</sup> The *Akazu* had tight control over Habyarimana's extensive network of political patronage,<sup>79</sup> and in the early 1990's they began to be identified by the populace with corruption, clan-based politics, nepotism and discrimination.<sup>80</sup> As the legitimacy of the state began to decline and the elite came under increasing threat,<sup>81</sup> it could no longer provide economic security for its Hutu clients, nor uphold claims of democratic governance (to donors and the international community) whilst it excluded a section of the population and refused to permit opposition party mobilisation. The emerging opposition and the precarious nature of their patronage networks led to fear by the *Akazu* in the early 1990's that the country may unite to rid themselves of the so-called 'Gisenyi boys'.<sup>82</sup>

On October 1 1990, the RPF launched an incursion into Rwanda from neighbouring Uganda. By 1990, the RPF was a substantial army with 7 000 soldiers at its command.<sup>83</sup> The attack offered Habyarimana's regime the opportunity to rally the population against the external threat, shoring up their waning legitimacy.<sup>84</sup> The government used this to round up and arrest some 13 000 critics of the regime, and resorted to using overt ethnic threats – the Justice Minister declared that Rwandan Tutsi were *ibyitsa*, or 'accomplices' of the invading RPF army.<sup>85</sup>

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<sup>71</sup> Chossudovsky, 939.

<sup>72</sup> Chossudovsky, 939.

<sup>73</sup> Andy Storey, 'Structural Adjustment, State Power & Genocide: The World Bank & Rwanda', *Review of African Political Economy* 28, no. 89 (1 September 2001): 365–85.

<sup>74</sup> Chossudovsky, 'Economic Genocide in Rwanda', 940.

<sup>75</sup> The argument put forward by Chossudovsky is contested by Storey, 'Structural Adjustment, State Power & Genocide' However, this doesn't change the analysis that structural adjustment and economic crisis threatened the legitimacy of the state and the continued control of the *Akazu*.

<sup>76</sup> Reyntjens, 'Rwanda', 243.

<sup>77</sup> Des Forges, "'Leave None to Tell the Story': Genocide in Rwanda", 41.

<sup>78</sup> Storey, 'Structural Adjustment, State Power & Genocide', 369.

<sup>79</sup> Hintjens, 'Explaining the 1994 Genocide in Rwanda', 259.

<sup>80</sup> Hintjens, 'When Identity Becomes a Knife', 36.

<sup>81</sup> Economic shocks associated with the adverse effects of a reliance upon primary commodities tend to make economic management difficult and are liable to confuse citizens' comprehension of government performance, leading to a rise in discontent; Paul Collier and Anke Hoeffler, 'Resource Rents, Governance, and Conflict', *Journal of Conflict Resolution* 49, no. 4 (1 August 2005): 627.

<sup>82</sup> Hintjens, 'When Identity Becomes a Knife', 36.

<sup>83</sup> Des Forges, "'Leave None to Tell the Story': Genocide in Rwanda", 42.

<sup>84</sup> Des Forges, 43.

<sup>85</sup> Des Forges, 43.

A series of invasions and incursions between 1990 and 1992 turned into a civil war and the government steadily militarised society and increased the size of the army. The war in the north-east – and later the north more generally – produced more than a million internally-displaced persons who were driven from their land into settlement camps around Kigali. These camps – alongside people’s associated grievances around economic opportunities, land and displacement – would provide fertile recruiting grounds for the militias that would carry out the genocide.<sup>86</sup> Under pressure to negotiate from external forces and other Rwandan political parties, the civil war between the RPF and FAR was temporarily quieted by the signing of the Arusha Accords on the 4<sup>th</sup> August 1993.<sup>87</sup> This treaty called for the end to hostilities, democratisation of the state and power sharing in both government and the military. The beginning of the implementation of the Accords spelled the initiation of the genocide plan by the *Akazu*. The opening up of the media allowed open and widespread criticism of the government, and the *Akazu* in particular.<sup>88</sup> The creation of a multi-party power-sharing government and envisioned inclusion of the RPF in the army represented the end of *Akazu* hegemony. While it committed to political liberalisation in 1991, the Habyarimana government also resorted to the condemnation of the RPF and its alleged Tutsi (and moderate Hutu) ‘allies’ as the root of all Rwanda’s problems.<sup>89</sup> This elite began to militarise Rwandan society, establishing militias (*Interahamwe* – the literal translation of this is “those who *work* together”)<sup>90</sup> around the country and began a campaign of propaganda and suppression of dissent.<sup>91</sup> This operation involved the heightening of existing tensions between Hutu and Tutsi people and the dissemination of hate speech directed against Tutsi’s.<sup>92</sup> The militarisation of the state was evident, the army was increased from 7 000 troops in 1989 to 30 000 in 1994, and emergency aid for food and health provision was diverted to arms purchases (particularly from the French government).<sup>93</sup>

The genocide began on the 7<sup>th</sup> April 1994 although it had been secretly planned and plotted by the *Akazu* and other Hutu extremists over a number of years. The trigger was the death of President Habyarimana and the Burundian president in a plane crash, and within hours the *interahamwe* began “the work” for which they had been trained.<sup>94</sup> It was orchestrated by a highly organised killing machine arranged in ‘cells,’ they were capable of killing a thousand people an hour within the first hour that the order was given.<sup>95</sup> The genocide began with the eradication of the political opposition, journalists, civil society leaders and human rights defenders (these people were a mix of Hutu and Tutsi)<sup>96</sup> and ended with hundreds of thousands of Hutu people turning upon their Tutsi neighbours and acting *en masse* to kill three-quarters of the Tutsi population.<sup>97</sup> Women and the young were also among the most vulnerable during the genocide. Tutsi women were specifically targeted as ‘reproducers’ of society. The targeting of women was a policy specifically encouraged and directed to further the goals of the leaders of the genocide: to destroy Tutsis as a social group.<sup>98</sup> The toll of the genocide was unfathomable. In less than 100 days, 13% of the population (just less than a million people) had been killed, there were two million refugees across the

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<sup>86</sup> David Newbury, ‘Understanding Genocide’, *African Studies Review* 41, no. 1 (April 1998): 78.

<sup>87</sup> Dorn and Matloff, ‘Preventing the Bloodbath’, 9.

<sup>88</sup> Hintjens, ‘When Identity Becomes a Knife’, 36.

<sup>89</sup> Hintjens, ‘Explaining the 1994 Genocide in Rwanda’, 247.

<sup>90</sup> Bert Ingelaere, *Inside Rwanda’s Gacaca Courts: Seeking Justice After Genocide* (University of Wisconsin Press, 2016), 17.

<sup>91</sup> Hintjens, ‘When Identity Becomes a Knife’, 36.

<sup>92</sup> Hintjens, 36.

<sup>93</sup> Hintjens, ‘Explaining the 1994 Genocide in Rwanda’, 257.

<sup>94</sup> Dorn and Matloff, ‘Preventing the Bloodbath’, 24.

<sup>95</sup> Reyntjens, ‘Rwanda’, 248.

<sup>96</sup> Dorn and Matloff, ‘Preventing the Bloodbath’, 24.

<sup>97</sup> Filip Reyntjens, ‘Rwanda, Ten Years on: From Genocide to Dictatorship’, *African Affairs* 103, no. 411 (1 April 2004): 178.

<sup>98</sup> Newbury, ‘Understanding Genocide’, 93.

borders, and a million internally displaced persons.<sup>99</sup> Rwandan infrastructure had been destroyed, banks and businesses had been plundered, crops and livestock had been decimated, and all institutions of government including the health, education and judicial services were in ruins. The Rwandan state almost ceased to exist. The civil war and genocide were ended by the military victory of the RPF in early July 1994 and as they took office, it seemed that it would take many decades to rebuild Rwanda and heal the wounds left by this mass atrocity. The RPF formed a transitional government, promised to hold a general election in 1999 and reaffirmed its commitment to upholding the terms of the Arusha Accord.<sup>100</sup>

During the genocide, the international community failed to react effectively and timeously to the widespread killings. The United Nations initially claimed that it was unaware of the scale and extent of the atrocities, but their complicity soon came to light. In 1994, under the Arusha Accords, an international peace-keeping force was stationed just outside of Kigali. This force, which was headed by General Romeo Dallaire, was underfunded and under-staffed with a weakened mandate.<sup>101</sup> Prior to the genocide, numerous people raised the alarm and foreign diplomatic staff watched the unfolding events and growing insecurity carefully. People in Rwanda and outside noted growing attacks on Tutsis, increasingly alarming press reports and radio broadcasts, comments by government actors which highlighted their plans and the distribution of weapons around the country more than 6 months before the genocide officially began. The conclusion that Des Forges and other sources came to was that “although international decision makers did not know everything, they knew enough to have understood that disaster lay ahead.”<sup>102</sup> Despite Dallaire’s frequent warnings to the UN Security Council, his superiors at the UN repeatedly told him to do nothing and the peacekeeping forces were restricted to a passive role.<sup>103</sup> Dallaire’s subsequent memoirs were damning of the international response to the genocide.<sup>104</sup> Despite the clear signs of imminent violence, the US and French governments failed to respond. France had close ties to President Habyarimana and other high-ranking Rwandan officials. According to Des Forges, the French clearly knew about the plans to kill Tutsi and opponents of the regime, but they continued to support the regime diplomatically and through arms sales. Various studies have confirmed the complicity or incompetence that characterised the international community’s response to the genocide.<sup>105</sup> This coloured the way in which the international community would then respond to both the post-genocide administration and the transitional justice processes – as the Rwandan government was able to use its ‘genocide credit’ to overcome international criticism of a problematic process and its increasing authoritarian creep.<sup>106</sup>

## 2.2 Path dependencies

The *Akazu* played on and furthered the colonial bifurcation of Rwandan society as a desperate attempt to retain power and influence and to discredit their opponents. The post-colonial regimes had maintained the structures of

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<sup>99</sup> Reyntjens, ‘Rwanda, Ten Years on’, 178. Ibid.

<sup>100</sup> Reyntjens, ‘Rwanda, Ten Years On’, 178.

<sup>101</sup> Des Forges, “‘Leave None to Tell the Story’: Genocide in Rwanda”, 99–100.

<sup>102</sup> Des Forges, 101.

<sup>103</sup> Des Forges, 130.

<sup>104</sup> Roméo Dallaire and Brent Beardsley, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Carroll & Graf, 2005).

<sup>105</sup> Samantha Power, *A Problem from Hell: America and the Age of Genocide* (London ; New York: Harper Perennial, 2007); Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Brookings Institution Press, 2004); Gregory H. Stanton, ‘Could the Rwandan Genocide Have Been Prevented?’, *Journal of Genocide Research* 6, no. 2 (1 June 2004): 211–28; Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Cornell University Press, 2002); Andrew Wallis, *Silent Accomplice: The Untold Story of France’s Role in the Rwandan Genocide* (I.B.Tauris, 2014).

<sup>106</sup> Filip Reyntjens, ‘Constructing the Truth, Dealing with Dissent, Domesticating the World: Governance in Post-Genocide Rwanda’, *African Affairs* 110, no. 438 (2011): 1–34.

the state that had been abandoned by the Belgians, and centralised and militarised the state in response to a crisis of legitimacy. Hintjens (2009) argues that in spite of a tendency for certain historiographers to brand the pre-genocide state as a ‘failed state’,<sup>107</sup> it was not a weak state, but a state that was so powerful and efficient that it tended to overwhelm society completely.<sup>108</sup> This was in fact, an attribute that was inherited from the colonial state at independence; the state inherited a legacy of close public scrutiny of all spheres of life and continued the practices of its predecessor in controlling each individual through a dense and highly coordinated network of controls that extended down to the household level.<sup>109</sup> This is evident down to the local ‘cells’ into which Rwandan households were organised, initially for projects in the name of the public good. Later this system was utilised to mobilise Hutu households into doing “the work” – the extermination of Tutsi people.<sup>110</sup> The effects of the country’s colonial legacy in post-colonial Rwanda was devastating for Tutsi people in 1994. Even the identity cards instituted by the Belgians were utilised in the ethnic identification of Tutsi’s during the genocide.<sup>111</sup> The post-genocide RPF government has adopted a very different approach to identity politics than the previous administration; it has tried to emphasise that Rwandans must move away from ‘ethnic’ identities and adopt a common national identity.<sup>112</sup> The government has discouraged the use of Hutu, Tutsi and Twa identification in official publications, schools and the media.<sup>113</sup> The degree to which this will foster reconciliation remains to be seen. It may be that by making the use of these words taboo, it will merely force the issue below the surface of society and reproduce these identities through informal channels. Despite some of the apparent differences between the Habyarimana and Kagame regimes, Desrosiers and Thomson (2011) suggest that there are in fact many parallels, and that the two governments use very similar strategies for external legitimation and to discipline the Rwandan population.<sup>114</sup>

### 3. Transitional Factors & Societal Factors

The war in Rwanda and the genocide was ultimately ended by the military victory of the Rwandan Patriotic Army (RPA) and the associated RPF. The devastation wrought by the violence was so complete and so drastic, and the complicity of the international community was so overt that the RPF came to power with substantial external legitimacy and international support. This was in spite of the extensive reports of widespread violence, killings and human rights abuses committed by the RPF as they made their way to the country’s capital. The RPF claimed credibility and legitimacy as ‘liberators’ while members of the previous regime and Hutus as a social group were denounced as ‘*genocidaires*.’ Despite the complexities of the genocide (a significant number of Hutus were murdered, and some Tutsis even participated in the genocide), the subsequent narrative of the atrocities became very one-sided – with Tutsis as victims and Hutus as perpetrators. This has shaped how the transitional justice mechanisms were implemented – with only members of the former regime held accountable for their crimes, while atrocities committed by members of the current regime were not dealt with. This has led to some Rwandans feeling that the

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<sup>107</sup> Zartman cited in Preben Kaarsholm, ‘States of Failure, Societies in Collapse’, in *Violence, Political Culture & Development in Africa*, ed. Preben Kaarsholm (James Currey Publishers, 2006), 7.

<sup>108</sup> Hintjens, ‘When Identity Becomes a Knife’, 245.

<sup>109</sup> Hintjens, 245.

<sup>110</sup> Hintjens, 36.

<sup>111</sup> Hintjens, ‘Explaining the 1994 Genocide in Rwanda’, 254.

<sup>112</sup> Hintjens, ‘When Identity Becomes a Knife’, 48; Stef Vandeginste, ‘Governing Ethnicity after Genocide: Ethnic Amnesia in Rwanda versus Ethnic Power-Sharing in Burundi’, *Journal of Eastern African Studies* 8, no. 2 (3 April 2014): 263–77.

<sup>113</sup> Lyn Graybill, ‘To Punish or Pardon: A Comparison of the International Criminal Tribunal for Rwanda and the South African Truth and Reconciliation Commission’, *Human Rights Review* 2, no. 4 (1 December 2001): 4.

<sup>114</sup> Marie-Eve Desrosiers and Susan Thomson, ‘Rhetorical Legacies of Leadership: Projections of “Benevolent Leadership” in Pre- and Post-Genocide Rwanda’, *The Journal of Modern African Studies* 49, no. 3 (September 2011): 429–53.

justice dispensed was ‘victor’s justice,’ as the deaths of Hutu civilians at the hands of the RPF army were not compensated for or even spoken about in national proceedings.

## 4. Choices in Transitional Justice

### 4.1 *Deciding upon transitional justice mechanisms*

The genocide was highly localised – prior to the genocide, Rwanda was the most densely populated country on the African continent, and Hutu and Tutsi people lived in close proximity to each other. They were often intermarried, and lived in mixed villages. Partly as a result of this, the genocide was immensely personal – it was frequently organised within communities, and perpetrated face-to-face by neighbours using machetes and clubs rather than more impersonal weapons such as guns and mortars. After the genocide, when displaced and incarcerated persons returned, perpetrators and victims were forced again to live in close proximity to each other, despite the devastatingly personal effects of the violence. This had huge import for the type of transitional justice mechanisms chosen. While prominent members of the former regime were held accountable at the International Criminal Tribunal for Rwanda (ICTR) which was held in Arusha, the government needed to create a space for community-level justice.

In a society that has been plagued by an incomprehensible tragedy that has played out amongst the people themselves, it is necessary for the government to try to foster some sort of reconciliation or retribution. After the Rwandan genocide, it was clear that in order to have a return to stability and normalcy and to prevent another genocide, the government needed to pursue some type of transitional justice. This could either be retributive justice in the form of a criminal tribunal to punish the guilty on the basis of individual criminal culpability, or restorative justice – which is more geared towards rehabilitation and truth-telling as a route to achieving ‘justice.’ The Rwandan state chose the former option, initially supporting the creation of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania and then voting against it at the UN. The duty of this court is to hold and prosecute the planners of the genocide. The RPF government passed legislation in 1996, which authorised the state prosecution of those who carried out the genocide. These moves by the state seemed to show a commitment to righting past wrongs and catching the perpetrators so that Rwanda could move forward and reconcile her past. Later, in response to political concerns,<sup>115</sup> the state would adopt a belligerent stance towards the ICTR and would adopt a novel, grassroots approach to transitional justice that would be both praised and criticised in equal measure. The next section will deal with trials conducted by the national judicial system, the ICTR and the ‘grassroots’ *gacaca* court system.

### 4.2 *Implementing transitional justice policies*

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

The International Criminal Tribunal for Rwanda (ICTR) or the Arusha process, as it became known, came into being on 8 November 1994. It was permanently based at the International Convention Centre (ICC) in Arusha, Tanzania. It was established following a UN Security Council Resolution to track down and prosecute those who had perpetrated the Rwandan genocide.<sup>116</sup> From its opening in 1995, the Tribunal indicted 93 people, convicted

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<sup>115</sup> These were regarding the location, date of jurisdiction, the final location of incarceration of prisoners, and the mandate of the court – including war crimes.

<sup>116</sup> Richard Vokes, ‘The Arusha Tribunal: Whose Justice?’, *Anthropology Today* 18, no. 5 (1 October 2002): 1.

62, acquitted 14, and referred 10 to Rwandan courts.<sup>117</sup> The court operated for 20 years before officially closing on 31 December 2015. The people indicted were high-ranking individuals and those suspected of having orchestrated mass murders; they included politicians, businessmen, high-ranking military and government officials, as well as religious, militia, and media leaders.<sup>118</sup> The former Rwandan Minister of Women and Family Affairs Pauline Nyiramasuhuko also became the first woman to be convicted in an international court for crimes against humanity, including the ordering of multiple rapes.<sup>119</sup> The UN and international community were heavily involved in both setting up and adjudicating crimes at the ICTR, and as a result the process had little local ownership. In fact, the ICTR came into serious conflict with the government in Rwanda (see below), which grew increasingly critical of the approach and process adopted at the Arusha tribunal.

The ICTR was initially lauded by the international community, achieving the first ever conviction under the 1948 genocide convention and establishing rape as a crime against humanity and instrument of war.<sup>120</sup> This was due to the fact that sexual violence and rape were common during the violence, and it is estimated that around 200,000 women were raped.<sup>121</sup> In spite of this the tribunal was severely criticised by both Rwandans and international civil society. The critiques of the ICTR are that it was “too slow, too bureaucratic, corrupt at times, too detached from Rwandan reality and above all too costly.”<sup>122</sup> By 2004, the ICTR had tried only 21 detainees at a cost of an estimated US\$ 2 billion, so that each completed case had cost US\$ 100 million.<sup>123</sup> The proceedings were hardly recognised by Rwandans due to the location of the court in Arusha and a feeling that its principles were at odds with their notions of justice.<sup>124</sup> Formed, staffed and driven by the international community and the UN Security Council, the ICTR was not seen to be a ‘domestic’ process in Rwanda, but rather a judicial process driven from the outside. As noted by Oomen, “whatever its merits, [the ICTR] remained an institution with the international community — and not the Rwandan victims — as its audience, and the development of international criminal law as its aim. In spite of an outreach office in Kigali, ordinary Rwandans knew very little about the institution and its work and if they had heard about it at all, perceptions were (largely due to government propaganda) normally negative.”<sup>125</sup>

Similarly to the national court process, the trial was seen by many as constituting victor’s justice as it did not indict members of the RPF who committed murders and acts of genocide during the April-July period and its aftermath.<sup>126</sup> In fact, Prosecutor Carla del Ponte was forced to stand down by the United Nations Security Council (largely as a result of pressure from the USA) on 28 August 2003 over escalating tensions with the Rwandan government over her intention to prosecute members of the RPA.<sup>127</sup> The Rwandan government obstructed the

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<sup>117</sup> ‘The ICTR in Brief’, United Nations International Criminal Tribunal for Rwanda, accessed 14 June 2017, <http://unictr.unmict.org/en/tribunal>.

<sup>118</sup> ‘The ICTR in Brief’.

<sup>119</sup> Johanna Mannergren Selimovic, ‘Gender, Narrative and Affect: Top-down Politics of Commemoration in Post-Genocide Rwanda’, *Memory Studies*, 29 September 2017, 5, <https://doi.org/10.1177/1750698017730869>.

<sup>120</sup> Vokes, ‘The Arusha Tribunal’, 1.

<sup>121</sup> Mannergren Selimovic, ‘Gender, Narrative and Affect’, 5.

<sup>122</sup> Barbara Oomen, ‘Donor-Driven Justice and Its Discontents: The Case of Rwanda’, *Development and Change* 36, no. 5 (1 September 2005): 896.

<sup>123</sup> *Ibid.*

<sup>124</sup> Tiemessen, ‘After Arusha’, 58.

<sup>125</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 896.

<sup>126</sup> Charles T. Call, ‘Is Transitional Justice Really Just?’, *Journal of World Affairs* 11, no. 1 (2004): 105; Luc Reydam, ‘The ICTR Ten Years On Back to the Nuremberg Paradigm?’, *Journal of International Criminal Justice* 3, no. 4 (1 September 2005): 977–88.

<sup>127</sup> ‘The International Criminal Tribunal for Rwanda: Time for Pragmatism’ (Brussels: International Crisis Group, 26 September 2003), <https://www.crisisgroup.org/africa/central-africa/rwanda/international-criminal-tribunal-rwanda-time-pragmatism>; ‘Prosecutor Accused’, *The Economist*, 21 August 2003, <http://www.economist.com/node/2010873>.

work of the ICTR on a number of occasions; in 2002 it prevented the travel of Rwandan witnesses to Arusha in retaliation for the prosecutor's interest in investigating crimes committed by the RPA/RPF.<sup>128</sup> Ultimately, a deal was brokered by the USA for the prosecutor's office to drop the investigations into abuses carried out by the RPF in return for their continued cooperation with existing trials. This meant that at the time of the ICTR's closing in 2015, it had failed to investigate crimes committed by the victors in Rwanda's civil war and failed to even hint at further human rights abuses carried out by the Rwandan Army in neighbouring DRC until 1997. Besides the deaths that occurred in 1994, the RPF are also alleged to have been responsible for war crimes during the war in Northern Rwanda, and the deaths of approximately 200 000 Rwandan Hutu refugees in DR Congo between 1995 and 1997.<sup>129</sup> It is likely that for those Hutu who lost family members during violence perpetrated by the RPA, the ICTR appeared to be a very one-sided process.

The ability of the ICTR to provide reconciliation or psychological healing to victims or the broader public was limited. The court exposed victims to intense cross-examinations which likely led to an opening up of old wounds and a feeling of further victimisation.<sup>130</sup> The court process did not allow for a real cathartic 'truth-telling' experience for victims, who often refused to testify for fear of reprisals.<sup>131</sup> The ICTR was also criticised because it didn't allow for perpetrators to admit their crimes in front of the affected communities, leading to a lack of localised accountability and instead allowing for a 'faceless' community of victims.<sup>132</sup> This meant that the justice provided by the ICTR felt distant from victims, leading to retributive justice for key senior figures, but little sense that justice had been done more broadly. The ICTR wasn't the only mechanism pushed by the international community – they consistently pushed the Rwandan government to set up a South Africa-style Truth and Reconciliation Commission (TRC), going so far as to facilitate contacts between South Africans involved in the process and Rwandan officials.<sup>133</sup> This was due, in part, to the fact that the Arusha Accords had included the setting up of a truth commission.

However, the Rwandan government pushed back consistently against this pressure, opting instead for a watered-down version of this in the form of the National Unity and Reconciliation Commission (NURC). The NURC sought to 'serve as a forum for Rwandan people of different categories to exchange on their problems and find solutions in truth, freedom and mutual understanding' and to 'seek all possible ways of fostering spirit of patriotism amongst Rwandan people.'<sup>134</sup> But despite what the NURC purported to do, the commission was not really a 'public platform' but a body that developed and implemented a centrally-designed project. Oomen (2005) suggests that the government's reason for pushing back so heavily against an independent TRC was that they might lose control over the process and the subsequent prosecutions or amnesty processes. Instead, the NURC (as a re-education, community-support and reconciliation campaign as well as a forum for the enabling of *gacaca*) was driven by the RPF administration, and heavily funded by international donors – predominantly Germany.<sup>135</sup> The Rwandan TJ process was a veritable industry in the decade after the genocide, with dozens of conferences, hundreds of international consultants and researchers and numerous visits abroad for Rwandans involved in the process. All

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<sup>128</sup> 'The International Criminal Tribunal for Rwanda'.

<sup>129</sup> 'Prosecutor Accused'; Oomen, 'Donor-Driven Justice and Its Discontents', 900.

<sup>130</sup> Vokes, 'The Arusha Tribunal', 2.

<sup>131</sup> Vokes, 2.

<sup>132</sup> Phil Clark, 'Negotiating Reconciliation in Rwanda: Popular Challenges to the Official Discourse of Post-Genocide National Unity', *Journal of Intervention and Statebuilding* 8, no. 4 (2 October 2014): 314.

<sup>133</sup> Oomen, 'Donor-Driven Justice and Its Discontents', 897.

<sup>134</sup> As quoted in Oomen, 897.

<sup>135</sup> *Ibid.*

of this was funded by the international community as donor funding shifted from ‘development’ to ‘justice and reconciliation’ efforts.<sup>136</sup>

#### 4.2.2 Local Trials

During the genocide, a large number of judges and judicial staff had fled the country or been murdered, and judicial infrastructure had been destroyed. In a situation where the local courts had very little capacity to try cases, they found themselves overwhelmed by the number of people facing charges for genocide-related crimes in court. In order to address the problem of a lack of judicial staff and capacity, international donors offered to bring in foreign lawyers and judges but this was roundly rejected by the Rwandan government.<sup>137</sup> After 1994, the RPF government imprisoned approximately 130 000 people suspected of crimes of genocide – roughly ten percent of the adult male Hutu population.<sup>138</sup> Although they were all classified as ‘genocide crimes,’ these crimes ranged in severity from property crimes, to those who attacked others without the intention to kill; but also including those who killed others while acting under orders and those who planned and coordinated mass killings and committed rape. Genocide crimes were defined much more broadly in Rwanda than they ever have been by an international court. Although conventional courts had begun trying genocide cases by December 1996, they had only tried 1 292 genocide suspects by 1998. At that rate, it would have taken more than a century to try all those held in the government’s prisons. Only 6 500 of these detainees were tried in the fifteen years between 1994 and 2009.<sup>139</sup> The prisons that held these prisoners were built for a mere 15 000 but were holding almost ten times that number, while the prisoners languished in appalling conditions, suffering from malnutrition and disease, and many died before seeing the inside of a court room.<sup>140</sup> This created a number of problems for reconciliation and justice in Rwanda, many families of those held in prison, serving sentences without due process, would inevitably feel wronged by the government and judicial system. This detention of a significant proportion of the population, over a period exceeding a decade, inevitably undermines social cohesion and reproduces bitterness. In order to address this, the Rwandan government implemented a system of ‘civic re-education camps’ known as *ingando*, to which ordinary citizens and released prisoners were sent prior to returning to their communities.<sup>141</sup> Prisoners were forced to confess to their crimes in prison in order to be released into the *ingando*, resulting in many forced confessions and some people remaining in prison for a decade because they refused to confess to crimes they hadn’t committed.

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<sup>136</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’.

<sup>137</sup> Human Rights Watch, ‘Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts’ (New York: Human Rights Watch, 31 May 2011), <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>.

<sup>138</sup> Mark A. Drumbl, ‘Restorative Justice and Collective Responsibility: Lessons for and from the Rwandan Genocide’, *Contemporary Justice Review* 5, no. 1 (1 January 2002): 6.

<sup>139</sup> Alana Erin Tiemessen, ‘After Arusha : Gacaca Justice in Post-Genocide Rwanda’ (University of British Columbia, 2009), 59, <https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0091268>.

<sup>140</sup> Tiemessen, 59.

<sup>141</sup> There are many types of *ingando*, and many groups have been targeted for inclusion. Purdekova (2008) notes that “Those who have gone through the camps include ‘old caseload’ and ‘new caseload’ returnees, ex-FAR soldiers and demobilised rebels (adult and youth ex-combatants), provisionally-released prisoners and those serving ‘alternative sentences’ (TIG programme takes a form of *ingando*), prison-born children, public and (as of recently) private university entrants, groups of uneducated youth, college students in diaspora, head teachers of primary and secondary schools and district education officers, civil servants, the *inyangamugayo* (gacaca judges), various associations (ATRACO ‘taxi’ [bus] drivers, tea growers, masons), sexual workers, hawkers (‘informal sector workers’), informal cash changers, and street children.”

The *ingando* camps are spaces for lectures on Rwandan history, for disseminating RPF ideology and re-integrating prisoners into the ruling party's conception of "Rwandan-ness."<sup>142</sup>

The problems with the trials were far greater than just the slow pace of justice. National trials found it difficult to produce a sense of individual responsibility amongst the prisoners, almost all of the prisoners interviewed by Drumbl (1998) and other scholars have denied any wrongdoing or even that the genocide occurred at all.<sup>143</sup> Many prisoners and many amongst the Rwandan population believe that the massacres of 1994 occurred within the bounds of war, which ascribes the death of the Tutsi's to a situation for which they were themselves somehow responsible.<sup>144</sup> There was a popular lack of faith in the national judiciary, many people believed that the 'justice' dispensed is little more than victor's justice.<sup>145</sup> This is largely due to the politicisation of the judiciary, which was apparent in the RPF interventions in the judiciary in 1999 with the suspension, removal, and replacement of judges by the government.<sup>146</sup> A refusal to incorporate Hutu judges into the genocide trials, as well as the arrests and assassinations of Hutu lawyers further delegitimised the judicial process.<sup>147</sup> In light of the above circumstances, reconciliation and justice was not achieved by the RPF government with regards to the trials conducted by the national court system. Although there was much pressure for a national truth and reconciliation commission, the government opted instead for a punitive community-based courts system which was intended to function as a hybrid truth-telling mechanism. As a result of the backlog of cases, the government opted to create a decentralised lay-court system based on a traditional Rwandan dispute mechanism.

#### 4.2.3 *Gacaca Courts and 'justice on the grass'*

Partly in response to the issues identified above with the ICTR process, but more as a result of the slow pace of prosecution of cases in ordinary courts and prison overcrowding, the Rwandan government decided to repurpose a traditional conflict resolution mechanism to fit the needs of the post-genocide society. This was sold to the public and the international community as the Rwandan state's recourse to restorative justice – the use of '*gacaca*' trials, which means 'judgement on the grass.'<sup>148</sup> This is a traditional court that is organised at village level; it was previously used for the settlement of disputes that involved the community.<sup>149</sup> These courts traditionally dealt with issues such as marriage disputes, property crimes, inheritance and personal injury cases – more serious crimes were generally dealt with by village chiefs or the King's representative.<sup>150</sup> *Gacaca* was chosen for both pragmatic – to address highly localised perpetration of violence in a context where there were millions of perpetrators and judicial collapse – and for more profound ideological reasons.<sup>151</sup> While the local trials served a practical purpose in replacing the inadequate national court system, it was also premised on a belief that only in having perpetrators address their victims and vocalise their crimes in front of their communities could reconciliation, healing and peace

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<sup>142</sup> Andrea Purdeková, 'Rwanda's Ingando Camps: Liminality and the Reproduction of Power', Refugee Studies Centre Working Paper Series (Oxford: University of Oxford, 2011), <https://www.rsc.ox.ac.uk/publications/rwanda2019s-ingando-camps-liminality-and-the-reproduction-of-power>.

<sup>143</sup> Drumbl, 'Restorative Justice and Collective Responsibility', 16.

<sup>144</sup> For a full discussion, see Drumbl, 'Restorative Justice and Collective Responsibility'.

<sup>145</sup> Drumbl.

<sup>146</sup> Drumbl.

<sup>147</sup> Jeremy Sarkin, 'The Tension between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the Gacaca Courts in Dealing with the Genocide', *Journal of African Law* 45, no. 2 (2001): 158.

<sup>148</sup> Tiemessen, 'After Arusha', 60.

<sup>149</sup> Tiemessen, 61.

<sup>150</sup> 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts'.

<sup>151</sup> Philip Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2011), 354.

be achieved. Its goals – as stipulated by the government – were to heal the victims and community, provide a national narrative about the crisis, allow for open truth telling and to restore the perpetrators to a healthy relationship with the community.<sup>152</sup>

Following the increase in tensions between the ICTR and the Rwandan government in the early 2000s, the government proved to be highly critical of externally-imposed judicial solutions, and instead framed *gacaca* as a ‘local’ response to a local problem, rooted in the values, culture and society of the people of Rwanda. This would become emblematic of the Rwandan approach to the international donor community in the 21<sup>st</sup> century as the government sought to push its own agenda and ‘domesticate’ the world.<sup>153</sup> Oomen (2005) argues, contrary to the Rwandan government’s pronouncements and despite the RPF’s framing of the *gacaca* courts as a home-grown initiative, there is evidence to suggest that it was in fact first suggested by consultants and members of the donor community prior to the government’s adoption of the idea in 1998.<sup>154</sup> Bert Ingelaere (2016) notes that the first mention of using the traditional community courts to resolve Rwanda’s justice problems was in a United Nations High Commissioner for Human Rights (UNHCHR) report which was published in 1996 – the report was written by several Rwandan researchers and professors, along with UNHCHR staff.<sup>155</sup> However, this report recommended that the *gacaca* system should not deal with violence or massacres, that it should instead be a truth-telling mechanism that collected facts of local-level violence and transmitted them to a national tribunal.<sup>156</sup> Finally, the report noted that “caution should be exercised against too much government intrusion, and the institution should not be subverted into becoming a formal tribunal.”<sup>157</sup> But ultimately, the RPF took little heed of this report and decided to proceed with refashioning the traditional court system to suit the needs of the post-genocide dispensation – and that of the ruling party more generally. Civil society played little role, as it had hardly begun to develop when it was decimated by the genocide. The international community initially pushed back against the use of *gacaca* citing concerns of judicial process, but they ultimately relented as they came to believe that it was the less bad way of tackling the past in Rwanda.<sup>158</sup>

The *gacaca* process was later heavily supported by the international community, who paid for the training of judges, the 19 benches per community court, the red motorcycles for government officials to visit the courts and other expenses incurred for logistics.<sup>159</sup> Universities and INGO’s also got involved, working on communication initiatives, public outreach, advocacy, *gacaca*-related art and theatre productions and radio shows to encourage widespread participation in the process.<sup>160</sup> Their reasons for doing this were two-fold, the first concern was that (as noted above) the ICTR and national court processes were unsuited to providing the kind of community-level justice needed in Rwanda after the genocide, and secondly it was driven by a growing international interest in participatory justice at a time when academic and policy work was focused on participatory democracy, decentralisation and a distrust of the strong central state.<sup>161</sup> But for all the donor’s enthusiasm, their attempts to

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<sup>152</sup> Tiemessen, ‘After Arusha’, 60.

<sup>153</sup> On this and how the post-genocide administration sought to advance its own agenda, see Reyntjens, ‘Constructing the Truth, Dealing with Dissent, Domesticating the World’.

<sup>154</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 902.

<sup>155</sup> Ingelaere, *Inside Rwanda’s Gacaca Courts*, 20.

<sup>156</sup> Ingelaere, 22.

<sup>157</sup> Ingelaere, 22.

<sup>158</sup> Ingelaere, 24.

<sup>159</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 902–3.

<sup>160</sup> Oomen, 903.

<sup>161</sup> Oomen, 903.

monitor the process for fair judicial standards and propose amendments to the Rwandan government went largely unheeded.<sup>162</sup>

In June 2002, in response to the failures of more formal judicial processes in national courts and the need to end the culture of impunity, the Rwandan government launched a contemporary form of *gacaca* to try genocide cases.<sup>163</sup> It was run by a newly established government institution which became known as the National Service of Gacaca Jurisdictions (SNJG), and coordinated by the NURC.<sup>164</sup> The local courts drew up lists of victims and suspects, and suspects were classified into one of four categories depending on how severe their crime had been.<sup>165</sup> Category 1 was reserved for the most serious cases, those involving mass murders, rapists, and those concerning the community and political leaders who had incited killings, which were then transferred to the conventional courts.<sup>166</sup> All other cases were to be tried in *gacaca* at sector or cell level.<sup>167</sup> In the decade between 2002 and 2012, 400 000 genocide suspects were prosecuted in around 1 million cases in 11 000 jurisdictions overseen by locally-elected lay judges. It is stated by Selimovic (2017) that women were also perpetrators in the Rwandan genocide, although this is often played down and excluded from the dominant narrative. Women were not only victims of rape and sexual violence, but several of the high-profile instigators of violence were women, and they were subsequently sentenced for crimes against humanity – a case in point being the former Rwandan Minister of Women and Family Affairs Pauline Nyiramasuhuko. Women took part in the violence in various ways; they organized it, were part of the core-planning group and were members of the militias. About 2000 of the total number of people arrested for the genocide were women.<sup>168</sup> The Gacaca process was – according to most accounts – “the most extensive post-conflict accountability process attempted anywhere in the world.”<sup>169</sup> There were 9 201 *gacaca* jurisdictions at ‘cell’ level whose task was to investigate the ‘facts,’ and then to classify the accused and try people who committed property crimes.<sup>170</sup> Another 1 545 *gacaca* jurisdictions at sector level oversaw those who committed ‘violent acts without the intent to kill.’ The 106 *gacaca* jurisdictions at the district level heard cases of homicide, while the 12 *gacaca* jurisdictions at provincial level or in Kigali were used to hear the appeals from cases. The local-level planners and organizers of the genocide as well as those charged with rape and sexual torture were (after undergoing village-level classification) were tried in front of the ordinary criminal courts.<sup>171</sup>

The Rwandan government’s *gacaca* manual, which was used to guide the lay judges across the country, states that a primary objective of *gacaca* is to facilitate ‘the reconciliation of the Rwandan people and the reinforcing of their unity through the creation of an environment favourable to dialogue and to collaboration.’<sup>172</sup> Phil Clark (2011) noted that at *gacaca*, “perpetrators are invited to confess their crimes, apologize and ask for forgiveness. Victims are invited to express their anger directly to the perpetrators and question them about the details of their crimes and their repentance. The hope is that such open airings and shared reckonings will ease lingering communal

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<sup>162</sup> Martien Schotsmans, “‘But We Also Support Monitoring’: INGO Monitoring and Donor Support to Gacaca Justice in Rwanda”, *International Journal of Transitional Justice* 5, no. 3 (1 November 2011): 390–411.

<sup>163</sup> Ingelaere, *Inside Rwanda’s Gacaca Courts*, 24.

<sup>164</sup> ‘Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts?’.

<sup>165</sup> [CSL STYLE ERROR: reference with no printed form.].

<sup>166</sup> [CSL STYLE ERROR: reference with no printed form.].

<sup>167</sup> Ingelaere, *Inside Rwanda’s Gacaca Courts*, 15.

<sup>168</sup> Mannergren Selimovic, ‘Gender, Narrative and Affect’, 6.

<sup>169</sup> Clark, ‘Negotiating Reconciliation in Rwanda’, 304.

<sup>170</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 903.

<sup>171</sup> The details of this section are from Oomen, 903.

<sup>172</sup> As quoted in Clark, ‘Negotiating Reconciliation in Rwanda’, 309.

tensions and forestall future violence.”<sup>173</sup> The *gacaca* trials were intended to promote justice and reconciliation at a local level by naming, shaming and encouraging truth telling within the local community. Human Rights Watch (2011), which has generally been quite critical of the *gacaca* process, noted a few successes of the programme which had been reported by their interviewees in the country. According to HRW: “many Rwandans agree that it has shed light on what happened in their local communities during the 100 days of genocide in 1994, even if not all of the truth was revealed. They say it helped some families find murdered relatives’ bodies which they could finally bury with some dignity. It has also ensured that tens of thousands of perpetrators were brought to justice. Some Rwandans say that it has helped set in motion reconciliation within their communities.” Clark (2010) is much more positive than HRW regarding the outcomes of the *gacaca* process – that in spite of the criticisms of the process that have come from many scholars, it has been quite successful in promoting healing and reconciliation at a local level in ways that the ICTR and national legal processes were not able to. As one *gacaca* judge noted to Phil Clark:

In Arusha the big fish are there. The victims travel there, but in *gacaca*, everyone is already here: survivors, perpetrators, judges, they are all here in the community. That is the difference ... Those in Arusha haven’t asked for forgiveness, yet they have committed many crimes here. They should face us, the Rwandan family, but they avoid us by being there.<sup>174</sup>

Despite this, these courts have been the subject of much international criticism for several reasons. The key critiques were that: *gacaca* did not allow for legal defence for the accused, the judges had little formal legal training and as the courts are held within the community, that the judgements may be subject to bias or victor’s justice, and that they may be used to settle local political scores.<sup>175</sup> Ingelaere’s (2016) research appears to have confirmed that these were valid concerns – particularly the last two. Many Rwandans (both victims and perpetrators) worried that these courts may be used to settle personal scores and certain civil society groups have rejected the proposed courts as they give the “accusers all the power to prosecute the accused.”<sup>176</sup> Another problem with this proposal of local justice is the large degree of variation that will be possible both within and between districts, this lack of universalisation of proceedings might have had significant and dire consequences for the communities and the process as a whole. Clark (2010) responds to these criticisms by stating that the critiques of *gacaca* were written from a strictly legal analysis of the laws governing the process; instead he suggests that *gacaca* be understood as a socio-legal institution with a variety of inbuilt safe-guards, both in legal form and in practice.<sup>177</sup> However, Ingelaere’s more anthropological account highlighted the places where this process failed victims and perpetrators.

Notably, *gacaca* courts were not permitted to try crimes committed by the RPF during the genocide or the following months; this was particularly problematic as the death toll of massacres by the RPF in the April-August period may have numbered as many as 45 000 people.<sup>178</sup> This likely fostered feelings of bitterness and victimisation and further entrench ‘ethnic’ divides.<sup>179</sup> Indeed, in Clark (2014), he relates a story of a genocidaire whose story he followed for nearly a decade as he was released from prison, attended *ingando* and completed his own *gacaca* trial. Notwithstanding his own crimes, he had also lost his brother and nephew who had been killed by the RPF in

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<sup>173</sup> Phil Clark, ‘Opinion | All Justice Is Local’, *The New York Times*, 11 June 2014, sec. Opinion, <https://www.nytimes.com/2014/06/12/opinion/all-justice-is-local.html>.

<sup>174</sup> Clark, ‘Negotiating Reconciliation in Rwanda’, 314.

<sup>175</sup> Sarkin, ‘The Tension between Justice and Reconciliation in Rwanda’, 158.

<sup>176</sup> Sarkin, 158.

<sup>177</sup> Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*, 349–52.

<sup>178</sup> Tiemessen, ‘After Arusha’, 69.

<sup>179</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 905.

August 1994, after they had taken control of the country.<sup>180</sup> Although he was expected to account and atone for his crimes against members of his community, no justice or atonement would be forthcoming for the crimes against his own family. This man suggested that one of the major continuing sources of tension within communities was that Hutu were unable to seek justice for crimes committed against their loved ones.<sup>181</sup> This speaks to the impact of the *gacaca* proceedings on 'truth-telling' or the creation of a 'true' or 'universal' narrative upon which the post-conflict society can seek to rebuild. The truth that was presented at the local trials was what Bert Ingelaere (2016) refers to as 'truth-with-a-capital-T' – a truth that was shaped by the political context in which the trials took place.<sup>182</sup> It was shaped by the narrative emanating from government and advertised by their donor allies, while the constant presence of state officials at trials shaped what was allowed to be included in the genocide 'truth' and how survivors (both victims and perpetrators) could vocalise their experiences. As noted by Ingelaere (2016), "the state, or "authority" in the broadest sense of the word, weighed heavily on the nature of participation in *gacaca* and defined what was considered to be true or false."<sup>183</sup> This is a criticism also echoed by Selimovic (2017) regarding the addressing of gender issues in the Rwandan post-genocide politics.<sup>184</sup> The experiences of the 'raped woman' are considered shameful and are not individualized as other stories are. The symbolic rape victim only functions as an object for social and collective mourning and is activated in support of a nationalist agenda, yet the real rape victims in Rwanda are marginalized, live precariously and are shrouded in 'amplified silence'.<sup>185</sup>

## 5. Impact of Transitional Justice

Although transitional justice policies have created a common narrative of the genocide, this has been one that has been crafted by and for the ruling elite in post-genocide Rwanda with the complicity of "sympathetic journalists and aid workers uninformed about the region, and academic scriptwriters without research experience in Rwanda."<sup>186</sup> The narrative is not one that is equally shared by all citizens, but rather represents a simplification of history and erasure of the complicity of the 'liberators' in fomenting the genocide and in subsequent crimes against citizens. The control exerted by the Rwandan Patriotic Front (RPF) over the *gacaca* process and the narrative produced may yet prove to be one of the greatest threats to the continued peace and stability of Rwanda. The next section will examine the degree to which the local courts (*gacaca*) promoted reconciliation – the subject of a heated academic debate. Several scholars argue that, rather than being just a flawed but well-meant transitional justice process, the process itself was instrumentalised by the RPF government and used to entrench its power and consolidate control over the state.<sup>187</sup> This will be dealt with in section 5.2 below.

### 5.1 *Gacaca courts and reconciliation*

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<sup>180</sup> Clark, 'Negotiating Reconciliation in Rwanda', 307.

<sup>181</sup> Clark, 307.

<sup>182</sup> Ingelaere, *Inside Rwanda's Gacaca Courts*, 162.

<sup>183</sup> Bert Ingelaere, 'What's on a Peasant's Mind? Experiencing RPF State Reach and Overreach in Post-Genocide Rwanda (2000–10)', *Journal of Eastern African Studies* 8, no. 2 (3 April 2014): 163.

<sup>184</sup> Mannergren Selimovic, 'Gender, Narrative and Affect', 7.

<sup>185</sup> Mannergren Selimovic, 2.

<sup>186</sup> Johan Pottier, *Re-Imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century* (Cambridge University Press, 2002), 109.

<sup>187</sup> Oomen, 'Donor-Driven Justice and Its Discontents', 902; Reyntjens, 'Rwanda, Ten Years On'; Reyntjens, 'Constructing the Truth, Dealing with Dissent, Domesticating the World'; Anuradha Chakravarty, *Investing in Authoritarian Rule: Punishment and Patronage in Rwanda's Gacaca Courts for Genocide Crimes*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2016).

The debate between scholars on the *gacaca* process and its outcomes is polarised and often polemical. This is a result of the particular difficulties of studying Rwanda, and navigating a path between elite discourses and lived experiences in a country where people are notoriously evasive and where the consequences of honesty can be dire.<sup>188</sup> As Ingelaere notes:

“...in a society in which daily life itself is politicized, it is difficult for an observer to interpret or gain a balanced understanding of the social milieu. An active interference [by the state] in the scientific construction of knowledge, the cultivation of an aesthetics of progress, and a culturally specific ethics of communication all lie at the heart of difficulties in understanding life after genocide.”<sup>189</sup>

This section will seek to outline the various perspectives on the Rwandan *gacaca* courts as a mechanism for achieving accountability, fostering ‘reconciliation’ and reinforcing state power in the post-genocide dispensation. This paper will suggest that the *gacaca* process has had varied and complex outcomes – that it is difficult to envisage a better way of dealing with problems of justice and accountability in a context where neighbours and family members turned on each other, but that the process has not been without its flaws and it has certainly been used by the Rwandan state to entrench its power and authority, shoring up its legitimacy and suppressing any possibility of accountability for crimes committed by the RPF and its allies. Equally, the *gacaca* process is widely praised for its localised nature and for fostering reconciliation, but many scholars suggest that ‘reconciliation’ in circumstances such as Rwanda’s is perhaps, for now, too lofty a goal. However, *gacaca* has certainly begun (though not completed) the conversation around violence, impunity and justice in Rwanda and it has allowed for the reintegration of offenders and co-habitation of victims and perpetrators in a context where social bonds were violently ripped apart by one of the worst tragedies of the 20<sup>th</sup> century.

On the likelihood of the *gacaca* process to lead to reconciliation, the evidence is mixed and the debate is polarised. The Rwandan government’s National Unity and Reconciliation Commission (NURC) has released two ‘reconciliation barometers’ – funded by the UN and the UNDP – which purports to measure how well Rwandans are living together. In 2015, the commission deemed that reconciliation in Rwanda was at 92.5%.<sup>190</sup> While the findings and methodology of the report are questionable<sup>191</sup> (it is also unclear as to how something as ephemeral as ‘reconciliation’ could ever be measured), it raises a number of interesting questions and highlights the importance of foregrounding ‘reconciliation’ in the Rwandan government’s official discourse. This was also highlighted by Clark (2014) who argues that the Rwandan government sees reconciliation as transactional and as the immediate outcome of the *gacaca* process, despite citizen’s views that true reconciliation is a slow process built through daily interactions.<sup>192</sup> Ingelaere (2010) highlights the degree to which the reconciliation agenda was pushed

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<sup>188</sup> On this topic, see Bert Ingelaere, ‘Do We Understand Life after Genocide?: Center and Periphery in the Construction of Knowledge in Postgenocide Rwanda’, *African Studies Review* 53, no. 1 (26 June 2010): 41–59.

<sup>189</sup> Ingelaere, 42.

<sup>190</sup> The Republic of Rwanda, ‘Rwanda Reconciliation Barometer’ (Kigali: National Unity and Reconciliation Commission, 2015), [http://www.nurc.gov.rw/index.php?id=70&no\\_cache=1&tx\\_drblob\\_pi1%5BdownloadUid%5D=55](http://www.nurc.gov.rw/index.php?id=70&no_cache=1&tx_drblob_pi1%5BdownloadUid%5D=55).

<sup>191</sup> A quick review of the released report is sufficient to get a grasp of its problems, including that “trust in leaders” (with sub-indicators such as “confidence in the executive”, “confidence in the legislative”, “citizens empowerment in governance”), “national security” and “understanding of facts” are the indicators measured to come up with the overall ‘reconciliation’ score. It is almost farcical that these indicators are suggested to have a bearing on how ‘reconciled’ Rwandans are. Equally, some of the questions are perplexing and disturbing such as (pg. 36) “I am one of those who would prefer to die instead of engaging in divisions and genocide” – to which 92.6% of respondents agreed. Ingelaere (2010) notes that a previous, unauthorised report was released in 2005/6 which was highly critical of the *Gacaca* process, contradicting the government’s narrative.

<sup>192</sup> Clark, ‘Negotiating Reconciliation in Rwanda’, 314.

by the Rwandan government and international actors and local NGOs, but that this often didn't resonate with survivors:

“Survivors hear about reconciliation on the radio, but such talk will not bring back their family. A former killer named Girumuhitse explains that reconciliation and confession are “a program of the state.” A survivor named Mariane dismisses requests for pardon as theater, a performance in the interest of the government. Another survivor questioned about how he manages to live alongside neighbors released from prison who had been the killers of his family members says that, in fact, he is not managing at all, he just pretends to get along.”<sup>193</sup>

The government narrative on the requirement that citizens reconcile has been so all-encompassing and pervasive that people speak about the success of reconciliation even when they don't feel it themselves. Oomen (2005) outlines how donors and foreign NGOs converged in Kigali in the early 2000s, to research the *gacaca* process but also to provide funding and support for hundreds of radio spots, talk shows, seminars, theatre and film shows, billboards and trainings – all of which was followed by a survey to find out how many Rwandans had heard the radio jingles encouraging them to participate in *gacaca*.<sup>194</sup> Between the donors and the government, official narratives of the conflict and instructions on how to go about ‘reconciling’ were ubiquitous. The ever-present government narrative intersected with Rwandan social norms – and a significant degree of state coercion – to provide a high degree of participation and ‘support’ for the process. Jean-Marie Kamatali, a lawyer and Rwandan genocide-survivor highlighted the incredibly obedient nature of Rwandan citizens, a cultural trait and social norm that enabled the genocide, and may serve to threaten Rwanda's post-genocide peace:

You can hear it in our maxims. “Intero nyirurugo ateye, niyo wikiriza” means “the tune the head of the household begins is what everyone in the house sings.” “Umwera uturutse ibukuru bucya wakwiriye hose” means that orders from above spread quickly, in the form of rules. “Order” and “law” translate the same: “itegeko.” A “law-giver,” an “order-giver” and an “authority” are each an “umutegetsi...” Reconciliation has proceeded in similar fashion. Under the transitional justice system known as *gacaca*, introduced to speed up genocide trials and promote truthful confessions, forgiveness and reconciliation, a *gacaca* judge would ask a survivor if she really forgave the murderer of her children and she would say: “The government forgave them. What can I do? I also forgave him.”<sup>195</sup>

Evidence of this norm of social compliance can also clearly be found in the government's reconciliation barometer. When confronted with questions about social trust and ‘leaving children with someone of a different social category,’ and whether or not they believe that ‘Rwandans trust each other without discrimination,’ 93-96% of Rwandans agreed that there are high levels of social trust and almost no discrimination based on ethnic or religious categories.<sup>196</sup> This level of compliance and agreement is almost unheard of in social surveys (as a brief run over Afrobarometer findings would attest), and it may have something to do with how the questions were phrased. The barometer was comprised of a series of ‘positive’ statements about trust and reconciliation, with no negative options presented to respondents. Rather than being able to select a more appropriate answer, respondents would have to ‘disagree’ with the interviewer, which, as outlined above, is out of step with social norms in the country. Beyond this, the government's expectations of the populace – made apparent through the *ingando* re-education camps, education facilities, public pronouncements, local public officials and radio spots – help to colour how people respond to surveys and to *gacaca* more generally.

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<sup>193</sup> Ingelaere, ‘Do We Understand Life after Genocide?’, 44.

<sup>194</sup> Oomen, ‘Donor-Driven Justice and Its Discontents’, 903.

<sup>195</sup> Jean-Marie Kamatali, ‘Opinion | Following Orders in Rwanda’, *The New York Times*, 4 April 2014, sec. Opinion, <https://www.nytimes.com/2014/04/05/opinion/following-orders-in-rwanda.html>.

<sup>196</sup> The Republic of Rwanda, ‘Rwanda Reconciliation Barometer’, 97.

Phil Clark takes a 'positive' view of the Rwandan *gacaca* process, noting that the traditional court system has been instrumental in driving reconciliation. Clark (2014) recounts that all Rwandan actors – including the state, perpetrators and victims of the genocide – highlight reconciliation as a necessity for the country to move on from mass atrocity. But each group understands reconciliation slightly differently.<sup>197</sup> Clark notes that “the intimacy of the genocide, in which most perpetrators knew their victims personally, and the intimacy of the post-genocide situation, in which most perpetrators have returned to live alongside survivors, are key reasons that many survivors describe reconciliation as imperative.”<sup>198</sup> Reconciliation is key because of the very intimate nature of the violence and that, as people have returned to their communities, survivors and perpetrators are in daily contact – a recipe for continued social conflict. Of those interviewed by Clark (2014), most Rwandans argued that Gacaca was a necessary but not sufficient condition for reconciliation – that the truth-telling was an important first step towards healing fractured communities but that further healing would need to take place in the positive everyday interactions between neighbours who had previously turned on each other. Clark (2014) has been critiqued by Ingelaere (2016) who suggests that Clark’s research was insufficiently grassroots-focused, and that he uncritically adopted the government narrative on reconciliation, ignoring peasants with alternative (or less positive) views or presenting them as the minority. By contrast, Ingelaere (2016) used an inductive, anthropological approach to studying the *gacaca* process and arrived at very different conclusions regarding the key outcomes of the process and the apparent veneer of reconciliation.<sup>199</sup> However, even Clark (2014) highlights the problems and tensions between popular conceptions of reconciliation and the government narrative. As one of his interviewees stated:

“Reconciliation, in the end, really comes from the authorities. These people in the camp like to obey ... They obey like animals. What we really need is reconciliation from the heart. People need to reflect on their actions during the genocide, then they will be ready to reconcile with the survivors.”<sup>200</sup>

Ingelaere suggests that, contrary to the government’s official narrative, the *gacaca* process was characterised more by retributive than restorative justice.<sup>201</sup> Rather than a focus on confession to rebuild trust and broken social bonds, in practice the courts became prosecutor processes driven more by accusations by victims than by confessions of perpetrators. The local traditional court processes failed to re-shape society, instead leading to the entrenchment of previous patterns of behaviour. Ingelaere (2016) argues “the *gacaca* experience demonstrated a continuation and even consolidation of patterns that have long characterised Rwandan society: self-limiting behaviour, distrust and suspicion, strategic behaviour and communication, patron-client dynamics, obedience to authority, and the like.”

On the apparent reconciliation of Rwandans as reported by Clark, but also by the international media,<sup>202</sup> Ingelaere concludes that this is a feature of the veneer of reconciliation maintained by citizens as a result of the pragmatic need to live together, and in response to government expectations enabled by social norms of compliance. Rwandans frequently use an expression to describe the alliances between victims and perpetrators as “someone

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<sup>197</sup> Clark, ‘Negotiating Reconciliation in Rwanda’.

<sup>198</sup> Clark, 312.

<sup>199</sup> Ingelaere (2016) spent approximately 32 months in Rwanda between 2004 and 2008, and he observed nearly 2000 *gacaca* proceedings. He also used a variety of research methods, but predominantly the collection of life stories of participants in the transitional justice process.

<sup>200</sup> Clark, ‘Negotiating Reconciliation in Rwanda’, 313.

<sup>201</sup> Ingelaere, *Inside Rwanda’s Gacaca Courts*, 160.

<sup>202</sup> For example see Megan Specia, ‘How a Nation Reconciles After Genocide Killed Nearly a Million People’, *The New York Times*, 25 April 2017, sec. Africa, <https://www.nytimes.com/2017/04/25/world/africa/rwandans-carry-on-side-by-side-two-decades-after-genocide.html>; Pieter Hugo, ‘Portraits of Reconciliation’, *The New York Times*, 4 April 2014, sec. Magazine, <https://www.nytimes.com/interactive/2014/04/06/magazine/06-pieter-hugo-rwanda-portraits.html>.

hides that he hates you and you hide that you know.”<sup>203</sup> However, despite Ingelaere’s belief that the *gacaca* process itself did not lead to the types of wide scale reconciliation suggested by the Rwandan government, he suggests that in some cases, victims absolved the perpetrators during the trials in a way that – within Rwandan culture – suggests the fuller meaning of forgiveness, reconciliation and healing.<sup>204</sup> However, this was not the case at the vast majority of trials that he observed. As Rwandan scholar Yolande Bouka observed, expecting that true reconciliation would have emerged through any process just 23 years after such brutal violence is to expect too much – rather than facilitating ‘reconciliation,’ the *gacaca* process has facilitated co-habitation and begun (but not ended) a conversation on the cycles of communal violence perpetrated during Rwanda’s post-colonial history.<sup>205</sup>

## 5.2 *Transitional Justice and Nation- and State-Building*

How has the *gacaca* process affected the construction of the post-genocide nation and state, and what have its effects been on social and political processes? A number of scholars have expressed concern with the Rwandan government’s attempts to forge a new ‘Rwandan’ identity and to subsume all ethnic identities within it.<sup>206</sup> In 2003, the Rwandan government introduced the ‘Organic Law’ under which “a new set of thought and speech crimes were introduced into the law, including ‘divisionism’, ‘ethnic ideology’ and a ‘genocide mentality’.”<sup>207</sup> Ethnicity has been de-legitimised and criminalised as a means of public expression or identification. According to Hintjens, “under the same law, all political parties were ‘prohibited from disseminating information (of) a denigrating or divisive nature’ about elected and appointed political leaders, and were forbidden from using ‘words and acts that intend to denigrate or disparage a person in order to unlawfully remove him or her from leadership positions’ (Articles 20, 40.10).” This has been used to limit legitimate criticism of government by opposition parties under the guise of reconciling the divided nation. In addition, ‘genocide credit’ and positive external views of Rwanda’s transitional justice process has limited external criticism of the government’s increasingly authoritarian bent.<sup>208</sup> In addition, the nation-building project presents real threats to future stability as “driving the terms Hutu, Tutsi and Twa underground may in the future reinforce the appeal of mobilizing opposition to the government in power along these lines”<sup>209</sup> and, in fact, Clark (2014) suggests that this is precisely what has happened amongst Rwandan diaspora groups who have mobilised around a collective, marginalised Hutu identity.<sup>210</sup> As Hintjen’s notes:

“The government wants reconciliation, yet it constantly draws attention back to the cataclysm that beset Rwandans in 1994, and thus draws attention to those who were killers, contrasting their evil with the innocence of those they killed... By preserving genocide as the defining moment of Rwandan history, the RPF regime has elevated Tutsi into victims, even those not directly targeted in the genocide. And Hutu, even those who refused to kill, become suspected accomplices at best, and genocidal killers at worst.”<sup>211</sup>

This reproduction of the binary of ‘perpetrators’ and ‘victims’ ultimately alludes to ethnic categories, and helps to maintain the divide despite the criminalisation of the terms. And the pain and suffering of Hutu people both during

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<sup>203</sup> Ingelaere, *Inside Rwanda’s Gacaca Courts*, 147.

<sup>204</sup> Ingelaere, 157.

<sup>205</sup> Yolande Bouka, Rwandan academic, 27 June 2017.

<sup>206</sup> See for example, Helen Hintjens, ‘Post-Genocide Identity Politics in Rwanda’, *Ethnicities* 8, no. 1 (1 March 2008): 5–41; Ingelaere, ‘Do We Understand Life after Genocide?’; Janine Natalya Clark, ‘National Unity and Reconciliation in Rwanda: A Flawed Approach?’, *Journal of Contemporary African Studies* 28, no. 2 (1 April 2010): 137–54.

<sup>207</sup> Hintjens, ‘Post-Genocide Identity Politics in Rwanda’, 10.

<sup>208</sup> Hintjens, 19.

<sup>209</sup> Hintjens, 31.

<sup>210</sup> Phil Clark, ‘After Genocide: Democracy in Rwanda, 20 Years On’, *Juncture* 20, no. 4 (1 March 2014): 308–11.

<sup>211</sup> Hintjens, ‘Post-Genocide Identity Politics in Rwanda’, 32.

and after the genocide remain unacknowledged and formally repressed. These issues dealt with in a one-sided manner during the transitional justice process, and it is not hard to see how this might present challenges to unity and reconciliation in the future.

Oomen (2005) argues that the *gacaca* process, despite or even because of its aims, has also served to entrench the authority of the new regime in Kigali. It did so by highlighting that the RPF was beyond the law, but it also aided in creating and entrenching the RPF's genocide narrative and a feeling among citizens that the central state is ever-present. This was produced at the *ingando* camps – where the government's narrative of history, victimhood and the future were pervasive, and reproduced at *gacaca*.<sup>212</sup> The weekly *gacaca* meetings always had a government representative present, people were trained, conscientised and subject to radio broadcasts that all served to reinforce the government's narrative and strengthen perceptions of highly localised systems of control.<sup>213</sup> Ingelaere (2014) argues that the RPF has used the *gacaca* proceedings to institute highly localised structures of control, which helps to monitor and moderate citizens' behaviour.<sup>214</sup> This has helped to minimise what dissent may have begun to emerge in Rwanda, but it has also certainly merely driven it underground and it presents another potential threat to the country's future stability.

The RPF-led government has also been praised for making gender equality a central policy component, and the 2003 constitution reflects a turning point for mainstreaming gender-sensitive legislation, providing for instruments like the constitutional quota, which cemented the pathway for one of the world's highest representations of women in parliament. Some significant legal transformations have been undertaken regarding inheritance rights, the appointment of women has been mainstreamed in the top-down restructuring of government administration from national to village level, and programmes are in place to combat domestic violence.<sup>215</sup> The effective legislation for gender equality is employed as a global narrative of the 'Rwandan miracle' of rising from the genocide. It is repeatedly used as an illustration of the country's progress. Gender equality is, thus, 'linked to nationalism' and used as a counter-argument against any critique of the Rwandan government's undemocratic tendencies. The fact that women are well represented in parliament and in other political and administrative functions however should not be taken to mean they fully exercise power and influence.<sup>216</sup> Despite the positive view of Rwanda promoted in donor circles, many academics and journalists note that the RPF is increasingly becoming an ethnocratic party-state, with a small clan-based Tutsi elite controlling all of the levers of power and excluding people on the basis of ethnicity and history.

## Conclusion

The genocide was a consequence of the combination of the ethnic stereotyping of the colonial administration and a clientelist crisis, which began with the collapse of the coffee industry and imposition of structural adjustment policies. The post-1994 RPF regime has made all the right noises with regards to de-ethnicisation and democracy but has not democratised and the state still appears to be biased to a particular ethnic group. These are worrying trends for a society still deeply scarred by a previous ethno-nationalist authoritarian regime. The successes of the RPF government must also be recognised, the government managed to end the civil war, it restored the economy to its pre-war level and established several institutions ostensibly aimed at creating checks and balances, such as

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<sup>212</sup> Purdeková, 'Rwanda's Ingando Camps'.

<sup>213</sup> Oomen, 'Donor-Driven Justice and Its Discontents', 906.

<sup>214</sup> Ingelaere, 'What's on a Peasant's Mind?'

<sup>215</sup> Mannergren Selimovic, 'Gender, Narrative and Affect', 6.

<sup>216</sup> Mannergren Selimovic, 6.

the National Human Rights Commission, the Unity and Reconciliation Commission and the auditor-general.<sup>217</sup> However, there remain concerns regarding the efficacy and independence of these institutions. The RPF government rebuilt the decimated infrastructure, eliminated the divisive identity cards, instituted a process of retributive justice and formed a government aimed at representing all sectors of the population.<sup>218</sup> Most importantly for most donors and international observers, the RPF appeared to institute a process of democratisation.<sup>219</sup> The state promulgated a new constitution in 2003, which was praised for its bill of rights, provision of mechanisms for the de-ethnicisation of society and the control of hate speech as well as including equitable power sharing and multi-party politics.<sup>220</sup> However, this process of democratisation has largely appeared to be constituted of political rhetoric. The local elections of 1999 and the general elections of 2003 were not seen to be free and fair due to the government proscription of opposition parties and their campaigns. In addition, voters were required to vote by thumbprint, increasing fears of identification of voters and potential repression if one did not vote for the RPF. The deployment of troops at polling stations, military personnel within the electoral committee and the coercion of voters undermined the 'democratic' nature of the elections. Reports of ballot box-stuffing, counting irregularities, arrests, intimidation and 'disappearances' were also made by the EU observer mission in the 2003 election, where President Kagame received an overwhelming 95% of the vote. The democratic credentials of the RPF government are also undermined by the active undermining of civil society, repression of and denunciation of opposition parties and activists as well as the RPF control over the coercive arms of the state.<sup>221</sup> Some scholars and critics have labelled the Kagame government as an 'ethnocracy,' due to the fact that already by 1996, the majority of MP's, Supreme Court Judges, over 80% of mayors, most permanent secretaries, university lecturers and students as well as the vast majority of the army command structure and intelligence services were Tutsi.

Although Kagame's second seven-year term was scheduled to end in 2017, he was 'entreated' to stay in power by a petition that circulated in early 2017 – and in a subsequent referendum on his continued stay in office, 98% of those who voted wanted the president to contest the elections.<sup>222</sup> The president has never received less than 90% of the vote, though observers regularly note serious problems with the elections including the detention of genuine opposition contenders.<sup>223</sup> Indeed, in 2017, Kagame was re-elected with 99% of the vote – while opposition candidate Diane Rwigara was prevented from running and later arrested at her home, alongside her mother and sister. Rwigara has been charged with inciting an insurrection against the state and denied bail while her family members faced the same charges alongside charges of forgery and tax evasion. This demonstrates the lengths that the administration will go to in order to prevent challenges to the RPF and Kagame's dominance.

The growing 'Tutsization' and 'RPF-isation' of government are worrying developments.<sup>224</sup> After the resignation of President Bizimungu in 2000 and the rise of President Kagame, there has been a tendency towards the increasing

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<sup>217</sup> Elizabeth Sidiropoulos, 'Democratisation and Militarisation in Rwanda', *African Security Review* 11, no. 3 (1 January 2002): 1.

<sup>218</sup> Sidiropoulos, 1.

<sup>219</sup> Ibid.

<sup>220</sup> Drumbl, 'Restorative Justice and Collective Responsibility'.

<sup>221</sup> 'Many Africans See Kagame's Rwanda as a Model. They Are Wrong', *The Economist*, 15 July 2017, <https://www.economist.com/news/leaders/21725000-its-recovery-after-genocide-has-been-impressive-land-ruled-fear-can-never-be-happy>.

<sup>222</sup> 'Many Africans See Kagame's Rwanda as a Model. They Are Wrong'.

<sup>223</sup> The RPF is known to sponsor smaller opposition parties in order to give the pretence of an open and democratic environment. These parties may challenge the RPF's stance, but they never openly challenge Kagame.

<sup>224</sup> Reyntjens, 'Rwanda, Ten Years On'.

centralisation of power in Tutsi and RPF hands. Any opposition is denounced as ‘genocide denialist’ or ‘Hutu supremacist’ and opposition political parties have been accused of being ‘divisionist.’ In addition to this, the regime draws much of its legitimacy from the genocide, holding commemoration ceremonies and regularly pronouncing its genocide ‘credentials.’ An increase in the militarisation of the state and the primacy of the role of the military and security services are dangerous signs of a defiance of democratic norms. These elements have led to the emergence of external opposition and rebel groups such as the *Armee de Liberation du Rwanda* (AliR) which has been formed from *interahamwe*, previous FAR troops and Hutu refugees which aim to destabilise the Kagame government.<sup>225</sup> The incursions by these forces have been used by the Kagame government to justify the continued and increasing influence of the security forces within the political arena.<sup>226</sup> The government will face significant problems with regards to democratisation, many of which are a product of its own movement towards an elitist, clientelist regime. The attempts at justice and reconciliation have not reduced the Hutu/Tutsi distinction, but have maintained and possibly even deepened it. The ‘ethnocracy’ of the Tutsi-RPF government could be reinforcing ethnic divisions and creating a militant opposition to Tutsi dominance. The failure of the state to de-ethnicise whilst reinforcing Tutsi dominance and creating an increasingly centralised, authoritarian state will be a significant problem for the consolidation of democracy as this trend is extremely difficult to reverse. These actions on the part of the government will most likely lead to the future mobilisation of people around ethnicity, particularly around the ‘marginalised’ Hutu identity, and may lead to a future mass conflict. This does not bode well for the survival of the state or the deepening of democracy.<sup>227</sup>

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<sup>225</sup> Sidiropoulos, ‘Democratisation and Militarisation in Rwanda’, 4.

<sup>226</sup> Sidiropoulos, 4.

<sup>227</sup> By 2002, 70% of the Rwandan population are living below the poverty line, and in a time of economic decline this is likely to increase, which will lead to an increase in instability within the state, Sidiropoulos, E. (2002). “Democratisation and Militarisation in Rwanda: Eight Years After the Genocide”, in *African Security Review*, Vol. 11, No. 3, p. 1

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