

Justice for Whom?
The Gacaca Courts and Restorative Justice for Survivors of Sexual Violence in Rwanda

By

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Abstract

Between 250,000 and 500,000 women were raped during the Rwandan genocide in 1994. In 2001, Rwanda incorporated a traditional, community-based method of conflict resolution known as gacaca into their transitional justice program, and in 2008, the Rwandan government decided to use this system to try perpetrators of sexual violence from the genocide. This thesis analyzes the effectiveness of the gacaca court system in providing restorative justice to Rwandan rape survivors, concluding that gacaca has failed to achieve this objective. When deciding to transfer sexual crimes to the jurisdiction of gacaca, the Rwandan government did not reevaluate the goals that this system was designed to achieve, nor did it address the challenges that gacaca posed to survivors of sexual violence. Rather, the government considered only the practical need to expedite the processing of genocide cases and thus sacrificed the unique needs of survivors of sexual violence. I argue that community-based, women-centered organizations that focus their resources on addressing the practical needs of rape survivors have been more effective at providing “justice” to survivors of sexual violence from the genocide than the state system of gacaca and should therefore be incorporated into the transitional justice framework of Rwanda.

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Chapter 1: Introduction

Between 500,000 and one million people were killed—and as many as 500,000 raped or otherwise sexually abused—during the one hundred days of killing in Rwanda between April and July, 1994 (De Brouwer and Ka Hon Chu 2009, 11).¹ Since then, prison overcrowding and poverty directly resulting from the genocide have claimed thousands of additional lives. To this day, the lives of many Rwandans are shaped by poverty, social isolation, HIV/AIDS, and psychological trauma. The post-genocide reconstruction effort in Rwanda was thus designed to address both practical concerns and the more profound social objectives associated with transitional justice, defined by the United Nations (2004) as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (1).

In 2001, Rwanda implemented the *gacaca* court system as part of their transitional justice program. Based on a traditional Rwandan method of conflict resolution, *gacaca* is a system of community-based justice which tries accused perpetrators of genocide within their own neighborhoods, based on their confessions and the testimony of community members. This thesis will explore the objectives that the *gacaca* system was designed to achieve and the motivations behind the decision to adjudicate sexual crimes through this process, with the aim of assessing the effectiveness of *gacaca* as an institution of transitional justice as it applies to survivors of sexual violence. But first, in order to understand the issues to which the transitional justice

1. It is nearly impossible to estimate the number of deaths during the Rwandan genocide. Alison Des Forges (1999) estimates this number to be 500,000 (16), while Gérard Prunier’s (1997) most conservative estimate is 850,000 (265). For the purposes of this study, I adopt the range used by Phil Clark (2010), based on analysis by several scholars. For a discussion of the number of rapes committed during the genocide, see Chapter 2.

system in Rwanda had to respond, it is necessary to briefly review the historical context of the Rwandan genocide and the events that preceded it.

Pre-Colonial and Colonial History of Rwanda

The 1994 genocide against the Tutsi people of Rwanda did not arise in a vacuum, but was rather the result of centuries of complicated historical processes in the region. Before the advent of colonialism, relative peace existed in Rwanda between the three primary ethnic and social groups which existed there: Twa, Hutu, and Tutsi. The Twa people, likely the original inhabitants of Rwanda, are a pygmoid race of hunter-gathers who probably settled in the region in approximately 1000 AD and now make up about one percent of the total Rwandan population (Clark 2010, 14). The Twa were soon followed by the Bantu-speaking Hutu people, and, again, in the sixteenth century by the Tutsi, herdsman who most likely originated in southern Ethiopia (Clark 2010, 15). The Tutsi conquered much of Rwanda, establishing territories and placing Tutsi kings known as *mwami* at the head of Rwandan life.

Thus, though these ethnic groups originated from different locations in Africa, over time the distinctions between Hutu and Tutsi came to have more to do with social class than with ethnicity, per se. The meanings of these terms began to shift during the eighteenth century, with “Tutsi” coming to describe “a person rich in cattle...the term that referred to the elite group as a whole” and “Hutu” meaning a “subordinate...[the term that] came to refer to the mass of ordinary people” (Des Forges 1999, 32). Despite different origins, Hutu and Tutsi people shared a common language and religion and therefore these categories were highly permeable; Hutu could become Tutsi upon acquiring a certain level of wealth or prestige and intermarriage between the two groups was common (and remained so, even upon the eve of the genocide).

Although these socio-economic categories were likely a source of division and resentment in Rwanda, “there is no record of violence between Hutu and Tutsi in the pre-colonial era” (Clark 2010, 16).

The nature of this social relationship changed drastically upon the arrival of German colonists in Rwanda in 1894. The Germans, noticing the existing political structures with Tutsi kings at the head, sought to form alliances with the *mwami* and other Tutsi administrators. Appealing to social Darwinism and the biblical story of Ham (known as the “Hamitic Hypothesis”), the colonial administrators exploited the existing understanding of Tutsi difference to justify their political alliance with the ruling class of Rwanda.² Therefore, while socio-economic and indeed ethnic distinctions existed between the two groups prior to colonialism, “[the] idea that the Tutsi were superior because they came from elsewhere, and that the difference between them and the local population was a *racial* difference, was an idea of colonial origin” (Mamdani 2001, 80).

When the Belgians gained control of Rwanda in 1919, they continued to favor the Tutsi leaders and expanded the existing divide between the socio-ethnic groups, while the reinforcement and expansion of “race policy” became a political priority. Beginning in 1925, the annual colonial administrative reports included extensive chapters defining the racial difference between Hutu and Tutsi (Mamdani 2001, 88). The Belgian colonial government “turned Hamitic racial superiority from an ideology to an institutional fact by making it the basis of changes in political, social, and cultural relations” (Mamdani 2001, 88). Under Belgian rule, education, taxation, and the Church were reorganized around this concept of difference. Hutu people were

2. For more information regarding the Hamitic Hypothesis and how it operated to “racialize” the difference between Hutu and Tutsi in Rwanda, consult Mahmood Mamdani’s *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (2001).

forced into a nationwide system of forced labor and the government extracted taxes and crops from the Hutu population at extremely high rates (Mamdani 2001, 95). In 1933, the colonists solidified the distinction between Hutu and Tutsi by conducting an official census and requiring every Rwandan to carry an ethnic identity card indicating whether he or she was Twa, Hutu, or Tutsi. These identity cards remained a requirement for all Rwandans until they were abolished following the genocide (Clark 2010, 17).

Independence, the “Hutu Revolution,” and Civil War

Recognizing the global shift toward decolonization during the 1950s, the Belgians attempted to prepare Rwanda for a transition to democracy. Knowing that the Hutu majority would likely take political control of the nation under a democratic system, the colonists began allowing Hutu into the civil service and promoting them to positions of influence in an attempt to “ensure a smooth transfer of power” (Clark 2010, 17). Starting in 1960, the Belgians replaced many Tutsi chiefs with Hutu ones and organized elections, throwing their support behind the Hutu political party *Parti du Mouvement de l’Emancipation des Bahutu* (PARMEHUTU) (Prunier 1997, 51). This shift in allegiance from Tutsi to Hutu—after a half-century of the reinforcement of Tutsi dominance by colonial powers—had a destabilizing effect on the people of Rwanda, and the 1960s “were characterized by the first recorded instances of mass violence between Hutu and Tutsi” (Clark 2010, 18). Following independence in 1962, the Hutu majority cemented near-absolute political leadership of the nation, and engaged in violent persecution of the Tutsi population from the outset. The approximately thirty years between independence and the genocide were known as the “Hutu Republic” and were characterized by state-sanctioned violence against the Tutsi population in Rwanda, “in an almost continuous if irregular stream

between 1959...1972” (Prunier 1997, 61). During this time, approximately 20,000 Tutsi were killed (Des Forges 1999, 40), and over 300,000 were forced to flee to Burundi, Uganda, Tanzania, and Zaire (now the Democratic Republic of the Congo) (Prunier 1997, 62).

This pattern of Hutu dominance continued when General Juvénal Habyarimana took power in 1973 and established a single-party state. Habyarimana’s regime was characterized by tightened control (through the continued use of ethnic identity cards and strict censuses of birth, death, and geographical movement); mobilization of the armed forces; the reinstatement of the unpaid, communal labor established by the colonial regimes; and intense propaganda campaigns designed to glorify Habyarimana, his party, and his Hutu ethnic group (Des Forges, 1999).

By the late 1980s approximately 600,000 Rwandan Tutsis were living in exile (Des Forges 1999, 48). Some of the Tutsi refugees who had fled to Uganda following the Hutu violence in the 1960s established the political and military organization known as the Rwandan Patriotic Front (RPF). In 1990, this organization attacked Rwanda, “proclaiming its goals to be...the return of the refugees...the ouster of Habyarimana and the establishment of a more democratic government” (Des Forges 1999, 48). Though the RPF forces were driven back within three days, the attack proved to be a turning point in the Habyarimana regime, serving as both a rallying call for support of the government in the face of “external” threats and as a justification for increased suppression of those Tutsis within Rwanda. Additionally, this attack resulted in financial and military support for the Habyarimana regime from France, Belgium, and Zaire (Des Forges 1999, 49-50).³

3. Some scholars believe that the attack was in fact staged by the Habyarimana government for exactly these purposes. For more on this theory, consult Alison Des Forges’s *Leave None to Tell the Story* (1999), pages 49-51.

From this point forward, “events both within and outside of Rwanda exacerbated ethnic tensions” (Clark 2010, 13). Guerrilla war continued for three years near the Ugandan border between the Hutu-led Rwandan government and the RPF. The Burundian President, a Hutu, was assassinated by a Tutsi-led army in 1993, inspiring the massacre of tens of thousands of Burundians—both Hutu and Tutsi (Des Forges 1999, 5)—and the flight of thousands of refugees to Rwanda (Clark 2010, 13). The Habyarimana regime heavily promoted extremist media sources and propaganda which called explicitly for violence against the Tutsi population, and began training Hutu youth militias known as *Interahamwe* to attack Tutsi civilians (Clark 2010, 13).⁴

Thus, by April 6, 1994, the stage was set for genocide in Rwanda. On this day, a plane carrying President Habyarimana, along with the Burundian President Cyprien Ntaramira, was shot down, killing everyone on board. Within an hour, the Rwandan national army (*Forces armées rwandaises*, or FAR) and the *Interahamwe* in Kigali began setting up roadblocks, checking ethnic identity cards, and killing Tutsi politicians and civilians as well as “moderate” Hutu accused of collaborating with Tutsi. The killing rapidly spread beyond the capital city of Kigali, and within two weeks approximately 250,000 Tutsi were killed (Clark 2010, 14). By July, between 500,000 and one million Tutsi were murdered.

At least, that is one version of the story. It is important to note that many details of Rwandan pre-colonial history, including the degree to which Hutu and Tutsi have historically coexisted, their understanding of ethnic difference prior to colonization, and the geographic and

4. According to Phil Clark (2010), *Interahamwe* is translated from the Kinyarwanda as “those who stand together” or “those who fight together” (13).

ethnic origins of the two groups, remain contested.⁵ Despite differing interpretations, scholars agree that the genocidal violence that occurred in 1994 was not based on “ancient” or “tribal” hatred between Hutu and Tutsi. While prejudice, resentment, and discrimination between the two groups surely existed in Rwandan society before colonialism, these divisions were intentionally exploited by (and escalated rapidly under the influence of) European colonists. Importantly, this understanding of history is actively promoted by the Rwandan government, meaning that average Rwandans today are taught that the origins of Hutu/Tutsi ethnic tension were a direct result of the negative influence of colonialism. Moreover, several Western nations supported the genocidal policies of the FAR, and international legal bodies, including the United Nations, all but ignored the genocidal violence that was occurring in Rwanda. When examining the transitional justice system in Rwanda and the role that Western organizations should play in reconstructing Rwandan society following the genocide, it is important to consider Rwandans’ perceptions of Western influence in their history and their understandable resistance, in some cases, to adopting “Western” models of justice.

The unique nature of the psychological trauma suffered by survivors of the Rwandan genocide also played a role in what kind of transitional justice system could be established after the genocide. Rather than occupying two historically distinct racial categories, Hutu and Tutsi coexisted in Rwanda for centuries prior to the genocide. Shared language, religion, culture, and history shaped the relationship between these two groups, and centuries of social mobility, cohabitation, and intermarriage resulted in close-knit Rwandan communities of both ethnic groups that, even during the twentieth century, were grounded more in commonality than in

5. My summary of pre-colonial Rwandan history and the ethnic and/or socio-economic origins of the Hutu-Tutsi distinction is based largely off of the analysis of Phil Clark (2010), Mahmood Mamdani (2001), and Alison Des Forges (1999).

difference. When average Hutu civilians raped and killed Tutsi civilians by the hundreds of thousands, they turned against their own friends, neighbors, and family members. Many of the objectives of the gacaca court were therefore shaped by Rwanda's historical context, including the desire to adopt a transitional justice mechanism that was consistent with Rwandan culture and the need to address the unique psychological trauma that resulted from the genocide.

Research Question and Methodology

This thesis attempts to answer a fairly basic question: As an institution of transitional justice, how effective has gacaca been in providing restorative justice for survivors of sexual violence during the Rwandan genocide? This study provides a qualitative analysis of the existing literature on sexual assault as a weapon of genocide, the gacaca court system in Rwanda, and the theoretical framework behind transitional justice, using a multidisciplinary approach which combines historical, legal, and theoretical scholarship with testimonies from rape survivors about their experiences testifying in the gacaca courts.

It is my conclusion that gacaca has not been an effective mechanism for providing restorative justice for survivors of sexual violence when viewed through a transitional justice framework. Rather, my research shows that the specific needs of rape survivors were sacrificed within the gacaca system in order to pursue the pragmatic objectives of the Rwandan state, and that while gacaca might be "restorative" to the Rwandan society as a whole, the process is most often harmful to individual survivors of sexual violence.

The following chapters review the historical, legal, and cultural contexts in which survivors of sexual assault from the Rwandan genocide live today. Chapter 2 discusses the widespread and systematic sexual violence that occurred during the Rwandan genocide, outlining

the specific ways in which sexual violence was used as a strategic weapon to achieve the genocidal objective of the elimination of the Tutsi people. This chapter concludes with a review of the response of the international community to this violence and an assessment of how genocidal rape has been defined in international law as a result of this response.

Chapter 3 examines the establishment of the gacaca court system and its function as an institution of transitional justice. After a summary of the historical evolution of gacaca, I outline the objectives that this court system was originally designed to achieve, including both the pragmatic goals and the broader, more “profound” goals traditionally associated with transitional justice.

Chapter 4 discusses the decision to move sexual crimes to the jurisdiction of the gacaca court in 2008. I outline the reasons for this shift and the adaptations to gacaca law that accompanied it, and address why these adaptations were not sufficient to overcome the barriers that survivors of sexual violence face when testifying at gacaca. In Chapter 5 I return to the social objectives of gacaca, outlined in Chapter 3, in order to analyze the failure of gacaca to achieve its stated objectives when it came to survivors of sexual violence.

My final chapter proposes an alternative model for providing restorative justice to survivors of sexual violence. It is my conclusion that community-based, women-centered organizations which focus their resources on addressing the practical financial and medical needs of rape survivors and emphasize mental health, social support, and a sense of empowerment are more effective at providing “justice” to survivors of sexual violence from the genocide than is the Rwandan state system of gacaca.

Chapter 2: Sexual Violence as a Weapon of Genocide

This is not rape out of control. It is rape under control. It is also rape unto death, rape as massacre, rape to kill and to make the victims wish they were dead. It is rape as an instrument of forced exile, rape to make you leave your home and never want to go back.

It is rape to be seen and heard and watched and told to others: rape as spectacle. It is rape to drive a wedge through a community, to shatter a society, to destroy a people. It is rape as genocide.

-Catharine A. MacKinnon (1994, 11-12)

Stories of mass rape during warfare predate Roman history, and the connection between armed conflict and violence against women has been cemented in the popular imagination so thoroughly that countless expressions spring to mind: to “rape and pillage,” Sabine women, the Rape of Nanking, “comfort women,” “rape camps.” For centuries wars between men, tribes, ethnic groups, and states have been fought on the battlefields of women’s bodies, because the rape of enemy women has traditionally been accepted as spoil of war or the “prerogative” of conquering soldiers (Reid-Cunningham 2008, 279). The rapes that occurred during the genocides in the former Yugoslavia and Rwanda in the 1990s, however, garnered international media attention due to the widespread and systematic nature in which they were conducted. For the first time, legal scholars and historians began to discuss sexual violence not merely as an inevitable by-product of war but as a potential weapon. From these discussions emerged the concept of rape as a form of genocide, and of “genocidal rape” as distinct from other forms of sexual violence committed both within and outside of the context of war.

In this chapter I examine the sexual violence that occurred within Rwanda between April and July of 1994, noting how rape was used intentionally and systematically as one tactic within a larger genocidal policy. I follow this overview with a discussion of how this violence was understood by the international community and the emergence of a definition of genocidal rape.

Sexual Violence During the Rwandan Genocide

It is impossible to estimate how many Rwandan women were raped or otherwise sexually abused during the one hundred days of the genocide. A 2000 report by the Organization of African Unity (OAU) (2000) summarizes the difficulty this way:

Since rape was widely regarded as shameful for the victim, it was often enveloped in secrecy. As a result, compiling statistical evidence on rape during the genocide is difficult. However, there is no question that it was used as a systematic tool...to wipe out the Tutsi population. According to testimonies given by survivors, we could conclude that practically every female over the age of 12 who survived the genocide was...[a] direct [victim] of rape or other sexual violence, or [was] profoundly affected by it...most survivors reported the belief that rape was the norm for virtually all women during the genocide. (149)

Most estimates for the number of women who were raped during the genocide range from 250,000 to 500,000 (De Brouwer and Ka Hon Chu 2009, 11). Common forms of sexual violence in this context included gang-rape, rape with foreign objects (such as sharpened sticks, guns, and beer bottles), mutilation of the breasts and genitals, and sexual slavery—both in collective settings and through forced marriages. As suggested by the OAU report, the massive scale and the extreme brutality of the sexual violence against Tutsi women is strongly indicative of a systematic, targeted strategy on the part of the Rwandan government to implement rape as part of a larger genocidal policy.⁶ As described by Anne-Marie de Brouwer and Sandra Ka Hon Chu

6. Because this thesis focuses on survivors of genocidal rape, my analysis of sexual violence in Rwanda will be limited to those who were raped specifically in order to achieve the objectives of the genocide: namely, Tutsi women and girls. This limitation is not intended to further silence the experiences of other survivors, as serious attention must be paid to providing all survivors of sexual violence with the justice that they deserve. It is important to note that many men were subjected to sexual violence during the conflict along with moderate Hutu women, Hutu women who were married to Tutsi men, and Hutu women who protected Tutsis. Moreover, the RPF was responsible for the rapes of many Hutu women, among other atrocities. Significantly, war crimes and crimes against humanity committed by the RPF are not within the jurisdiction of gacaca. For more on the exclusion of Hutu survivors of sexual violence from the justice system in Rwanda, consult Chiseche Mibenge's *Sex and International Tribunals: The Erasure of Gender from the War Narrative*, Chapter 2.

(2009), “the sexual violence in Rwanda is notorious because of the organized propaganda...the very public nature of the rapes and the level of ruthlessness directed towards women” (17).

Indeed, given the widespread propaganda and the direct and indirect orders to rape from authorities during the genocide, it is evident that the génocidaires understood the power of rape as an extremely effective method of demoralizing and humiliating the entire Tutsi population and intentionally implemented this weapon as part of their genocidal policy. Moreover, they actively employed forced impregnation, the destruction of reproductive capacity, the intentional spread of HIV/AIDS, and the breaking of cultural and familial ties as tools of a targeted, systematic campaign of genocide. These strategies combined to make sexual violence “a coordinated, logical, and brutally effective method of prosecuting warfare” in this context (Kruger 2011, 36).

Propaganda

Hutu propaganda played a decisive role in encouraging and inciting the genocide through media sources such as the magazine *Kangura* and the radio station *Radio-Télévision Libre des Milles Collines* (RTL). Hassan Ngeze, the Chief Editor of *Kangura* and co-founder of RTL, was compared in his indictment by the International Criminal Tribunal for Rwanda (ICTR) to Heinrich Himmler, the chief of propaganda in Nazi Germany (TRIAL 2016).⁷ Much of the propaganda distributed prior to and during the genocide demonstrated a concerted effort to incite hatred of and encourage sexual violence toward Tutsi women. Four of the famous “Ten Commandments” published in 1990 in *Kangura* concerned women. The first, for example,

7. Ngeze was sentenced by the ICTR in 2007 for 35 years in prison on the following charges: genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, and crimes against humanity. Though none of these charges included reference to his specific encouragement of rape or targeted attacks toward Tutsi women, he is widely known to have published materials “constituting slander and persecution against Tutsi women” (TRIAL 2016).

stated: “Every Hutu must know that any Tutsi woman, wherever she is, is working for her Tutsi ethnic group” (Ngeze 1990). Propaganda was widely distributed which condemned Tutsi women as arrogant, manipulative, seductive, and hypersexual. An essay published in a 1991 issue of *Kangura* stated:

You find [Tutsi women] everywhere in all the institutions, in the Ministries, in the private sector, in...illegal drinking places, as well as in our own houses, which many of them have infiltrated through marriage. Having husbands does not prevent them from being accomplices and extracting secrets from people using their worldly wiles...As soon as they see that they have lost the armed war, [Tutsi leaders] will use their sisters’ bodies as well as that of their wives and mothers. (“Editorial,” 1991)

Moreover, pornographic cartoons were widely distributed depicting Tutsi women in sexual positions or using their bodies to manipulate Hutu leaders, politicians, and UN peacekeepers. The February 1994 issue of *Kangura* contained a cartoon illustration of the UN Peacekeeper Lieutenant-General surrounded by highly sexualized caricatures of Tutsi women with the caption “General Dallaire and his army have fallen into the trap of the Tutsi femmes fatales” (“Cartoon,” 1994) (See Appendix A).

This sexualization of Tutsi women undoubtedly contributed heavily to creating an atmosphere in which “the mass rape of Tutsi women appeared to be an appropriate form of retribution for their purported arrogance, immorality, hyper-sexuality, and espionage” (Sarlach 1999, 394). Propaganda also appealed to ethnic myths about the beauty and social superiority of Tutsi women. This tactic proved highly effective in encouraging perpetrators of the genocide to commit rape against Tutsi women. One survivor explains, “a man I had refused to date before the genocide raped me.... Before he raped me, he said I now had no choice but to accept him” (De Brouwer and Ka Hon Chu 2009, 101). Another survivor recalls an *Interahamwe* soldier saying, just before raping her, “remember the past months when you were proud of yourselves and didn't

look at us because you felt we were lower than you? Now that will never happen again” (De Brouwer and Ka Hon Chu 2009, 114).

Endorsement of and Command to Rape by Authority Figures

In continuation of this coordinated governmental strategy, military and civilian authorities were responsible for directly ordering or indirectly encouraging génocidaires to rape Tutsi women. The indictment against Jean Paul Akayesu included the charges that he “facilitated the commission of...sexual violence” and “encouraged these activities” (ICTR 1998, 7).

Akayesu was famously quoted as instructing *Interahamwe* soldiers (with a laugh): “Never ask me again what a Tutsi woman tastes like.”⁸ In locations such as Taba and Kabgayi, women and girls were kept in sexual slavery and raped in communal offices organized by political and military authorities. In Kabyagi, a nursing school, “soldiers ordered the directress to give them the young women students as *umusanzu*, a contribution to the war effort” (Des Forges 1999, 215).

In addition to direct orders, a tacitly understood “permission” to rape Tutsi women was actively employed as a strategy to recruit *Interahamwe* and other perpetrators of genocide. Prunier (1997) explains how many poor or socially disadvantaged members of society took advantage of the genocide: “For these people the genocide was the best thing that could ever happen to them. They had the blessings of a form of authority to take revenge...They could steal, they could kill with minimum justification, they could rape and they could get drunk for free. This was wonderful” (232). Permission to rape, especially to rape those women who were

8. This famous quote comes from the testimony of a survivor (code-named J.J.) during the trial of *Prosecutor v. Jean Paul Akayesu* (ICTR 1998, 109). This testimony helped convict Akayesu for genocidal rape, as it was interpreted as an order by Akayesu to the *Interahamwe* to continue raping Tutsi women.

considered most beautiful and hardest to attain in society, was just one of many spoils available to génocidaires. One survivor notes that her rapist “told [her] that he had never before had the opportunity to have sex with Tutsi women, but now they had all become available” (De Brouwer and Ka Hon Chu 2009, 115).

Strategies of Genocidal Rape

Forced impregnation and Loss of Reproductive Freedom

While many of these “opportunistic” rapes undoubtedly occurred, scholars agree that sexual violence during this period was not simply an example of the chaos and lawlessness that results from wartime but was also intentionally used as a tactic to further the genocidal objective of eliminating the Tutsi ethnic group. Forced impregnation was one of the key strategies utilized by génocidaires in this campaign. As with most statistics generated from the genocide, it is difficult to estimate the number of children born to Tutsi women as a result of rape (known as *enfants mauvais souvenir*, or “children of bad memory”) during this period; according to de Brouwer and Ka Hon Chu (2009) this number could range anywhere between two and fifteen thousand (145). Without dispute, these forced pregnancies have had a huge impact on Rwandan life long past the genocide, and caring for this population remains a devastating and difficult challenge both for survivors and for the Rwandan government.

Fathering children from forced pregnancies was among the primary reasons that génocidaires utilized a strategy of genocidal rape. Because Rwandan lineage, and therefore ethnicity, has traditionally been determined patrilineally, the children born of these rapes would be considered Hutu (Penal Reform International 2002, 44). Furthermore, many survivors of sexual assault who found themselves pregnant underwent illegal and dangerous abortions,

resulting in death or infertility (Morris 2014, 23). A report from the OAU (2002) claimed that “many women require treatment for serious complications due to self-induced or clandestine abortions due to rape-related pregnancies” (150).

In fact, the destruction of the reproductive capacities of Tutsi women was another intentional consequence of the sexual violence directed toward them. Infertility among women as a result of unsafe abortions or injuries sustained during sexual assault remains widespread in Rwanda. Rape with foreign objects and the mutilation of women’s sexual organs with “acid, boiling water, and machetes” (Kruger 2011, 7) were extremely common during the genocide, and many women who were violently raped remain unable to conceive children as a result of damage to their reproductive organs, scar tissue, fistulas, and internal bleeding. Moreover, emotional trauma has made it extremely difficult for some women to conceive children, and social stigma against rape makes it difficult for them to remarry. By physically denying many Tutsi women the ability to reproduce, perpetrators of sexual violence during the genocide have achieved their goal of reducing the Tutsi population in Rwanda for generations. Thus, in a strange paradox, genocidal rape in Rwanda served the dual purpose of limiting the amount of Tutsi children born, both during and after the genocide, while at the same time increasing the amount of Hutu children born during this period through forced impregnation.

The Intentional Spread of HIV/AIDS

According to Amnesty International (2004), approximately seventy percent of survivors of sexual violence committed during the Rwandan genocide are HIV positive (3). This staggering figure is the result of an intentional, concerted effort to infect Tutsi women with HIV/AIDS. Special *Interahamwe* units were formed which consisted exclusively of HIV-positive

men whose duty it was to spread HIV/AIDS to as much of the Tutsi population as possible. As President Paul Kagame stated in an interview “the government was bringing AIDS patients out of the hospitals specifically to form battalions of rapists,” (Landesman 2002). This claim was supported by the 2000 report from the OAU report previously mentioned (148).

Countless testimonies from survivors of rape during the genocide confirm that the transmission of HIV to their victims was indeed intentional. One survivor remembers,

One of the gendarmes was seriously ill, you could see that he had AIDS, his face was covered with spots, his lips were red, almost burned, he had abscesses on his neck. Then he told me ‘take a good look at me and remember what I look like. I could kill you right now but I don’t feel like wasting my bullet. I want you to die slowly like me.
(Nduwimana 2004, 18)

Other survivors “have stated that their perpetrators told them that they would not kill them immediately, but that a slow, painful death was awaiting them in the form of HIV/AIDS” (Kruger 2011, 43).

HIV infection was seen as a “triply effective weapon” in the genocidal campaign, because once a Tutsi woman was infected with HIV, she became “a potential source of contamination to her future partners, supposedly Tutsi; she would give birth to children who would have very limited chances of survival; and she would finally die, bringing several others with her” (Nduwimana 2004, 18). Because of this strategy, HIV has been described as “the legacy left to women raped during the genocide” (De Brouwer and Ka Hon Chu 2009, 146), and the effects of this legacy are among the longest lasting and most pervasive consequences of the genocide on Rwandan women’s daily life.

Demoralization and the Destruction of Cultural Bonds

While many of the “strategies” of genocidal rape worked directly to kill Tutsi women or inhibit their ability to reproduce, the functions of genocidal rape go beyond killing and can also serve to destabilize or destroy specific ethnic groups (Reid-Cunningham 2008, 281). In societies where women hold essential roles in community and family structures, genocidal rape is intended to weaken “the very fabric of society” (Kruger 2011, 37). Because familial and cultural ties are cemented around women’s roles as wives and mothers, genocidal rape is “meant to degrade not just the individual woman but also to strip the humanity from the larger group of which she is a part. The rape of one person is translated into an assault upon the community through the emphasis placed...on women’s sexual virtue” (Nowrojee 1996, 1-2).

When utilized this way, the intended targets of genocidal rape are indeed the men in the community, both because the men are viewed as “responsible” for protecting the women (Kruger 2011, 39) and because the rape of a Tutsi woman “robs the husband of his control over his wife’s sexuality,” leaving the men “emasculated...and therefore dehumanized, rendered powerless” (Reid-Cunningham 2008, 291). In the logic of genocidal rape, “a raped woman’s body is evidence of an attack on her people” (Kruger 2011, 39).

In addition to degrading and demoralizing the entire Tutsi population in order to facilitate their elimination in the immediate sense, rape was also intended to destroy the social and cultural bonds of Tutsi families and communities in the longer term. Because of the social stigma surrounding rape in Rwanda, many survivors were abandoned by their husbands and/or rejected by their communities. Many women were unable to form bonds with the children they had birthed as a result of forced impregnation; one woman says of her daughter, “I hated her, because she was a constant reminder of what had happened to me” (De Brouwer and Ka Hon Chu 2009,

122). Because of the vital position of women in Rwandan families and communities through their roles as wives and mothers, these consequences which affect women's ability to participate in their communities or care for their children inevitably led to "the deterioration of the familial structures...[and] the social structures of the community" (Reid-Cunningham 2008, 292).

Because perpetrators knew the social consequences that sexual violence would have for families and communities, rapes were often conducted in public places to make them more difficult for survivors to conceal. Catharine MacKinnon describes genocidal rape as "rape to be seen and heard and watched and told to others: rape as spectacle. It is rape to drive a wedge through a community, to shatter a society, to destroy a people" (MacKinnon 1994, 11-12). During the Rwandan genocide, women were frequently raped in public places or forced to march naked through their communities. One survivor notes that she was gang raped "during the daytime, in front of the bar. Many *Interahamwe* were watching, dancing and laughing at me" (De Brouwer and Ka Hon Chu 2009, 102). In addition to their genocidal functions described earlier, forced pregnancies, genital and breast mutilation, HIV infection, and infertility rendered rape even more visible and prevented women from remarrying or reintegrating into their communities after the genocide.

Because so many of these rapes occurred in public, many witnesses can also be considered "secondary victims" (Kruger 2011, 41). One survivor remembers that while she was being raped in a public space "one of the *Interahamwe* decided to call my father and force him to see what was happening to me" (De Brouwer and Ka Hon Chu 2009, 60). A 2000 survey found that 31 percent of Rwandan children had witnessed rape or sexual assault during the genocide (Kruger 2011, 7). Indeed, rape was so visible during this time that it became "generalized to the whole population as survivors, witnesses, families, and communities internalize[d] rape as an

assault on their collective consciousness” (Reid-Cunningham 2008, 279).

The Emergence of Rape as Genocide in International Law

After centuries of indifference concerning wartime rape on the part of the international legal community, the genocides in Yugoslavia and Rwanda in the 1990s fundamentally reshaped the international discourse surrounding this matter. The Western world had watched, transfixed, as the extreme brutality of the conflict in Yugoslavia was broadcasted directly to their living rooms. Detailed accounts of the mass rapes occurring in the Balkans were being widely publicized throughout the global community by August of 1992 (Crider 2012, 26). By the time media sources began publishing stories about the mass rapes in Rwanda in 1995, the global community had already begun to take notice of the systematic and widespread sexual violence happening in conjunction with these genocides.⁹ With women from both genocides speaking publicly to media sources about their experiences of rape, it soon became evident that these experiences were fundamentally different than those of many other victims of rape during armed conflict. As Erica Feller, director of the Department of International Protection of the United Nations High Commissioner for Refugees (UNHCR), stated in 1999: “The invisibility of women and sexual violence ended with the war in Bosnia and Herzegovina. This war, and the genocide in Rwanda, made it all too clear that rape and sexual violence, far from being isolated acts, are more and more frequently used as strategic weapons of war” (Crider 2012, 26).

A precedent in international law prohibiting wartime rape had existed prior to these

9. It is worth noting that the first publication about mass rape in Rwanda by a mainstream media source was not published until 1995. The failure of Western media to initially report the Rwandan genocide has been well documented, prompting scholars such as Allan Thompson (2007) to claim that “more informed and comprehensive coverage of the Rwanda genocide...might well have mitigated or even halted the killing by sparking an international outcry” (3).

conflicts. Article 27 of the Fourth Geneva Convention, published in 1949, states that within the context of war “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” However, before the International Criminal Tribunal for Yugoslavia (ICTY) was established in 1993, and its sister tribunal in Rwanda in November 1994, rape had never been tried as a war crime. Thus, both tribunals made history by including rape within their charges of war crimes and crimes against humanity from the outset (Crider 2012, 29), eventually specifically classifying the rapes that occurred in Yugoslavia and Rwanda as a form of genocide.

Article II of the 1948 UN Convention on the Prevention and Punishment of Genocide provides the basis for the definition of genocide in international law. This article states that:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group. (280)

Using this definition, the ICTR was able to sentence Jean Paul Akayesu in the first-ever international war crimes trial to convict a defendant for genocide. *Prosecutor v. Jean Paul Akayesu* was a landmark decision both for the ICTR and for the entire international legal community in the pursuance of justice for victims of genocide. Importantly, the *Akayesu* ruling explicitly defined the systematic rape that occurred during this period as a crime of genocide.

According to the Fourth Annual Report for the ICTR:

The Trial Chamber held that rape...and sexual assault constitute acts of genocide insofar as they were committed with the intent to destroy, in whole or in part, a targeted group, as such. It found that sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against

Tutsi women only, manifesting the specific intent required for those acts to constitute genocide. (6)

This ruling explicitly links genocidal intent—“intent to destroy, in whole or in part, a targeted group”—with the sexual violence committed against Tutsi women between April and July of 1994. Thus, the *Akayesu* decision cemented a legal precedent to which all female Tutsi survivors of sexual violence during the genocide have a claim.

Unfortunately, this precedent was not translated into justice for the majority of Rwandan women who brought their rape cases to the ICTR. Within the tribunal,

in the 30 per cent [of adjudicated cases] that included rape charges, only 10 per cent were found guilty for their role in the widespread sexual violence...20 per cent, were acquitted because the court found that the prosecutor did not properly present the evidence beyond a reasonable doubt. In real numbers, that means that, at the tenth anniversary of the genocide, only two defendants had specifically been held responsible for their role in sexual violence crimes, despite tens of thousands of rapes committed during the genocide. (Nowrojee 2005, 3)

This summary of the failure of the ICTR to convict rape cases is startling. However, these numbers do not even include the thousands of rape survivors who were waiting for their cases to be processed in the extremely backlogged Rwandan national court system (to say nothing of the tens of thousands of survivors who have never sought formal criminal justice). Though the precedents being set by the ICTR were groundbreaking, it was obvious that it would be unfeasible to rely on the tribunal and the Rwandan courts alone to provide justice to genocide survivors. The next chapter will trace the development of Rwanda’s unique solution to this problem: the revival of the gacaca court system.

Chapter 3: The Gacaca Court System as an Institution of Transitional Justice

As Rwanda emerged from the genocide, its new government had to face the task of rebuilding a nation mired in political upheaval, economic stagnation, crippling poverty, and some of the most pronounced physical and mental health epidemics in the world. Prior to the genocide, the population of Rwanda was approximately seven million; by August 1994 as many as a million people had been murdered and nearly two million additional civilians, government officials, and soldiers had fled to neighboring countries (Prunier 1997, 312). The destruction of the nation's administration and infrastructure was "virtually unparalleled in human history" (Wells 2005, 181). Though the ICTR had been established by November 1994, and a Special Chamber of the Rwandan Supreme Court was established in 1996, it quickly became apparent that these two legal institutions alone would not be able to provide the type of justice required for the nation to move forward. What was needed was a holistic approach to justice, "aiming to rebuild individual and communal lives and to contribute to reconstruction in both the short and the long term" (Clark 2010, 32).

In effect, Rwanda needed a transitional justice system. Transitional justice programs typically combine a variety of mechanisms such as war crimes tribunals, truth and reconciliation commissions, institutional reforms, and reparations programs in an attempt to reconstruct societies that have been affected by political violence, civil war, or widespread human rights abuses. Due to the specific needs of such societies, transitional justice programs are intended to address both the practical needs that any nation faces following armed conflict (i.e., prosecuting criminals and rebuilding infrastructure) as well as the more subtle socio-cultural goals of promoting truth, healing, and restorative justice. In the case of Rwanda, nearly every member of the nation's civilian population was directly involved in the genocide, and communities were

destroyed as citizens killed their neighbors and family members. Most people did not have guns and therefore killed with machetes, blunt objects, or by beating people to death. Sexual violence was both normalized and extremely brutal in nature. In such circumstances, where killing was widespread, highly physical, and extremely personal, the trauma of survivors and perpetrators alike goes beyond the practical problems caused by other kinds of warfare. Moreover, because Hutu and Tutsi people were so integrated within society and many people were too poor to leave their communities following the genocide, survivors were forced to continue living alongside their rapists and the people who had killed their family members. In addition to trying criminals, the transitional justice system established after the genocide therefore needed to address broader, more profound objectives specifically designed to heal the society and help people live together again.

Thus, the decision to turn to gacaca as an institution of transitional justice was shaped by Rwanda's need to address a multitude of pragmatic and profound objectives, ranging from reducing prison overcrowding to providing restorative justice to survivors. This chapter will discuss the process of reviving this pre-colonial tradition into a modern, standardized judicial system, followed by an outline of the objectives that this system was designed to achieve.

Reviving the Gacaca Courts

Gacaca, derived from the Kinyarwanda word for grass, was a traditional method of conflict resolution in pre-colonial Rwanda (Clark 2010, 3). Traditional gacaca hearings were community gatherings, held outdoors and led by the male heads of households, meant to address minor conflicts that arose within or between families, such as issues of "land use, livestock, damage to property, marriage or inheritance" (Clark 2010, 52). Community members brought

grievances to respected elders, who allowed the defendants to respond to the charges brought against them and pass judgment based on the evidence heard. Gacaca hearings usually followed a well-established pattern wherein defendants would “confess their crimes, express remorse and ask for forgiveness from those whom they had injured. Gacaca judges would then demand that confessors provide restitution to their victims, and the process would culminate in the sharing of beer, wine or food...to symbolise the reconciliation of the parties involved” (Clark 2010, 53). By the twentieth century, gacaca was considered “the main method of ensuring social order in communities across Rwanda” (Clark 2010, 52). Variations of gacaca continued to exist under and after colonialism, shifting several times in form and function, but the system was never enshrined into written law.

As early as 1995, the Rwandan government and the UN had begun discussing restructuring gacaca as a potential solution for addressing the complex needs of post-genocide Rwandan society (Clark 2010, 55). The Rwandan President established a commission in 1998 “to investigate the possibility of restructuring gacaca into a system appropriate for handling genocide cases” (Clark 2010, 57), and after years of “protracted and often heated” debates and an extensive survey of the perceptions of the Rwandan population, the government determined that a restructured, institutionalized judicial system based on the customary practice of gacaca was the solution (Clark 2010, 57-63).

Organic Law 40/2000, referred to hereafter as the Gacaca Law, established the new gacaca system in 2001. After a series of “trial runs,” assessments, and modifications, gacaca was extended to a large portion of Rwandan society by 2002 (Clark 2010, 69), and instituted nationwide by 2005 (Haskell 2011, 17). In its modern form, gacaca is a system of community-based justice which tries accused perpetrators of genocide within their own neighborhoods,

based on their confessions and the testimony of community members. Gacaca trials are judged by *inyangamugayo*, local leaders elected by citizens for their “standing in the community, their dedication to the well-being of their neighbours and for their love of truth and justice” (Clark 2010, 67). Under the gacaca system, many suspected génocidaires were provisionally released from prison and sent to educational camps, known as *ingando*, devoted to the rehabilitation of recently released prisoners through sensitivity training, community service, and civic education. *Ingando* participants were taught the logistics of the gacaca process as well as how to “return to their communities and spread the government’s message that there was no place in Rwandan society for the ethnic divisions of the past” (Clark 2010, 106). After *ingando*, the prisoners were allowed to return to their communities to await their trials at gacaca.

In gacaca, *Inyangamugayo* determine punishments according to a set of regulations based on confession and plea-bargaining, in which suspects can reduce their sentence by at least half by confessing their crimes (Clark 2010, 77). Most gacaca sentences combine reduced prison terms with community service in the form of post-genocide reconstruction efforts, ranging from building roads to rebuilding houses for genocide survivors. Because of these lightened sentences and the informal nature of gacaca trials, the government is able to process cases much more rapidly than if all suspected génocidaires were sentenced through the ICTR or the Rwandan national courts.

Objectives of Gacaca

When announcing the official launch of the gacaca system in 2002, Rwandan President Paul Kagame stated that the five core objectives of gacaca were to:

- Reveal the truth about what happened;
- Accelerate genocide trials;

- Eradicate the culture of impunity;
- Reconcile Rwandans and reinforce their unity; and
- Prove that Rwanda has the capacity to resolve its own problems. (Haskell 2011, 16)

The 2001 Gacaca Law itself promotes similar objectives, aiming to

eradicate for ever the culture of impunity in order to achieve justice and reconciliation in Rwanda, and thus to adopt provisions enabling rapid prosecutions and trials of perpetrators and accomplices of genocide, not only with the aim of providing punishment, but also reconstituting the Rwandan Society that had been destroyed by bad leaders who incited the population into exterminating part of the Society. (Republic of Rwanda 2004, 3)¹⁰

Thus, from the outset gacaca was conscience of a wide variety of objectives. By understanding the goals that gacaca was intended to achieve, we will be able to examine the ways in which these goals were subverted for survivors of sexual violence.

Accelerating Genocide Trials and Reducing Prison Overcrowding

The most immediate problem that the post-genocide Rwandan government needed to address was the massive overcrowding in the nation's prisons. According to Haskell (2011), by October 1994, an estimated 58,000 Rwandans were being detained in prison space intended for only 12,000, and within just four years this number grew to approximately 130,000 (13). Virtually no system existed to deal with this backlog, as Rwanda's justice system had been under-resourced even before 1994 (Haskell 2011, 13) and "most of Rwanda's judges and lawyers had been killed and the judicial infrastructure was decimated" during the genocide (Clark 2010, 20). According to a 2008 Human Rights Watch report, "extreme overcrowding and lack of sanitation, food, and medical care created conditions that were universally acknowledged to be

10. This quote is extracted from the Revised Gacaca Law of 2004, rather than the original 2001 Gacaca Law, only because the English translation is more clear. The wording of the Kinyarwanda in both laws is the same.

inhumane and which claimed thousands of lives” (Haskell 2011, 13-14). By 1998, a mere 1,292 people had been tried in the conventional courts, and it was estimated that it would take approximately 200 years to try all of the genocide cases at this rate (Haskell 2011, 15). Because gacaca allowed for the provisional release of prisoners and the informal structure of gacaca trials was able to process cases more quickly than conventional courts, implementing gacaca would accelerate the sentencing of suspected génocidaires and reduce the population of the prisons dramatically.

Reducing Poverty

When considering the societal problems that gacaca needed to address, the government understood that “attention to poverty alleviation would minimize social unrest and help ensure a lasting peaceful environment in the country” (Clark 2010, 177). By 1998, the Rwandan state was spending \$20 million per year to support the prison population, funding that the country desperately needed elsewhere (Haskell 2011, 14). 81.9% of a sample of Rwandans cited poverty and economic hardship as Rwanda’s “major social problem after the genocide,” (Clark 2010, 176), and much of this economic hardship was directly linked to the genocide due to the massive percentage of the workforce lost to violence or imprisonment. Additionally, many community members were forced to support their family members in prison because “the government was unable to adequately provide food and clothing for detainees” (Clark 2010, 100).

The government argued that releasing detainees through the gacaca system would foster economic growth by returning tens of thousands able-bodied men to the workforce and by reducing the costs of prison maintenance (Clark 2010, 177). Moreover, under gacaca’s system of community service as punishment for genocide crimes, prisoners assisted in rebuilding national

infrastructure as well as rebuilding homes for survivors, reducing both the national debt and the economic burden of survivors. A 2009 UN report claimed that in four years gacaca had “produced 14 billion Rwandan francs’ worth of labour for the post-genocide reconstruction of the country” (Clark 2010, 178).

Establishing a “Rwandan” Model of Justice

Since the genocide, the Rwandan government has actively reinforced the historical narrative that the ethnic tensions in Rwanda resulted from the damaging influence of colonialism as part of their strategy of to unify Rwanda. The nation’s colonial history and the experiences of the Hutu Republic have “contributed to a population that is both highly dependent on and deeply fearful of hierarchy and state control” (Wells 2005, 178). Moreover, the international community famously abandoned Rwanda in 1994, and many Rwandans still resent Western policymakers and the UN for failing to act to prevent or halt the genocide. Given this context, one of the primary objectives of returning to the pre-colonial tradition of gacaca was to “enable communities to solve their problems in a manner consistent with Rwandan culture” (Wells 2005, 176). The community-oriented nature of gacaca provides an alternate model of justice from the Western-based, top-down ICTR or the national courts. To this end, the Executive Secretary of Rwanda’s National Unity and Reconciliation Commission (NURC) Fatuma Ndangiza described gacaca as “a form of justice originating from and serving Rwandan culture” as well as a demonstration of “Rwandans’ ability to manage their [own] conflicts” (Clark 2010, 134). This also explains why Kagame listed “[proving] that Rwanda has the capacity to resolve its own problems” as one of the primary objectives of gacaca (Haskell 2011, 16). This sentiment is

echoed by civilians and participants in gacaca; one survivor stated that she had faith in the gacaca process because it was how “Rwandans have always done it” (Amick 2011, 73).

Individualizing Guilt and Curbing the Desire for Revenge

One of the fundamental benefits of holding criminal trials after genocide is that they “make the statement that specific individuals—not entire ethnic or religious or political groups—committed atrocities for which they need to be held accountable” (Kritz 1997, 128). This is especially important in Rwanda to counteract the idea that all Hutu participated in the genocide, an assumption that has, according to Des Forges (1999), “become increasingly common among both Rwandans and outsiders” (763). By holding individuals responsible for atrocities and providing survivors with a sense of justice, criminal trials inherently curb the desire for revenge and “mitigate the resumption of violence by preventing mass reprisals or revenge killings,” necessary for maintaining lasting peace after a conflict (Mendeloff 2004, 359).

Truth

The first of the “five core objectives” of gacaca, according to President Kagame, was to “reveal the truth about what happened” (Haskell 2011, 16). Burt Ingelaere (2009) even goes so far as to argue that “the ‘surfacing of the truth’...is the cornerstone of the entire transitional justice framework in post-genocide Rwanda” (509). Indeed, by providing a space for witnesses and suspects alike to have their stories heard, gacaca serves as an important forum for truth-telling. In recognizing that “truth” was a primary objective of gacaca, and examining the benefits behind truth-telling for rebuilding post-conflict societies, I will be able to explore in Chapter 5

the ways in which each of these benefits was subverted under the gacaca system for survivors of sexual violence.

Without truth, it is impossible to establish an official historical narrative about a conflict. Survivors must tell the truth about their experiences if perpetrators are to be assigned blame and punished for their actions. The Rwandan government argues that gacaca is particularly well suited to achieve this objective because the testimony comes directly from the general population. Phil Clark (2010) summarizes this argument by emphasizing the assumption that

because genocide crimes were often committed in full view of the community...the population will know who committed these crimes and how they were perpetrated...the population not only knows better than anyone else what happened during the genocide but gacaca allows more people to tell their truth than is possible in other judicial institutions. (190)

Establishing an official record has had the added benefit of providing closure for those survivors who do not know what happened to their families during the genocide. One survivor appreciates that gacaca “help[s] genocide survivors learn what had happened to their loved ones and where their bodies lay, so that they could receive a proper burial” (De Brouwer and Ka Hon Chu 2009, 122). Moreover, there is evidence to suggest that repressing the truth may lead to future violence in post-conflict societies. One Tutsi returnee expressed fear that without an opportunity to hear and tell the truth about their experiences during the genocide, “the people are closed up and could explode again in the future” (Lambourne 2001, 327). Mendeloff (2004) argues that truth-telling prevents a resumption of violence by allowing post-conflict societies to develop a shared history, learn from the mistakes of the past, and create a common dialogue about human rights (360).

Moreover, truth-telling is frequently considered therapeutic for survivors and a prerequisite for individual healing and societal reconciliation. According to Michael Scharf

(1997), establishing the truth of a conflict “acknowledg[es] the suffering of victims and their families...and allow[s] victims to tell their story, thus serving a therapeutic purpose for an entire country, and imparting to the citizenry a sense of dignity and empowerment that could help them move beyond the pain of the past” (379). This healing” function of truth-telling is “one of the primary claims” of much transitional justice scholarship (Mendeloff 2004, 359), and was recognized within the official discourse of the Rwandan government as one of the objectives of gacaca (Clark, 1919). Thus, from the outset, gacaca was established as a forum to expose the truth of what happened during the genocide, and this objective was closely tied to the further objectives of healing, reconciliation, and justice.

Justice

Wendy Lambourne (2001) claims that “the need for justice is a strong motivating force in human life” (312), and justice is, accordingly, the “theme most readily identified as an objective of gacaca” (Clark 2010, 237). Justice is, however, an extraordinarily complex concept, and much like the other objectives of gacaca, definitions of justice vary widely and range from pragmatic to profound. Punitive (also known as retributive) justice is concerned with fairness, and aims to punish perpetrators because it is what they “deserve” (Clark 2010, 38). This form of justice is often powerful for survivors, as punishing criminals can “offer victims the opportunity to affirm the ‘wrongness’ of the crime committed against them” (Amick 2011, 73).

Moreover, punitive justice is linked to deterrent justice, the idea that “punishment is necessary, not simply because perpetrators deserve it but because it should help discourage a convicted perpetrator from committing another crime, for fear of receiving punishment” (Clark 2010, 38). In the official rhetoric of the Rwandan government, this objective has been referred to

as “eradicat[ing] the culture of impunity” and was emphasized as a primary goal of gacaca from the outset (Haskell 2011, 16). In Rwanda, this culture of impunity has been considered a fundamental cause of the genocide (Clark 2010, 35-36). No one was held accountable for the mass murders of Tutsi civilians that took place under the Habyarimana regime in the late 1950s and early 1960s, “fostering a sense that violence for political ends was ‘normal’” (Des Forges 1999, 4). Scholars agree that this lack of punishment “afforded license to those who planned, incited and perpetrated the genocide in 1994” (Clark 2010, 19). Deterrent justice has therefore been identified as a crucial objective of gacaca from the outset.

While punitive and deterrent forms of justice focus on the punishment of perpetrators, distributive justice is concerned less with the perpetrator and more with providing support to survivors. The international legal community, transitional justice scholars, and survivors alike have expressed frustration with offender-oriented models of justice in which the focus of legal outcomes is on “what happens to the offender, rather than what happens to the victim” (Herman, 2003, 162). Thus, reparations are hailed as a vital component of transitional justice programs because they are the “most victim-centred justice mechanism available” (United Nations 2011, 8). Within transitional justice programs, reparations promote interpersonal trust between survivors and perpetrators as well as trust in the legitimacy of the new, post-conflict government (Rubio-Marin 2006, 25). Accordingly, the UN General Assembly adopted a resolution in 2005 detailing the necessity of reparations for those who have suffered human rights abuses or violations of international law. This type of justice is especially relevant in the Rwandan context, as poverty and health concerns are often the most salient lasting effects of the genocide for survivors. To this end, Article 90 of the original Gacaca Law (2001) held gacaca responsible for compiling lists of damages suffered by survivors during the genocide and forwarding these lists

to the Compensation Fund for Victims of the Genocide and Crimes against humanity, who would then award reparations (30).

Thus, punitive, deterrent, and distributive forms of justice were all stated objectives of gacaca. These forms of justice, moreover, are precursors to the most profound objective of gacaca: *restorative* justice. Rather than simply punishing criminals or providing reparations to survivors, restorative justice focuses on restoring broken community ties and promoting reconciliation, “based on [the] recognition of the humanity of both offender and victim” (Lambourne 2001, 313). According to Gilbert and Settles (2007), “restorative justice views crime as a harm to individuals, their neighborhoods, the surrounding community, and even the offender...Under this restorative perspective, justice is not based on punishment inflicted but the extent to which harms have been repaired and future harms prevented” (7). Restorative justice therefore incorporates many of the aims of transitional justice and is often seen as the “ultimate objective” of transitional justice (Clark 2010, 38).

Gacaca was designed to provide restorative justice in several ways. It was assumed that the popular participation of gacaca would “encourage dialogue and collaboration” between survivors and perpetrators, which would help to “rebuild trust and relationships between previously antagonistic parties” (Clark 2010, 238). Gacaca also accelerated the reintegration of perpetrators into their communities by requiring them to serve their communities and/or participate in communal work programs (Clark 2010, 238-239). Restorative justice was therefore a primary objective of the Rwandan government when establishing gacaca; as stated by the Gacaca Law (2001) itself, gacaca was designed to “achieve reconciliation and justice in Rwanda...without only aiming for simple punishment, but also for the reconstitution of Rwandese society” (2).

Chapter 4: Survivors of Sexual Violence within the Gacaca System

With these objectives in mind, gacaca went into effect throughout Rwanda in 2001 to try murders and property crimes committed during the genocide. The original objectives, however, were not designed with survivors of sexual violence in mind, as the original Gacaca Law of 2001 did not place sexual crimes under the jurisdiction of the gacaca courts. This chapter will explore the decision to include these crimes under the jurisdiction of gacaca and the barriers that survivors of sexual violence have faced when attempting to access justice through this system.

Transferring Sexual Crimes to Gacaca

Organic Law No. 08/1996 of Rwanda was passed in 1996, separating genocide crimes and crimes against humanity into four distinct categories for the purposes of prosecuting the crimes committed during the genocide (Republic of Rwanda 1996). Under this law, the Category 1 was reserved for the crimes considered the most serious. Category 1 offenders included:

- a) ...planners, organizers, instigators, supervisors and leaders of the crime of genocide or of a crime against humanity;
- b) persons who acted in positions of authority...[who] fostered such crimes;
- c) notorious murderers who by the virtue of the zeal or excessive malice with which they committed atrocities, distinguished themselves...;
- d) persons who committed acts [of] sexual torture. (1)

The lower categories of 2, 3, and 4 contained non-sexual crimes including homicide, “serious assault,” and property crimes. The 2001 Gacaca Law adopted these same categories, determining that Category 1 offenses were to be referred to the Rwandan national court system or to the ICTR, while crimes in Categories 2, 3, and 4 would be placed within the jurisdiction of the gacaca courts (Republic of Rwanda 2001, 18).

As a result, sexual crimes were considered distinct from other genocide crimes starting in 1996. This categorization was the result of the efforts of women's rights activists who argued that placing rape in Category 1 "would accurately recognize...sexual violence as among the most serious of genocide-related offences, subject to the harshest penalties available" (Wells 2005, 184). Considering the manner in which sexual violence has been historically understood as a "spoil of war," placing these crimes in the highest category made sense to those wishing to recognize the systematic use of rape as a weapon during the Rwandan genocide. In practice, however, this decision resulted in very few cases of sexual violence being prosecuted at any level. Despite the landmark *Akayesu* decision, by 2005 "an overwhelming 90 per cent of those judgments [handed down by the ICTR] contained no rape convictions...there were double the number of acquittals for rape than there were rape convictions" (Nowrojee 2005, iv). Binaifer Nowrojee (2005) argues that at the level of the ICTR, prosecuting sexual violence was an "afterthought," and blames the low rate of sexual violence crimes prosecuted by the ICTR on "a lack of political will...to integrate sexual violence crimes into a consistently followed prosecution strategy...[and on] inadequate investigations, the use of inappropriate investigating methodology, and a lack of training for staff" (iv).

Even when sexual cases have been brought before the tribunal, witnesses have faced serious obstacles to testifying. Survivors wishing to testify at the ICTR must travel to Tanzania, potentially losing earnings or leaving young children behind to travel great distances. These trials have been characterized by aggressive and excessive cross-examination, scrutinization of witnesses' sexual history, and victim-blaming lines of questioning, and have created a hostile environment in which survivors have been humiliated, intimidated, undermined, and re-traumatized. In one shocking example, a defense attorney at the ICTR implied that a

witness could not have been raped because she smelled bad, resulting in laughter from the judges and the entire courtroom (Nowrojee 2005, 17). Moreover, despite being promised anonymity and witness protection, many witnesses have been exposed to their communities as survivors of sexual violence, frequently resulting in rejection and even violence (Nowrojee 2005, v).

The National Courts of Rwanda did not fare much better in prosecuting sexual crimes. Emily Amick (2011) argues that placing sexual crimes under the jurisdiction of the Rwandan courts actually “impeded access to justice for victims” (4). Because the national courts were charged with thousands of Category 1 cases, including the prosecution of organizers of the genocide and those who had used their positions of authority to incite genocide, sexual violence cases were treated as lower priority within the “triage” of the national court system (Amick 2011, 3). Additionally, witnesses had to travel considerable distances at their own expenses and pay court fees to bring their cases to trial (Amick 2011, 53). Though hundreds of thousands of the prisoners being held in the national prisons had committed rape, the Association of Genocide Widows AVEGA AGAHOZO (hereafter referred to as AVEGA) estimated that the national courts processed less than 100 genocide rape cases before 2001 (Amick 2011, 43).

Between the ICTR and the Rwandan courts, cases of sexual violence were simply not being heard. In an attempt to expedite these cases, the Rwandan government turned, once again, to gacaca. In May 2008, Parliament passed Organic Law 13/2008, which moved all Category 1 offenses to the jurisdiction of gacaca, with the exception of organizers of the genocide and suspects who occupied government positions at the prefecture level or higher (Republic of Rwanda 2008). Ninety percent of the cases transferred to gacaca at this time involved sexual violence (Haskell 2011, 113). Between 2008 and 2010, 6,608 cases of sexual violence were tried through the gacaca system (Morris 2014, 36).

While the decision to utilize gacaca to try genocide crimes was motivated by a range of pragmatic, economic, legal, and social objectives, the decision to include sexual crimes within its jurisdiction was driven almost exclusively by the desire to expedite genocide trials. The Attorney General of Rwanda himself, Tharcisse Karugarama, stated that the “primary motive [of transferring sexual crimes to gacaca was]...to enable us deal with the bulk of genocide cases that still remain unresolved till now” (Amick 2011, 35). Though the 2008 Gacaca Law adapted certain procedures for hearing the cases of sexual violence, the fundamental objectives which gacaca was designed to achieve were not reexamined. As a result, the gacaca system did not consider the specific needs of rape survivors, the barriers to testifying that they might face, or the ways in which the social or profound goals of gacaca might manifest themselves differently for survivors of sexual violence than for other witnesses.

Barriers to Testifying at Gacaca for Survivors of Sexual Violence

The public nature of gacaca trials makes it difficult for any survivor of the genocide to speak about their experiences. Men and women alike fear that their testimony will not be believed, that testifying will renew conflicts with their neighbors, or that they will face intimidation or violence. Strict laws prohibiting perjury, slander, “genocide ideology,” and “minimizing the genocide” have prevented witnesses from testifying for fear of facing charges themselves (Haskell 2011, 86-94). A 2006 study conducted by Karen Brounéus confirmed, “survivors who have witnessed in the gacaca have significantly higher levels of depression...and PTSD...than survivors who have not witnessed” (Brounéus 2010, 421). There are, however, additional barriers that only survivors of sexual violence face, or which they face to a greater extent, preventing gacaca from functioning equally well in all cases.

Stigma and Victim Blaming

As it is all over the world, sexual violence is highly stigmatized in Rwanda. Due to the “conservative social and cultural climate of Rwanda,” it is difficult for women to testify about the sexual abuses they suffered during the genocide (De Brouwer and Ka Hon Chu 2009, 19). Unlike other genocide survivors, female survivors of sexual violence “fear that testifying...will lead to community ostracism, ineligibility to marry and other secondary harms not similarly associated with the disclosure of non-sexual wartime assaults” (Wells 2005, 187). Survivors of sexual violence are frequently abandoned by their husbands or parents and are often unable to remarry. Survivors face additional social stigma if they become pregnant or contract HIV as a result of their rapes. One survivor summarized this problem by saying, “I never told my husband what had happened to me. I feared his reaction to the rapes, and I had no other relatives I could turn to” (De Brouwer and Ka Hon Chu 2009, 70). Due to the intimate and community-oriented nature of gacaca trials, survivors of sexual violence face a greater chance of rejection and social isolation when testifying at gacaca than in the conventional courts.

Victim-blaming attitudes and discourse that minimizes the effects of rape are especially prevalent in Rwandan society. Human Rights Watch identified government officials who believed that women could “[bring] on a rape by being drunk” or that “there are good reasons to disbelieve adult women when they report rape” (Amick 2011, 79). The Rwandan legislature admitted in 2006 that “Rwandan society had come to tolerate, even accept with impunity, acts of violence against women” (Amick 2011, 80). Many women, especially those held in situations of sexual slavery, were forced to have sexual intercourse in exchange for their lives; in such cases doubt was often cast on the survivor’s lack of consent (Rubio-Marin 2006, 209).

Because this stigma was widely recognized as a barrier to testifying, the Gacaca Law of 2008 attempted to put protections in place for survivors of sexual violence. These survivors were permitted to submit their testimonies to the gacaca courts in writing rather than in public hearings (Brounéus 2008, 72) and all formal proceedings concerning cases of sexual violence were to be held “in camera,” behind closed doors, to protect the witnesses’ privacy (Republic of Rwanda 2008, 16). Gacaca also experimented with “women only” courts and courts in which one judge heard a survivor’s testimony and then reported it back to the full gacaca court (Morris 2014, 36). These provisions failed to protect most survivors, however, both because they were inconsistently implemented and because they were insufficient to prevent rumors and speculations within small communities (Morris 2014, 36; Haskell 2011, 114). Additionally, while normal gacaca hearings make use of popular participation to hold *inyangamugayo*, witnesses, or perpetrators accountable for telling the truth, closed gacaca sessions cannot provide this protection (Haskell 2011, 112). Overall, rather than addressing the root issues which prevented women from testifying, these provisions simply “cradle[d] this stigmatization” (Amick 2011, 75).

Violence and Intimidation

Though all genocide survivors risk violence when testifying against their neighbors at gacaca, evidence suggests that there is a greater risk of re-victimization and continued violence for rape survivors than for those who speak about other crimes at gacaca. A 2002 survey by the NURC reports “unanimous agreement...that the risks of testifying female survivors [sic] are much greater than those of their male counterparts” (Wells 2005, 187).

Many survivors have faced intimidation and threats of violence from perpetrators attempting to silence their testimony, both before and during gacaca hearings. One survivor reported in an interview, “one of her perpetrators looks through her keyhole at night and asks her if she knows when the *Interahamwe* are coming” (Brounéus 2008, 67). Community members often shout or make insulting comments during gacaca hearings (Brounéus 2008, 68). These methods have proved to be an effective method of preventing women from giving their testimonies. One survivor summarizes the problem this way: “I was afraid when I gave testimony in the gacaca because people were yelling....Afterwards, they came; they broke my windows....I thought I would be killed....I do not go to gacaca any longer. I am scared to be attacked or killed. My sister was killed...after she had given testimony” (Brounéus 2008, 68). Indeed, survivors of sexual violence repeatedly report that intimidation by their perpetrators prevented them from testifying. “I kept quiet because I saw that I was not safe enough,” states one survivor, while another asserts that she “will never testify at the gacaca courts, because [her] sister was beaten on her way home from the gacaca courts where she appeared as a witness.” (Brounéus 2008, 67; De Brouwer and Ka Hon Chu 2009, 105). “Those who wronged me did not face justice,” states one survivor. “I cannot go to the gacaca courts as long as they are still free, because I am afraid the *Interahamwe* will kill me” (De Brouwer and Ka Hon Chu 2009, 103).

Violence serves both to silence witnesses and also to punish “those who make the mistake of testifying” (De Brouwer and Ka Hon Chu 2009, 105). Many survivors discuss how giving testimony has led to a resumption of violence from their perpetrators. “Before giving testimony, things were better,” states one survivor, “but, after gacaca everything has changed, because they...destroy my house, break my windows” (Brounéus 2008, 66). Another survivor

claims “Before, I was not afraid....Afterwards, they considered me an enemy....My enemies sought a way to kill me” (Brounéus 2008, 67).

Threats, intimidation, and retributive violence are particularly damaging for survivors of sexual violence because of their social and physical vulnerability and the unique nature of the trauma they suffered during the genocide. Moreover, perpetrators can use sexual violence itself as their form of retributive violence, maximizing the trauma and fear experienced by survivors. Even female *inyangamugayo* are not safe from being raped; four men were arrested in 2007 for gang-raping a gacaca judge after she testified against them at a hearing (“Police” 2007).

Lack of Communication Concerning Sexual Acts

According to AVEGA, “in pure Rwandese tradition the woman...does not like to talk about anything concerning her modesty” (Amick 2011, 19). More than just cultural taboo, it is linguistically difficult for Rwandans to discuss sex or sexual violence, as “the words to describe some sexual acts do not even exist in Kinyarwanda” (Carpenter 2008, 647). Witnesses have used euphemisms that translate to “we got married” or “to share a bed” to describe their rapes, making it difficult for courts to establish a clear record of what occurred during the genocide (Koomen 2013, 265). One Rwandan court interpreter summarized it this way: “In my culture you don’t say the words for genitalia. But in court you have to. It is a shock for interpreters, as well as witnesses. And graphic descriptions of rape are an ordeal for women. And the interpreter may be a woman too” (Koomen 2013, 265-266). These linguistic and cultural challenges pose a significant barrier to women wishing to testify about their experiences of rape in gacaca and conventional courts alike.

Structural Barriers within Gacaca Law

Legal and procedural features of the Gacaca Law posed additional barriers for survivors of sexual violence. Inconsistency and lack of popular understanding surrounding gacaca and its role in trying sexual crimes meant that many cases were never properly reported. The original 2001 Gacaca Law and its subsequent modifications provided several varying, often conflicting avenues for reporting crimes of sexual violence. Unlike other crimes, sexual violence crimes could not be reported by third parties (Republic of Rwanda 2004, 17). Though this feature of the Gacaca Law was designed to protect these survivors from stigma, it also prevented rape cases from being reported in the manner with which Rwandans were most familiar (Amick 2011, 76). While most cases were placed on lists according to geographical location during the information gathering stage of gacaca, the prohibition on third party reporting meant that many cases of sexual violence never ended up on these lists. Moreover, both officials and citizens were unsure at which level to raise these cases because of their classification as a Category 1 crime (Amick 2011, 81). Prior to the transfer of sexual crimes to gacaca, a 2001 survey of Rwandan perceptions of the gacaca system revealed that, of those surveyed who were aware of gacaca, only nine percent understood that the tribunals would not try rape cases (Gabisirege and Babalola 2001, 11). Many survivors did not understand that it was necessary to report their rapes specifically and were waiting for their perpetrators' cases to come up at gacaca hearings to give their testimonies (Amick 2011, 81).

Even when survivors did bring rape cases to the authorities, fifty percent of those surveyed reported that their complaints were never registered (Amick 2011, 79). Additionally, survivors who had reported their rapes before 2008, thinking that conventional courts would adjudicate their cases, found their cases transferred to gacaca and exposed to their communities

without their permission (Haskell 2011, 112). The definitions of “rape” and “sexual torture” were unclear, leading to inconsistent categorization of cases of sexual violence. Moreover, the uncertainty and confusion surrounding the reporting process discouraged some survivors from even attempting to participate in gacaca (Amick 2011, 83).

Many survivors of sexual violence were not even allowed to bring their cases to gacaca. Despite that many rapes occurred after the genocide was “officially” over, and that these rapes were often motivated by or the direct result of the genocide, these cases were not processed through gacaca (Mibenge 2013). Moreover, gacaca laws required that survivors be able to name their perpetrators and that perpetrators be physically present at gacaca hearings in the sector where the rape took place (Morris 2014, 37). According to Haskell (2011), half of the rape victims interviewed by Human Rights Watch had been unable to bring their cases to gacaca because they did not know their perpetrator or because he had died (116). Morris (2013) also identified this as the primary reason that many rape survivors did not take their cases to gacaca; exactly fifty percent of the rape survivors she interviewed who did not take their cases to gacaca stated that this was because they did not know their perpetrator or that their perpetrator had died or fled the country (Morris 2014, 81).

It is logical that many survivors of sexual violence did not know their perpetrators personally, as this is true in the majority of cases of rape in the context of war and rapists during the Rwandan genocide often passed through unknown communities as part of the military or as *Interahamwe* (Morris 2014, 81). Stated one survivor, “I couldn’t accuse the ones who raped me even if I wanted to, since those rapes happened far from Kigali, and I don’t know who those men are” (De Brouwer and Ka Hon Chu 2009, 135). From a punitive justice standpoint, this feature of the Gacaca Law is reasonable and is consistent with most court systems internationally, as it is

impossible to try suspects who are unknown, not present, or dead. However, survivors may have wished to speak about their experiences of sexual violence at gacaca to help establish an official record of events, to contribute to the community narratives of the genocide, or to benefit from the “healing” aspects of truth-telling—all supposed objectives of the gacaca system. An alternative transitional justice mechanism which allowed survivors to tell their stories without the aim of punitive justice, such as a truth and reconciliation commission, may have been beneficial in such cases.

Chapter 5: The Failure of Gacaca to Achieve its Transitional Justice

Objectives for Survivors of Sexual Violence

Gacaca courts were supposed to bring justice and reconciliation, but they are bringing more tears than smiles.

-Pascasie Mukasakindi

(Survivor of sexual violence from the Rwandan genocide)¹¹

Taken together, these barriers presented a grim prospect for sexual violence survivors who wished to seek justice through the gacaca courts. As Megan Carpenter (2008) argues, “the gacaca tribunals are simply not designed to accommodate this cultural context” (647). Indeed, the gacaca system was not designed with survivors of sexual violence in mind at all. While gacaca was originally intended to achieve a wide range of pragmatic and profound objectives, the primary factor in the decision to transfer rape cases to gacaca was the practical goal of rapidly processing genocide cases. The broader social goals of revealing the truth and providing justice to survivors of the genocide were not reexamined as part of this decision, and gacaca continued to work towards objectives that were either not relevant or were directly harmful to these survivors.

Truth

Like many other genocide survivors, survivors of sexual violence have frequently spoken about their desire to tell the truth about their experiences during the genocide. A study conducted in 2013 by Meghan Morris found that among survivors of sexual violence who chose to take their cases to gacaca, the primary factor motivating their decision was that they “wanted to share their story” or they “felt it important to speak publicly about what happened to them” (78). When

11. This quote is taken from Anne-Marie De Brouwer and Sandra Ka Hon Chu’s 2009 collection of testimonies of survivors of sexual violence *The Men Who Killed Me*, page 77.

asked why they chose to tell their stories, the rape survivors interviewed for de Brouwer and Ka Hon Chu's collection *The Men Who Killed Me* (2009) repeatedly emphasized a desire for recognition of what had happened to them. For many, a formal acknowledgment of their rapes was also linked to a desire for monetary assistance or distributive justice: "I hope that some of those who read this testimony will help genocide survivors, because we urgently need help" (110). Others expressed fear that their experiences would be forgotten or denied and wished for recognition from the international community, with one woman stating "I hope that my testimony will be proof of what happened in Rwanda. Some people deny this part of our history, but it is a reality they must face" (110). Many survivors believed that talking about their experiences of rape during the genocide would help prevent similar crimes in the future: "When more people learn the truth, I hope that their voices will add to the chorus of those ensuring such crimes will never happen again" (57); "We must never let this happen again and must build a better world for our children" (136).

All of these responses point to the necessity of including sexual violence crimes in the historical narrative of the genocide. Establishing an official account of events is an important goal of transitional justice systems and an explicit objective of gacaca, for without an understanding of the facts it is impossible to hold perpetrators accountable for their actions. Publicly condemning atrocities is a way to "[restore] the humanity of the victim and her value in society" (Nowrojee 2005, 6). This is especially true for survivors of sexual violence, as victim-blaming, stigma, and silence surrounding rape may lead survivors to blame themselves. Moreover, without explicit sanctions against sexual violence, perpetrators and potential perpetrators may not realize that sexual violence is "wrong" or may continue to perpetrate sexual violence in the future. Evidence suggests that this might be especially true in the Rwandan case.

Based on interviews of prisoners in Kigali conducted by Mark Drumbl in 1998, Emily Amick (2011) concludes that “the combination of tendencies in Rwanda to minimize sexual violence as a crime, a lack of identification of genocide crimes as ‘wrong,’ and a limited community discussion regarding sexual violence crimes provides for a worrisome future outlook” (93).

Despite the necessity of public recognition of sexual violence crimes, gacaca has not proved to be an appropriate mechanism through which to incorporate these crimes into community and historical narratives. Provisions designed to protect the privacy of survivors actually inhibit their stories from becoming a part of the “truth” of the genocide established at gacaca. Though typical gacaca hearings allow the community to come together, listen to confessions and testimonies, and establish a joint understanding of the events that occurred in their communities during the genocide, the private “in camera” sessions for sexual violence cases remove rape from the public discussion and therefore condemnation of rape is “not woven into the common morality” (Amick 2011, 92). Women’s limited participation in gacaca means that their stories do not become “part of the common language that will move the country forward” (Amick 2011, 89).

Gacaca laws also prohibit perpetrators from publicly confessing to sexual violence crimes (Republic of Rwanda, 2008, 15). Again, while this provision was intended to protect survivors from having their rapes exposed to the community without their permission, it further excludes rape from the collective memory of what happened during the genocide. In a culture of severe victim-blaming, public admissions and apologies by perpetrators of sexual violence would go a long way in breaking the stigma of sexual assault and establishing a common morality in which sexual violence was considered a serious crime.

However, as previously noted, revealing the truth has serious consequences for survivors of sexual violence. Though establishing a historical narrative and breaking the silence surrounding sexual violence are admirable goals, it is impossible to separate Rwandan survivors from their cultural context, in which the truth may result in social isolation, poverty, social vulnerability, and continued violence. While testifying at gacaca may help prevent future sexual violence in the long term, on the individual level it is more likely to result in social and economic vulnerability, retributive violence, and re-victimization.

In addition to social consequences and physical danger, rape survivors risk considerable re-traumatization by telling their stories at gacaca. According to a 2014 study conducted by Brounéus, female survivors in Rwanda experienced more war-related traumatic events than male survivors and “met the criteria for both depression and PTSD to a significantly higher extent than men” (138). She also found that social support was a significant factor in protecting against PTSD, particularly among women (144), but many survivors of sexual violence cannot benefit from this protection because they lost family members during the genocide or were rejected by their communities.

The Rwandan government also recognized the “healing” benefit of truth-telling is as an important goal of transitional justice, and was recognized from the outset as an objective of the gacaca system. However, according to David Mendeloff (2004), many of the claims regarding the positive psychological benefits of truth-telling are “flawed or highly contentious” (355). In fact, in recent years many transitional justice scholars have begun to question the underlying assumption that truth-telling is inherently cathartic or will naturally advance reconciliation. Rather, there is substantial evidence to suggest that being forced to relive experiences of the genocide at gacaca leads to re-traumatization and increased psychological ill-health. According

to a study conducted in 2006 by Karen Brounéus, survivors who witnessed in the gacaca courts had a 20 percent higher relative risk of depression and a 40 percent higher relative risk of Post-Traumatic Stress Disorder (PTSD) than those survivors who did not witness in gacaca (408).

Because female survivors of sexual violence are already more vulnerable to psychological ill-health than other survivors, it is no surprise that they experience the negative effects of witnessing at gacaca to a greater extent than others. “Traumatization, ill-health, isolation, and insecurity dominate the lives” of female witnesses at gacaca (Brounéus 2008, 57). Many women explained that discussing their experiences of sexual assault caused them to relive their trauma. “I felt very bad. I felt as if it were 1994 again” stated one survivor (Brounéus 2008, 70). Even when survivors themselves did not testify, listening to the testimonies of others was sometimes triggering for survivors of sexual assault; one survivor notes: “each time I go [to gacaca] I become very traumatized, seeing myself being raped in the forest again” (De Brouwer and Ka Hon Chu 2009, 135).

Public and private gacaca hearings alike force survivors to see and confront their rapists, a requirement which is often too much for those who have endured sexual assault. “I never went to the gacaca court when they were being tried because I could not bear to see them again,” explains one survivor. “I didn’t want to give them the satisfaction of seeing me retraumatized” (De Brouwer and Ka Hon Chu 2009, 116). Many survivors reported having “crises” or episodes of *traumatisme*—“reliving the trauma very strongly, crying, shaking uncontrollably, or fainting” (Brounéus 2008, 69). One survivor of sexual violence from the genocide explained having a “psychological crisis” during her testimony: “When you give testimony surrounded by people who have killed your family...you feel ill; you feel insane....Now, they do not let me speak at the gacaca. They say I am insane” (Brounéus 2008, 69). Survivors were often removed from

gacaca hearings following episodes of *traumatisme* and not allowed to return to finish giving their testimony. What is worse, perpetrators and other community members often exploit the trauma of witnesses to sabotage their testimony, harassing witnesses and describing their own crimes in graphic detail with the intention of triggering survivors so that they would not be allowed to continue giving their testimony (Brounéus 2008, 68-69). Without exception, all of the survivors of sexual violence that Brounéus (2008) interviewed linked testifying at gacaca to psychological ill-health (70).

Justice

Survivors of sexual violence sought many different types of justice when taking their cases to gacaca. Indeed, as discussed in Chapter 3, gacaca was designed to achieve punitive, deterrent, distributive, and restorative justice. Once again, however, these goals were not reevaluated to consider the special needs of survivors of sexual violence, and were therefore not attained for these survivors.

Punitive and Deterrent Justice

Though between 250,000 and 500,000 Rwandan women experienced sexual violence during the genocide, only 6,608 of these women saw their cases tried by the gacaca courts (Morris 2014, 36).¹² Among those women who did have their cases heard in gacaca, many expressed disappointment that their testimonies did not result in the conviction of their perpetrators or that their perpetrators had been released from prison. One survivor sums up her frustration this way:

12. Morris (2014) notes that this figure comes from the gacaca courts themselves, suggesting that it may in fact be exaggerated.

I accused them in the gacaca courts, including the one who raped me...but now they are being released. Gacaca courts do not bring justice. I think the best punishment those men could get is the death penalty, because they killed others, too. We need justice. The *génocidaires* should not be released. (De Brouwer and Ka Hon Chu 2009, 33)

The desire for the death penalty has been echoed repeatedly by survivors of sexual violence, many of whom believed that perpetrators should “be killed as they killed our people” (De Brouwer and Ka Hon Chu 2009, 103). Because sexual crimes were originally placed in Category 1, they should indeed have fallen within the range of crimes that incurred a death penalty, but the plea-bargaining system and lightened sentences of gacaca do not provide for this level of punitive justice (Republic of Rwanda 2001, 25).

Without providing adequate punitive justice for survivors of sexual violence, there is little hope that the judgments of these courts will deter perpetrators from committing sexual violence in the future. Because processing sexual violence cases through gacaca was so difficult and so few were adjudicated, and because perpetrators received light or no sentences for their sexual violence crimes, it is unlikely that these cases will lead to an increased recognition of the seriousness of rape or reverse the culture of impunity surrounding sexual violence in Rwanda.

Distributive Justice

One third of the Rwandan rape survivors interviewed by Human Rights Watch “expressed frustration with the fact that they had received no monetary compensation after the accused had been convicted” (Haskell 2011, 115). Despite the vital role of reparations within transitional justice programs, gacaca has failed to provide meaningful reparations for genocide survivors in Rwanda. Though the 1996 Organic Law makes mention of an indemnification fund for survivors (known as the *Fonds d’Indemnisation*, or FIND), this fund was never established. According to draft laws concerning this fund launched in 2001 and 2002, gacaca tribunals were

supposed to be responsible for compiling lists of damages and beneficiaries and reporting them to FIND, who would then award reparations based on the recommendations of gacaca (Rubio-Marín 2006, 199). Though these lists still exist and therefore could be used as the basis for awarding reparations (Rubio-Marín 2006, 200), lack of political will and insufficient financing make it unlikely that survivors will ever receive the reparations to which they are entitled (Rubio-Marín 2006, 227).¹³

The lack of distributive justice for Rwandan genocide survivors has been a grave miscarriage of justice, and one of the most significant failures of gacaca. This failure has been especially devastating to female survivors of sexual violence due to their increased economic vulnerability and risk of poverty, as discussed further in Chapter 5. Effectively incorporating reparations into transitional justice programs requires carefully considering “gendered notions of reparations, and differential needs of victims based on gender” (Morris 2014, 40). Established at the International Meeting on Women’s and Girl’s Right to a Remedy and Reparation in 2007, the Nairobi Declaration emphasized the importance of a gender-sensitive approach to reparations provision, stating that because of the unique nature of human rights violations against women, reparations must be “specially adapted to their needs, interests and priorities, as defined by them” (2). In cases of sexual violence especially, “governments should take into account the multi-dimensional and long-term consequences of these crimes” and therefore reparations “must go above and beyond the immediate reasons and consequences of the crimes...[to] address the political and structural inequalities that negatively shape women’s and girls’ lives” (5).

13. Interestingly, though the international donor community financially supports gacaca, there has been little interest from international donors to contribute to reparations funds. Rombouts (2006) suggests that this “hesitant attitude” is in part due to the fear of certain countries that contributing to reparations could be interpreted as an acknowledgment of partial responsibility for the genocide, a responsibility which the international community refuses to acknowledge (227).

Indeed, while reparations have most often been defined in international law by the ideal of *restitutio in integrum*, which focuses on restoring the survivor to his or her financial or social status prior to the violation, female survivors tend to “express preference for services to meet their basic needs and those of their family members over restitution of lost property or monetary compensation in proportion to harm or for lost opportunities” (Rubio-Marin 2006, 29). Rather than demanding lump sums or reparations designed to compensate them for their material losses during the genocide, Rwandan women have requested specific forms of economic assistance that reflected their needs as survivors of sexual violence. For many, this request has consisted of medical assistance to help them treat HIV/AIDS or financial support for children of rape. Other women have requested assistance with agricultural work, either in the form of seeds and planting materials or money to hire laborers, as many female survivors sustained injuries that prevent them from working in the fields and/or have lost their children and male relatives to the genocide (Morris 2014, 75). Some survivors expressed a desire for assistance with transportation costs so that they could attend gacaca hearings (Morris 2014, 75). Neither the gender-specific kinds of reparations requested by these survivors nor their increased need for economic assistance in general was considered when adopting gacaca as an instrument of transitional justice.

Restorative Justice

As discussed in Chapter 3, punitive and distributive justice are vital prerequisites for restorative justice. Herman (2003) argues that the victim must also be guaranteed physical safety if restorative justice is to be achieved (163). As we have seen, however, survivors of sexual violence have rarely seen punitive or distributive justice, and are often subjected to increased violence as a result of testifying at gacaca. Furthermore, gacaca has often been disruptive to

community reconciliation, especially in cases of sexual violence. Because the gacaca system was not implemented until nearly a decade after the genocide, “a natural, if very difficult, process of cohabitation...had already begun” (Ingelaere 2009, 515). Out of sheer necessity, Rwandans had begun learning to live together again, enabled by a culture of “silence about the past” (Ingelaere 2009, 515). One survivor said that Rwandans tried to forget and coexist, claiming that survivors and perpetrators “even prayed together” (Brounéus 2008, 66).

Despite its objective of restorative justice, the implementation of gacaca created considerable concern that the open discussion of genocide crimes would disrupt this natural process of restoring relationships within communities. Bert Ingelaere (2009) analyzes a series of surveys conducted by the NURC between 2002 and 2008 assessing Rwandan perceptions of gacaca. According to his findings, 49 percent of those surveyed in 2002 believed that “testimony by the population at large during gacaca [would] aggravate tensions between families,” and by 2006 this figure had increased to 55 percent (512).

Revelations about sexual violence were considered especially inflammatory and detrimental to reconciliation. According to Wells (2005), genocide survivors suggest that crimes of sexual violence are more difficult to forgive than other crimes committed during the genocide, and because these crimes were deemed “unforgivable and their consequences insurmountable,” Rwandans worried that revealing these crimes was more likely to damage community relationships than to restore them (188). Ingelaere’s study confirmed this: though in 2002 only 26 percent of Rwandans agreed to the statement “revelations of rape will hinder the reconciliation process,” by 2006 this figure had increased to 34 percent (512). As Rwandans began to see the negative impact that testifying at gacaca had on reconciliation processes within communities, their “belief in the appropriateness of gacaca to deal with sexual violence

cases...diminished over time” (Amick 2011, 64-65). Rather than acting as a mechanism to restore relationships between perpetrators, survivors, and their communities, gacaca disrupted reconciliation processes and further damaged community ties in the case of sexual crimes.

Justice for Whom?

Evidently, the gacaca courts failed to meet the objectives of transitional justice for survivors of sexual violence. Although the Rwandan government endeavored to establish a transitional justice system that pursued a range of objectives, a lack of gender analysis meant that these objectives were not equally met for all participants in gacaca. Due to the differential nature of the crimes inflicted on them, Sarah Wells (2005) argues that “community based and participatory models of justice may not equitably serve the interests of both women and men” (188). Despite that “the type of justice that survivors of rape during genocide seek, the type of truth that they feel free to tell, and the level of reconciliation that they seek can be quite different from that of other survivors” (Morris 2014, 41), the government chose to expand a ‘one size fits all’ solution to genocide crimes of vastly different natures, neglecting and sacrificing the needs of rape survivors in the process.

The most poignant example of the manner in which the Rwandan government has sacrificed the needs of survivors of sexual violence for greater political or practical goals lies in their insistence that survivors of sexual violence have a moral obligation to contribute to the establishment of a historical narrative of the genocide. The original Gacaca Law required that *all* survivors testify, claiming that “the duty to testify is a moral obligation, nobody having the right to get out of it for whatever reason it may be” (Republic of Rwanda 2001, 2), and going on to say that “any person who omits or refuses to testify on what he/she has seen or on what he/she

knows...risks a prison sentence from 1 to 3 years” (12). Subsequent modifications of the law upheld this requirement even for survivors of sexual violence—despite their much greater danger of social rejection, violence, and trauma. Many scholars uphold this ‘moral obligation.’ The OAU (2000) report on gacaca states unequivocally that “victims of rape must be asked to make the extraordinary effort of addressing this painful topic publicly if adequate care and justice are to be provided” (149), and Maggie Zraly refers to the need for survivors of sexual violence to testify as the “survivor mission” (398). According to Wells (2005), even Rwandan survivors’ rights activists often believe that because they make up the majority of the survivor population, “women have an ‘obligation to testify’” (183). Though this argument is logical from a practical standpoint, this is a wholly inappropriate and grossly insensitive demand to make of genocide rape survivors considering the extraordinary nature of the trauma that they have suffered.

Karen Brounéus (2010) has suggested that truth-telling may be more beneficial in some cases for those who did not know the extent of past atrocities than for those who were “directly involved and targeted by the violence” (411). In other words, truth-telling processes risk re-traumatizing survivors in order to educate others. Rwandan rape survivors have indeed been tasked with the brutal responsibility of educating the whole society about what happened to them during the Rwandan genocide. Rather than admitting this responsibility directly, however, the government rhetoric regarding gacaca appeals to the supposedly ‘healing’ nature of truth-telling to provide justification for these demands on survivors. In an attempt to establish a historical narrative about the genocide, the Rwandan state has placed the “obligation to testify” on the group of people to whom it was most likely to cause serious harm. Moreover, in failing to provide adequate confidentiality, witness protection, and reparations to survivors, the Rwandan state further endangered their most vulnerable citizens in the name of “transitional justice.”

To quote Wendy Lambourne (2001), “the question of ‘justice for whom?’ is relevant here” (325). It is certainly true that, before closing in 2012, gacaca achieved many of its objectives as a transitional justice mechanism. In just over ten years, “1,958,634 genocide related cases were tried through gacaca” (“Gacaca”). In theory, without an alternative judicial mechanism it would have taken the ICTR and the Rwandan courts over 200 years to try all of these cases (Haskell 2011, 15). The official website of gacaca claims that, according to a study done by the National University of Rwanda, 95 percent of Rwandans believe that gacaca was successful in “demonstrating the capacity of Rwandans to resolve their own problems,” 86.4 percent agree that it has “[put] an end to the culture of impunity,” and 87.3 percent believe that it has “strengthen[ed] unity and reconciliation” (“Gacaca”).¹⁴ Phil Clark (2010) also agrees “gacaca has...proven effective in many communities at initiating processes of restorative justice, healing, forgiveness and reconciliation” (342).

Hailed as “one of the boldest and more original ‘legal-social’ experiments ever attempted in the field of transitional justice,” (Goldstein Bolocan 2004, 355-356), gacaca is arguably the “most extensive post-conflict justice system in human history” (“Gacaca”) and has received widespread praise from scholars, NGOs, and intergovernmental organizations. By 2011, the EU and several sovereign nations had contributed almost \$25 million to supporting the gacaca system (Haskell 2011, 127-129). Obviously, the Rwandan government has enjoyed the reputation and financial support garnered by the gacaca system. Because of this prestige and the pressure to try genocide-rape cases created by the international significance of the *Akayesu* decision, the Rwandan state has had a vested interest in appearing proactive about sexual

14. Though these numbers are impressive, it is important to note that there is a possibility of bias or exaggeration, given that they were published by the gacaca website itself. Further information about the study was not provided by the website.

violence crimes—and in using gacaca to do it. The lack of meaningful justice provided to survivors of sexual violence through the gacaca system, however, prompted one rape survivor to say, “it seems that our testimonies in gacaca courts are more formalities than truly helpful” (De Brouwer and Ka Hon Chu 2009, 123), while another contended that many aspects of gacaca were designed only to “keep up appearances” (Morris 2014, 65).

Rwanda’s decision to include sexual violence cases within the jurisdiction of gacaca clearly was “in the interests of its new government more than in the interests of its citizens” (Morris 2014, 27). Though gacaca has been considered “restorative” to the Rwandan society as a whole, this system has not provided restorative justice to individual survivors of sexual violence, for whom “individual healing [has been] sacrificed for ‘societal peace’” (Morris 2014, 28).

Chapter 6: An Alternative Model of Justice for Survivors of Sexual Violence in Rwanda

What good is truth or compensation if you are dying?
-Sexual violence survivor, living with HIV/AIDS¹⁵

Survivors of sexual violence from the genocide have typically defined justice in vastly different terms than those of the Rwandan government. Because many of these survivors live in extreme poverty, with HIV/AIDS, and/or without social or economic support from husbands or families, they want a transitional justice system that would “prioritize redress for the collateral harms they suffer today before the criminal punishment of their rapists from ten years ago”

(Wells 2005, 196). As summarized by Morris (2014):

The fact that multiple dimensions of women’s lives were affected by rape—their health, their mental health, their family structures, their access to income...their housing—cannot be ignored. These very real challenges bring daily reminders of rape, and may factor greatly in how women perceive and define justice, and in what ways they seek justice for rapes they experienced. (25)

Rather than continue to seek restorative justice for survivors of sexual violence through a system which was not designed to meet their needs, an effective transitional justice program in Rwanda would evaluate the way in which these survivors define justice for themselves and prioritize the objectives they wish to achieve through transitional justice institutions.

Survivor-run women’s organizations are prevalent throughout Rwanda, “in large part due to the absence of government and other services” (De Brouwer and Ka Hon Chu 2009, 152).

Because “survivors understand the unique needs of their peers” (De Brouwer and Ka Hon Chu 2009, 152), these organizations are better positioned to define the transitional justice objectives

15. Interview conducted with AVEGA member, survivor of wartime rape, sexual slavery, forced marriage, now living with HIV/AIDS. Quoted from Sarah Wells (2005), 194-195.

of survivors of sexual violence than is the Rwandan state. When we reframe the objectives of transitional justice to align with the needs of survivors of sexual violence, it becomes apparent that community-based, women-centered nonprofit organizations “can be responsible for promoting, delivering and achieving the goals of transitional justice” (Tobin 2012, 33). According to Angela Tobin (2012), such organizations can be “understood as...example[s] of non-judicial community justice” (36). In this final chapter, I will identify several transitional justice objectives highlighted by survivors—namely financial assistance, healthcare, trauma counseling, social support, and empowerment programs—and demonstrate why community-based, women-centered organizations which are designed around these objectives are better suited to provide restorative justice to survivors of sexual violence than is the state system of gacaca.

Economic Assistance

Even before the genocide, Rwanda’s traditional patriarchal society limited women’s access to legal rights, education, or economic independence from their husbands. Women could not obtain credit, open a bank account, or accept formal employment without their husbands’ permission (Amick 2011, 17). This lack of economic opportunity for women created major problems for Rwandan families following the genocide, as female survivors were five times more likely to be widowed than male survivors, and traditional Rwandan society dictated that women should not remarry (Wells 2005, 183; Tobin 2012, 29). As a result, immediately following the genocide, an estimated fifty percent of households in Rwanda were headed by women (Morris 2014, 22), who, due to their lack of access to income or property, were expected

to provide for themselves and their families with “significantly fewer material resources than their male counterparts” (Wells 2005, 183).

Rwandan customary laws concerning property and inheritance were huge obstacles for female survivors attempting to provide for themselves and their children. Until 1999, women were not allowed to own land or inherit it from their husbands or fathers, meaning that widows had no claim to their land or homes after the death of their husbands (Rombouts 2006, 210). Even after 1999, the law maintained that widows must have been legally married to their husbands to inherit land, despite many couples in rural areas never having formal marriage ceremonies (Rombouts 2006, 205). Because most families in Rwanda still rely on subsistence farming, access to land is crucial for economic survival. Moreover, women are more reliant than men on subsistence farming, as they are less likely to engage in non-agricultural income generation due to lack of access to education or other employment opportunities (Rombouts 2006, 204-205).

Experiences of rape have exacerbated an already dire financial situation for many female genocide survivors. As previously noted, many women were abandoned by their husbands after being raped or were seen by potential suitors as “unmarriageable.” Chances of marriage or remarriage were even slimmer for those women who had lost their ability to bear children or who had contracted HIV/AIDS because of their rapes (Morris 2014, 23). Additionally, many women were left to financially support children born as a result of forced impregnation. Ironically, children born as a result of rape from the genocide are typically not considered official “survivors” by the RPF government because they have Hutu fathers, and are therefore not entitled to the same social services that orphans and other children who survived the genocide receive from the government (Morris 2014, 23). Rape survivors often suffer from injuries that

prevent them from working in the fields, and because of the stigma attached to rape, some survivors were denied employment in stores and markets (Morris 2014, 23). Due to this same stigma, survivors of sexual violence are also less likely than other genocide survivors to be able to rely on their families or communities for financial assistance.

Financial assistance is therefore a primary transitional justice objective for survivors of sexual violence and one of the most important functions of survivors' and women's organizations, which often provide food, housing, and even transportation and childcare to their beneficiaries. According to an annual report from 2010, the Association for Widows and Orphans of Rwanda (AVEGA) is actively involved in providing food to its beneficiaries as well as assisting with school fees and improving sanitation conditions. In addition to helping meet these immediate needs, AVEGA also assists their beneficiaries in long-term, sustainable economic investments by donating goats, cows, pigs, and bees to widow-headed households and providing loans for their small business projects (AVEGA 2010, 1-2). Many community-based organizations also support income-generating projects (IGPs), which "provide beneficiaries with the capacity to earn their own income with the long-term goal of independence," including agricultural activities, livestock trade, and making and selling crafts (Tobin 2012, 34).

Healthcare

Approximately seventy percent of survivors of sexual violence from the genocide are HIV positive (Amnesty International 2004, 3). Many survivors of sexual violence also require medical services to treat injuries sustained during their rapes, as a result of breast or genital mutilation, or as a result of unsafe abortions. However, financial insecurity, unavailability of health facilities, and stigmas surrounding rape and HIV have prevented many survivors of sexual

violence from accessing healthcare (De Brouwer and Ka Hon Chu 2009, 146). According to a 2002 survey, “only 6 percent of respondents who were raped during the genocide had ever sought medical treatment” (De Brouwer and Ka Hon Chu 2009, 146), and because HIV status contributes to poverty, only 28 percent of Rwandan households affected by HIV/AIDS are able to afford basic healthcare (Amnesty International 2004, 4). A 2008 report by the UN claimed that only 53 percent of Rwandan adults who required antiretroviral treatment were receiving it (De Brouwer and Ka Hon Chu 2009, 146). Though the ICTR provided antiretrovirals to accused perpetrators awaiting trial, they failed to do so for witnesses (Amnesty International 2004, 20).

It is the primary focus of some survivors’ organizations, therefore, to provide medical assistance to their beneficiaries. AVEGA, for example, provides anti-retroviral treatments, family planning programs, and vaccinations to widows and children as well as helping survivors access transportation to hospitals and funding the development of health clinics (AVEGA 2010, 2). Solace Ministries, a survivor-run community organization in Kigali that supports widows, orphans, and survivors of sexual violence, also incorporated medication and education about HIV/AIDS into their mission. Immaculée Makumi, a beneficiary of Solace and survivor of sexual violence, poignantly explains,

I used to think that I would rather be dead than living with HIV, but I have received comfort from a charity that also provides me with antiretroviral treatment and food. I know now that I can continue to live with HIV...I no longer hate who I am, and I feel my love for myself grow. (De Brouwer and Ka Hon Chu 2009, 82)

Psychological Health, Trauma Counseling, and Social Support

As noted, female survivors of sexual violence from the genocide are more vulnerable to psychological ill-health than are other survivors. Survivor organizations often work to address the mental health needs of their beneficiaries through individual and group counseling sessions,

as well as by providing beneficiaries with access to professional trauma counseling from hospitals (AVEGA 2010, 2). In addition to formal counseling, many survivors have identified positive mental health benefits, including “happiness and reduced trauma” (Tobin 2012, 36), as a result of the social support provided by the women’s organizations. Because of the social vulnerability and isolation experienced by many survivors of sexual violence, finding networks of support and sharing their experiences with other rape survivors is vital to their mental health. One survivor notes, “I find comfort and love through the support of those organizations and from seeing other widows who have the same problems. It makes me feel less lonely” (De Brouwer and Ka Hon Chu 2009, 77). Another survivor similarly explains, “Other widows and orphans have comforted me when I was in mourning and brought joy and laughter into my life when my heart was filled with pain and sorrow. I am now feeling less lonely and more secure” (De Brouwer and Ka Hon Chu 2009, 48). It seems that survivors of sexual violence can indeed benefit from the therapeutic nature of truth-telling, provided that they have access to safe spaces for truth-telling in which they are not exposed to judgment, violence, or re-traumatization. Professional trauma counseling and survivor support group serve this function in ways that prosecutorial courts cannot.

Empowerment and Women’s Rights

Women’s organizations have the additional capacity to serve as sites of empowerment for survivors of sexual violence. After experiencing rape, many women feel a loss of power and control over their lives. This lack of control is exacerbated for Rwandan women by their loss of partners, children, and parents and by the social and economic vulnerability that accompanies their rapes. Survivors’ and women’s organizations work to provide a sense of accomplishment

and control for survivors of sexual violence in a number of ways. Because these survivors are often required to take on new financial responsibilities after the death of their husbands, including running businesses and managing money, many organizations provide small business loans and training programs in financial management (AVEGA 2010, 1-2; Tobin 2012, 3-4). Some survivor organizations run informational sessions to educate women on their legal rights and roles within transitional justice systems in an attempt to “demystify the process and address the particular concerns of survivors of sexual violence” (Morris 2014, 97).

Most importantly, empowerment involves “critical consciousness and knowledge of...structural inequalities and oppression” (Lee 1994, 34). According to Meghan Morris’s (2012) definition, empowerment programs must “strengthen self-worth...[provide] validation through collective experience...contribute to critical thinking regarding injustice...[and involve] collective action” (47). Given the culture of impunity and stigma surrounding sexual violence in Rwanda, it is especially important for empowerment programs in this context to “involve a discussion around gendered violence, sexual violence, and how this relates to the role of women in Rwandan society” (Morris 2012, 49). By educating Rwandan women about the structural factors that have contributed to their victimization, women’s organizations can assist survivors to break the culture of silence surrounding their rapes and begin to heal.

A Comprehensive Approach to Justice

Perhaps the major difference between community organizations and judicial measures such as gacaca is the holistic nature of their approach to justice. Time and again, organizations such as AVEGA and Solace Ministries demonstrate their commitment to achieving simultaneously many of the transitional justice objectives of survivors of sexual violence.

According to their website, AVEGA's mission is to "work for the development and reintegration of widows and orphans of the Genocide and improve their psycho-socio-economic conditions in solidarity, justice and social peace" (AVEGA 2016), and this integrated approach is evident in many of the services the organization provides. Providing goats to widow-headed households, for example, was intended to "help alleviate [both] poverty *and* loneliness [emphasis mine]" (AVEGA 2010, 1).

Recognizing that HIV infection can contribute to negative physical health, mental health, social status, and economic status simultaneously, Solace Ministries applied a comprehensive strategy to caring for HIV positive survivors by providing "counseling and therapy for post-traumatic stress, nutritious food to maintain their health, stable housing, education about their illness, effective treatment, income-generating training, and resources such as school fees and materials to support the children and orphans they care for" (De Brouwer and Ka Hon Chu 2009, 152). Empowerment programs educate women about feminism and structural inequalities while also reducing trauma, creating networks of social support, and assisting them to support themselves financially, understand their legal rights, and take control of their physical health and HIV management. Because of the interconnected nature of the problems that sexual violence survivors face, assistance offered to these women must logically address multiple issues objectives of transitional justice simultaneously.

Implications for the Future

It would be impossible for gacaca alone to provide adequate justice for every member of Rwandan society. Transitional justice requires integrating various institutions to address the wide range of objectives required to reconstruct a society and address the needs of survivors. Because

they provide punitive justice, legal and judicial mechanisms have been necessary components of this reconstruction effort. Punishing war criminals is a necessary prerequisite for deterrent and restorative justice as well as for societal healing and reconciliation, and the “promotion of the rule of law and respect for human rights” is a necessary component of post-conflict peace building (Lambourne 2001, 311). The successes of gacaca on this front should not be dismissed.

By focusing almost exclusively on judicial structures, however, the Rwandan transitional justice program has done little to address the underlying causes of the sexual violence that occurred during the genocide and did nothing to shift the structural barriers that rape survivors have faced to accessing justice. Though survivor-run women’s organizations have proved more effective at meeting the transitional justice objectives of these survivors than have the ICTR, the Rwandan national courts, or gacaca, these organizations have not been discussed as part of the official transitional justice program in Rwanda. Rather than continuing to rely exclusively on “the prosecutorial logic of the modern gacaca process” (Ingelaere 2009, 517) to provide restorative justice for survivors of sexual violence, the Rwandan state and international community should recognize the important contributions of survivors’ organizations to transitional justice. Including community-based, women-centered nonprofit organizations within the official framework of the transitional justice program in Rwanda would legitimize these organizations and provide the basis for funding from the international community.

As summarized by de Brouwer and Ka Hon Chu (2009), an effective transitional justice program for Rwanda must

address sexual violence in a systematic way... must re-evaluate cultural practices and judicial systems to ensure that they are inclusive and protect women against all forms of abuse. Laws must be developed that deal both with violence and with issues that affect women's rights in all spheres, such as property, inheritance, marriage and divorce. Creating a world free from sexual violence requires creating conditions where justice can flourish and strong laws can be enforced through a strong judicial system. (157-158)

In addition to trying criminals, a transitional justice system designed to support survivors of sexual violence would also address the cultural and legal factors behind the violence against women that occurred during the Rwandan genocide and the difficulties women in Rwanda continue to face today. Applying a gender analysis to laws and judicial structures such as gacaca in order to address the differing needs of survivors of sexual violence would be an important step towards ensuring justice for all Rwandans, but this alone is not enough. Attention must be paid to the importance of educating children, providing support for families, and empowering women in the wake of the genocide. Recognizing the important contributions of survivors' and women's organizations to the transitional justice effort in Rwanda and providing financial support to these organizations is the best way to achieve the goals of transitional justice for survivors of sexual violence, in both the short- and the long-term.

Appendix A:

“General Dallaire and his army have fallen into the trap of the Tutsi femmes fatales.”



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