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BEYOND DICHOTOMIES

K. SASAKI

PhD

2009

BEYOND DICHOTOMIES

**THE QUEST FOR JUSTICE AND RECONCILIATION AND
THE POLITICS OF NATIONAL IDENTITY BUILDING
IN POST-GENOCIDE RWANDA**

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ABSTRACT

Beyond Dichotomies

The Quest for Justice and Reconciliation and the Politics of National Identity Building in Post-Genocide Rwanda

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Subject Keywords:

1. Conflict transformation.
2. Peace-building.
3. Reconciliation.
4. Restorative justice.
5. Retributive justice.
6. Rwanda-Ethnic relations.
7. Rwanda-Politics and government.

Justice and reconciliation are both highly complex concepts that are often described as incompatible alternatives in the aftermath of violent conflicts, despite the fact that both are fundamental to peacebuilding in societies divided by the legacies of political violence, oppression and exclusion. This thesis examines the relationship between justice and reconciliation, pursued as essential ingredients of peacebuilding. After advancing an inclusive working conceptual framework in which seemingly competing conceptions regarding justice and reconciliation are reconceived to work compatibly for building peace, the thesis presents the results of an in-depth case study of Rwanda's post-genocide justice and reconciliation endeavour.

The thesis focuses on Rwanda's justice and reconciliation efforts and their relationship to the ongoing challenge of reformulating Rwandans' social identities. A field research conducted for this study revealed that issues of victimhood, justice and reconciliation were highly contested among individuals and groups with varied experiences of the country's violent history. Resolving these conflicting narratives so that each Rwandan's narrative/identity is dissociated from the negation of *the other's* victimhood emerged as a paramount challenge in Rwanda's quest for justice and reconciliation. Rwanda's approach to justice and reconciliation can be seen as an innovative *both/and* approach that seeks to overcome dichotomous thinking by addressing various justice and reconciliation concerns in compatible ways. However, by limiting its efforts to the issues that arose from crimes committed under the former regimes, the justice and reconciliation endeavour of the Rwandan government fails to reconcile people's conflicting narratives of victimhood, which will be essential to transform the existing *racialised* and *politicised* ethnic identities of Rwandan people.

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ABBREVIATIONS

AEE	African Evangelistic Enterprise
AFDL	<i>Alliance des Forces Démocratiques pour la Libération</i>
AI	Amnesty International
APROSOMA	<i>L'Association pour la Promotion Sociale de la Masse</i>
AR	African Rights
ASF	<i>Avocats Sans Frontières</i>
BBC	British Broadcasting Corporation
CDR	<i>Coalition pour la Défense de la République</i>
CEO	Chief Executive Officer
DRC	Democratic Republic of Congo
FAR	<i>Forces Armées Rwandaises</i>
FARG	<i>Fonds pour l'Assistance aux Rescapés du Génocide</i>
FH	<i>Fondation Hirondelle</i>
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
ICSPHRI	International Centre for the Study and the Promotion of Human Rights and Information
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP(s)	Internally Displaced Person(s)
IMF	International Monetary Fund
INGO	International non-governmental organisation
IRDP	Institute of Research and Dialogue for Peace
IRIN	Integrated Regional Information Network for Central and Eastern Africa (United Nations: Office for the Co-ordination of Humanitarian Affairs)
LIPRODHOR	<i>Ligue pour la Promotion et la Défense des Droits de l'Homme</i>
MDR	<i>Mouvement Démocratique Républicain</i>
MINALOC	<i>Ministère de l'Administration Locale et des Affaires Sociales</i> (Ministry of Local Government and Social Affairs)
MP	Member of Parliament
MRND	<i>Mouvement Révolutionnaire National pour le</i>

	<i>Développement (et la Démocratie)</i>
NCFG	National Commission for the Fight against Genocide
NCHR	National Commission for Human Rights
NEC	National Electoral Commission
NGO	Non-governmental organisation
NSGC	National Service for Gacaca Courts
NURC	National Unity and Reconciliation Commission
OSCE	Organisation for Security and Cooperation in Europe
PARMEHUTU	<i>Parti du Mouvement de l'Emancipation Hutu</i>
PDC	<i>Parti Démocratique Chrétien</i>
PL	<i>Parti Libéral</i>
PSD	<i>Parti Social Démocrate</i>
RADER	<i>Rassemblement Démocratique Rwandais</i>
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
PRI	Penal Reform International
RTL	<i>Radio Télévision Libre des Mille Collines</i>
RSF	<i>Reporters Sans Frontières</i>
SETIG	<i>Secrétariat Exécutif du Comité National de TIG</i> (National Executive Secretariat of Community Service)
TRAFIPRO	<i>Travail, Fidélité, Progrès</i>
TIG	<i>Travaux d'Intérêt Général</i>
TRC	Truth and Reconciliation Commission
UN	United Nations
UNAR	<i>Union Nationale Rwandaise</i>
UNHCR	United Nations High Commissioner for Refugees
WCC	World Council of Churches

GLOSSARY

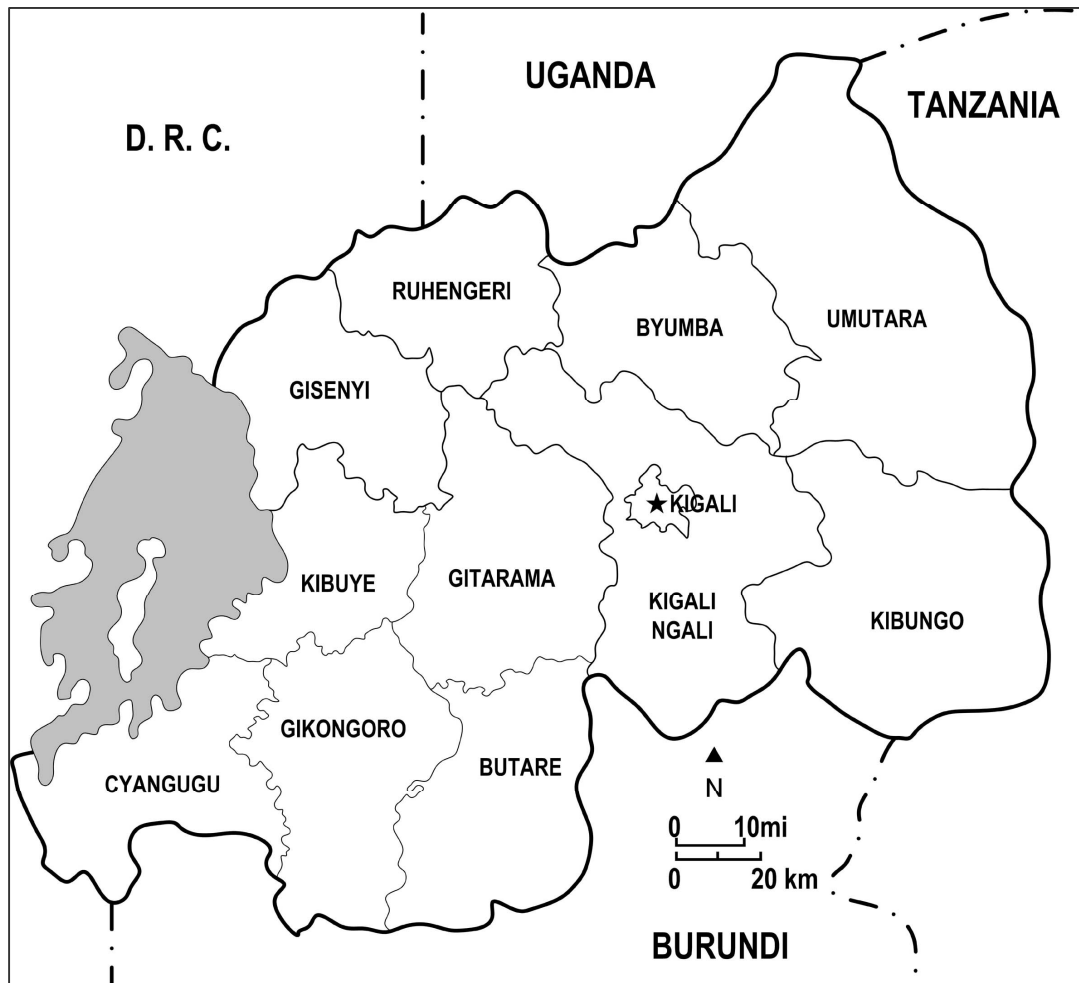
Kinyarwanda terms are indicated with (Kin.), whereas French terms are indicated with (Fr.). Terms which are coined by Rwandans based on French words/phrases are indicated with (KinFr).

<i>abaguze ubwoko</i> (Kin.)	those suspected of having changed their ethnic identity
<i>akazu</i> (Kin.)	small house; name given to the entourage of former President Habyarimana, particularly the persons close to his wife
<i>amahano</i> (Kin.)	horror; term used to vaguely refer to the events of 1994
<i>bourgmestre</i> (Fr.)	mayor; head of <i>commune</i>
<i>cellule</i> (Fr.)	cell; administrative unit of Rwanda, smaller than <i>secteur</i>
<i>commune</i> (Fr.)	former administrative unit of Rwanda, larger than <i>secteur</i> , smaller than <i>préfecture</i>
<i>conseiller</i> (Fr.)	head of <i>secteur</i>
<i>gacaca</i> (Kin.)	patch of grass; name given to a community-based dispute resolution mechanism
<i>gendarmerie</i> (Fr.)	corps of military police
<i>génocidaires</i> (Fr.)	genocide perpetrators
<i>génocide</i> (Fr.)	genocide
<i>gusaba imbabazi</i> (Kin.)	to beg mercy/forgiveness
<i>gutsemba</i> (Kin.)	to wipe out or decimate
<i>gutanga imbabazi</i> (Kin.)	to offer mercy/forgiveness
<i>ibuka</i> (Kin.)	Remember! (imperative form of verb <i>kwibuka</i>); name given to an umbrella organisation of genocide survivors associations
<i>ibyabaye</i> (Kin.)	'happenings'; term used to vaguely refer to the events in 1994
<i>ibyimanyi</i> (Kin.)	those with ethnically mixed parentage
<i>icyitso</i> (Kin.; pl. <i>ibytso</i>)	accomplice
<i>igitero</i> (Kin.; pl. <i>ibitero</i>)	attack group

<i>imvange</i> (Kin.)	those with ethnically mixed parentage
<i>ingando</i> (Kin.)	'solidarity camp' for civic education
<i>inkiko gacaca</i> (Kin.)	community-based courts established using the traditional <i>gacaca</i> mechanism
<i>Inkotanyi</i> (Kin.)	those who fight tirelessly; name given to members of the RPF
<i>intambara</i> (Kin.)	war
<i>Interahamwe</i> (Kin.)	those who work together; name originally given to the youth wing of the MRND party and later used to refer to genocidal militias as well as Hutu dissidents under the RPF regime
<i>inyangamugayo</i> (Kin.)	person(s) of integrity; name given to lay judge(s) of <i>gacaca</i> courts
<i>inyenzi</i> (Kin.)	cockroaches; name given to the Tutsi guerrilla fighters in the 1960s. The Hutu hardliners began to use the name for the RPF fighters again in the early 1990s.
<i>inzu</i> (Kin.; <i>amazuru</i> , pl.)	hut/house; the smallest social unit in Rwandan society
<i>itsebabwoko</i> (Kin.)	decimation of an ethnic group; term coined by the post-genocide government to refer to the genocide against the minority Tutsi
<i>itsebatsemba</i> (Kin.)	massacres; term coined by the post-genocide government to refer to the massacres of Hutu dissidents under the former genocidal regime
<i>jenocide</i> (KinFr.)	genocide; term coined by the post-genocide government based on French word <i>génocide</i>
<i>jenocide yakorewe Abatutsi</i> (KinFr.)	genocide committed against the Tutsi
<i>kunga</i> (Kin.)	to reunite
<i>kwiyunga</i> (Kin.)	to reconcile
<i>nyumba kumi</i>	unit of ten households; the smallest administrative unit in Rwanda
<i>préfet</i> (Fr.)	prefect

<i>préfecture</i> (Fr.)	prefecture
<i>responsable</i> (Fr.)	head of cell/ <i>cellule</i>
<i>secteur</i> (Fr.)	sector; administrative unit of Rwanda, smaller than <i>commune</i> or district
<i>tigiste</i> (KinFr.)	convict who serves a community service sentence
<i>Travaux d'Intérêt Général</i> (TIG) (Fr.)	community service as an alternative penalty to imprisonment
<i>ubumwe</i> (Kin.)	unity
<i>ubunyarwanda</i> (Kin.)	Rwandan national identity.
<i>uburetwa</i> (Kin.)	system of obligatory labour
<i>ubutabera</i> (Kin.)	justice
<i>ubutabera bwunga</i> (Kin.)	'justice which reconciles' or reconciliatory justice; term used to refer to <i>gacaca</i> -based justice system
<i>ubwicanyi</i>	killing; term used to vaguely refer to the events in 1994
<i>ubwiyunge</i> (Kin.)	reconciliation
<i>ubwoko</i> (Kin.; pl. <i>amoko</i>)	generic term used to refer to clan or ethnic group
<i>umudugudu</i> (Kin.; pl. <i>imidugudu</i>)	communal settlement
<i>umuganda</i> (Kin.)	communal work duty
<i>umuhutu</i> (Kin.; pl. <i>abahutu/Bahutu</i>)	Hutu person.
<i>umunyarwanda</i> (Kin.; pl. <i>abanyarwanda/Banyarwanda</i>)	Rwandan person
<i>umuryango</i> (Kin.)	lineage; intermediate social unit, larger than <i>inzu</i> but smaller than <i>ubwoko</i>
<i>umututsi</i> (Kin.; pl. <i>abatutsi/Batutsi</i>)	Tutsi person
<i>umutwa</i> (Kin.; pl. <i>abatwa/Batwa</i>)	Twa person
<i>umwami</i> (Kin.)	king
<i>umwunzi</i> (Kin.; pl. <i>abunzi</i>)	mediator
<i>uwacitse ku icumu</i> (Kin.; pl. <i>abacitse ku icumu</i>)	person who escaped a spear (attack); term used to refer to survivors of genocide

Administrative Map of Rwanda (2002)



PREFACE

My journey of inquiry began about nine years ago during my first visit to Rwanda in May 2000. The visit was a personal one. After working over nine years in conflict-stricken Ethiopia as a development worker, I was desperate to see a sign of hope, that building peace is possible even after a devastatingly violent conflict. This led me to Rwanda, the land in which the fastest genocidal massacres in the twentieth century caused hundreds of thousands of innocent people to perish in a space of merely a hundred days during 1994. I heard that six years after that horrendous act of extermination, some non-governmental organisations (NGOs) were beginning peace and reconciliation efforts. During this visit, I knocked on the door of one faith-based international NGO to get information about its peacebuilding programme.

There I met Ange, a young Rwandan woman who persuaded the NGO to launch its first ever peacebuilding programme in the aftermath of the genocide. While at her office, I asked her the background of the programme. She then told me her own story as a genocide survivor who lost both of her parents and many other family members. Her father was a prominent human rights activist who bravely spoke out against human rights violations by the former regime; he was not just a Tutsi but a Tutsi who was on the blacklist prepared by the organisers of the genocide. Because of his background, Ange had no doubt that her parents were slaughtered by *génocidaires*, but she did not know where their bodies were dumped or buried.

When her story came to an end after about two hours, she surprised me by sharing her hope that one day Rwandans would be united. I asked her how it

would be possible. She then told me about *gacaca* – a traditional community-based system of dispute resolution. ‘*Gacaca* will make it possible for Rwandans to tell the truth, forgive each other and reconcile’, she said calmly. ‘This is what my father used to say’.

Nine years later, the *gacaca* process of justice and reconciliation, which was officially inaugurated in June 2002, is now coming to an end. Contrary to her great expectation of the *gacaca* process at the outset, Ange has not found even a tiny clue about what happened to her parents. Nobody has acknowledged the killings or apologised for them. Despite her repeated pleas for the truth over the last few years, her neighbours have kept complete silence. The so-called ‘participatory’ *gacaca* courts have utterly let her down as well as her younger sister who also survived the mayhem in 1994.

This story and many others like it prompted me to ask difficult questions about the justice and reconciliation process in the aftermath of mass violence, particularly in post-genocide Rwanda. I believe that the questions addressed in this thesis are not only mine but are also shared by many others, particularly those in search of ways to put an end to the cycle of violence in Rwanda and around the world.

CHAPTER ONE

INTRODUCTION:

THE CHALLENGE OF JUSTICE AND RECONCILIATION IN POST-VIOLENCE PEACEBUILDING

1. Justice and Reconciliation in Tension

In the aftermath of violent political conflict, we often hear a desperate call for justice expressed by victims of atrocities. Many victims, human rights activists, and others, assert that all the perpetrators must be held accountable for their crimes and punished if 'justice' is to be done, the culture of impunity eradicated, the rule of law consolidated, and the vicious cycle of violence finally brought to an end. They may be alarmed by the language of reconciliation, particularly if it implies forgiveness of those responsible for serious crimes such as murder, torture and rape. The quest for reconciliation is often considered to be irrelevant or even counterproductive to the reconstruction of a society ravaged by violent political conflict, and emphasis tends to be placed on the prosecution and punishment of criminals.

On the other hand, reconciliation may be a genuine concern for those who consider it to be the only way to stop the vicious cycle of violence and start a new life. There are people who, often drawing on their religious convictions, call for forgiveness and a renewed relationship with their former enemies, including those who directly inflicted harm on them. Some commentators even insist that victims must forget what happened in the past and start a new chapter of their history free from hostility, mistrust and the fear of violence. In their view, a

demand for absolute justice is counterproductive to the goal of healing and reconciliation of nation(s) because it is likely to open up old wounds, induce hatred and resentment against the old enemies, and reinforce divisions within their society.

While people's views are usually more complex and diverse than this, these oppositional views illustrate the way the relationship between justice and reconciliation is often seen, particularly in the immediate aftermath of mass violence, where the memories of brutal killings, torture or rape are still fresh. Certainly this is not the only way to conceptualise and pursue justice and reconciliation in the context of peacebuilding. However, these sharply conflicting views point to the possible tensions that may stand between justice and reconciliation -- two critical challenges faced by societies emerging from protracted violent conflict. Moreover, the issues of justice and reconciliation are often further complicated by the existence of structural injustices which constitute the root cause of violent conflict in the first place.

This study seeks to make a modest contribution to the clarification of the complex relationship between justice and reconciliation pursued as important ingredients of peacebuilding in societies deeply divided by the legacies of violent political conflicts. The central theme of this study boils down to three questions:

- How can justice be pursued in ways that promote reconciliation in deeply divided societies emerging from violent political conflict?
- Potentially, what tensions may arise in the pursuit of justice and reconciliation?
- How can these tensions be alleviated or resolved?

This thesis assumes that potential tensions that may arise in the pursuit of justice and reconciliation can be alleviated, at least in theory, by adopting a comprehensive framework for understanding these twin goals/processes that

are fundamental to peacebuilding. A major goal of this study is to propose such an inclusive framework and then examine its validity with particular reference to the experience of justice and reconciliation efforts in post-genocide Rwanda. In this thesis, Rwanda's experience is presented as an example of endeavour to overcome dualistic thinking around issues of justice and reconciliation by conceiving and pursuing them together in a compatible way. The ultimate aim of the thesis is to draw lessons from Rwanda's experience with regard to conceptual understandings of justice and reconciliation in societies struggling to overcome the legacies of violent conflicts.

2. Justice and Reconciliation in Post-Violence Peacebuilding

This thesis discusses the challenge of justice and reconciliation in the context of 'post-violence' peacebuilding. The goal of this section is to explain why this thesis uses the term 'post-violence' peacebuilding instead of the more commonly used term 'post-conflict' peacebuilding. To answer this question, it is crucial to clarify my basic assumptions about peace, conflict and violence as well as how justice and reconciliation relate to them. Five major assumptions are outlined as follows:

Peace is about reducing violence.

Peace is a concept much broader and deeper than the absence of war or armed conflict. Galtung (1996, 2) says '[c]reating peace obviously has to do with reducing violence (cure) and avoiding violence (prevention)' and 'violence means harming and/or hurting'. If we agree with Galtung's proposition, peace is achieved when both symptoms and causes of violence are eliminated. But what is violence?

Galtung (1990; 1996, 2, 31, 196-210) makes important distinctions between

three forms of violence: direct violence, structural violence and cultural violence. Direct violence refers to a physical form of violence such as war, murder, assault, torture or rape that harms or causes great suffering to the people at its receiving end. Structural violence refers to forms of indirect violence caused by structural injustices underlying existing social relationships in societies. Two major forms of such structural violence are repression (political injustice) and exploitation (economic injustice). These forms of structural violence are not usually as visible as various forms of direct, physical violence, but cause great suffering to the people affected, as seen in extreme but not unusual cases of numerous deaths caused by hunger, malnutrition or preventable diseases in impoverished communities. Finally, cultural violence refers to all the factors in human societies that 'make direct and structural violence look, even feel, right – or at least not wrong' (Galtung 1990, 291). In other words, cultural violence means a range of cultural, social, political, religious or even scientific assumptions and practices that legitimise and render direct and structural violence acceptable in society (292).

Owing much to the work of Galtung (1969, 1985, 1990, 1996), peace and conflict studies make an important distinction between *negative* and *positive* peace in connection with the above three forms of violence. *Negative peace* is understood as the absence of direct violence, whereas *positive peace* is generally described as a situation in which various types of violence are minimised or totally eliminated, and potential causes of future violent conflict – structural and cultural violence – are also overcome (Pankhurst 1999, 239).¹

¹ Although *negative peace* and *positive peace* are often described in peace and conflict studies literature as 'the absence of direct violence' and 'the absence of structural and cultural violence' respectively, Galtung in his recent writings describes *negative peace* as 'the absence of violence of all kinds' and *positive peace* as a situation in which violent conditions of all kinds (direct, structural and cultural) are transformed to or replaced with positive conditions (1996, 31-2). Most recently, he defined *negative* and *positive peace* as

Conflict can be destructive or constructive.

The second important assumption underlying peace and conflict terminology used in this thesis is that conflict is not necessarily destructive, although the term 'conflict' in different languages has some negative connotations. This thesis follows a definition of conflict which is fairly common in the field of peace and conflict studies: 'the pursuit of incompatible goals by different groups' (Reyher 2001, 5). According to Galtung's influential conception of the *conflict triangle*, conflict is a 'triadic construct' composed of contradiction, attitude and behaviour (1969, 1996, 71-2). Contradiction refers to the content of conflict or the 'underlying conflict situation' that is often characterised by 'the clash of interests' between conflicting parties or their relationship based on structural injustices (Miall et al. 1999, 14). Attitude primarily concerns parties' perceptions of and emotions towards each other, whereas behaviour is something which can be observed in their words or/and actions towards each other. In theory, both attitude and behaviour can be either positive/constructive or negative/destructive.

Galtung and many other scholars maintain that having conflict in the sense of contradiction is problematic, but not necessarily destructive. It becomes destructive when it develops into violent forms characterised by hostile attitudes and destructive behaviours, whereas it can be used as a constructive opportunity to bring about positive social change without resorting to violent means (Galtung 1996, 70). As Lederach (2003, 15) says, 'conflict is a normal and continuous dynamic within human relationships' and it carries 'the potential for constructive change'. Thus, an important challenge for those who seek to achieve durable peace is not to eliminate conflict per se, but 'to transform

'the absence of violence' and 'the capacity to deal with conflict nonviolently and creatively' respectively (2001, 3).

actually or potentially violent conflict into peaceful (non-violent) processes of social and political change' (Miall et al. 1999, 22).

Peacebuilding is about transforming unjust structures and relationships.

The third assumption concerns an understanding of peacebuilding as a comprehensive concept that encompasses a wide range of efforts to transform structures and relationships underlying violent conflicts. This thesis considers that such peacebuilding efforts are relevant not only at a so-called 'post-settlement' stage, after the cessation of open hostilities, but also at 'pre-settlement' stages in the evolution of conflict.

Although Galtung distinguished peacebuilding from peacemaking and peacekeeping more than three decades ago (1975, 282-304),² it was only in 1992 that peacebuilding became part of the UN peace operation terminology, in addition to the already well-used terms peacekeeping and peacemaking (Mani 2002, 12). In that year, Secretary-General Boutros-Ghali's Agenda for Peace defined 'post-conflict peacebuilding' as 'actions to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict' (1992, 11). Distinguished from 'pre-conflict' preventive diplomacy, peacebuilding was generally understood as a 'post-conflict' agenda which was largely identified with military demobilisation and political transition to democracy through free elections (Miall et al. 1999, 187). The scope of the concept was progressively broadened in related UN documents in subsequent years under Boutros-Ghali to encompass both 'pre-conflict' and 'post-conflict' aspects (See Boutros-Ghali 1993, 1995). However, after Annan became the next UN

² Following the definitions proposed by Miall et al. (1999, 22), this thesis uses the terms peacemaking and peacekeeping in the sense of 'moving towards settlement of armed conflict, where conflict parties are induced to reach agreement voluntarily' and 'the interposition of international armed forces to separate the armed forces of belligerents, [...] associated with civil tasks such as monitoring and policing and supporting humanitarian intervention' respectively.

Secretary-General, the scope of peacebuilding narrowed down again to an operation restricted to the 'post-conflict' stage (See UN 1997b).

This narrow view of peacebuilding as an activity restricted to a post-settlement stage was challenged by Lederach (1997, 20) who proposed a much broader view of peacebuilding 'as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships'. His conceptual framework offers 'a comprehensive approach to the transformation of conflict that addresses the structural issues, social dynamics of relationship building, and the development of a supportive infrastructure for peace' (21). This thesis discusses peacebuilding along these lines as a range of efforts that are required, at both 'pre-conflict' and 'post-conflict' stages, for transforming the unjust structures and relationships which underlie violent conflicts.

So, how does peacebuilding relate to peacemaking and peacekeeping? Their relationships are probably best described conceptually with reference to Galtung's conflict triangle discussed above. Miall, Ramsbotham and Woodhouse (1999, 22) suggest that:

peacemaking aims to change the *attitudes* of the main protagonists, peacekeeping lowers the level of destructive *behaviour*, and peacebuilding tries to overcome the *contradictions* which lie at the root of the conflict.
(*italics* by this author)

When peacebuilding is understood in this way, its task is far beyond the maintenance of *negative peace* or the avoidance of a relapse into violent conflict. Its central task lies in the creation of *positive peace* through addressing structural and cultural forms of violence, thereby building social relationships and structures based on social justice.

Conflict does not disappear with the end of fighting.

The fourth assumption is that conflict does not disappear when antagonistic parties lay down their arms. This understanding of conflict underlies the use of the term 'post-violence' in this thesis, which is more accurate than the term 'post-conflict' (Bloomfield 2006, 3, n1). When war comes to an end through a negotiated settlement, antagonistic parties in conflict stop engaging in direct, physical violence. However, issues of conflict do not suddenly disappear with the end of fighting. The process of conflict transformation must continue if the goal is to create a sustainable peace environment based on transformed social relationships and structures. It is for this reason that the term 'post-conflict' is grossly misleading.

This thesis also avoids using the term 'post-settlement' because fighting can stop without a settlement in the sense of an official peace agreement between parties involved in a violent conflict, as is the case with Rwanda, in which civil war and genocide ended by an outright military victory by one of the parties to the conflict. Defined as the array of efforts to transform unjust structures and hostile relationships underling violent conflict, peacebuilding is relevant not only to post-settlement societies but also to post-war societies with no clear peace settlement.

That said, the limitations of the term 'post-violence', must be acknowledged for two important reasons. First, while the end of armed conflict usually entails the cessation of fighting between antagonistic parties, it does not mean that there will be no more physical violence in societies emerging from years of armed conflict. There are plenty of examples indicating that domestic, and other forms of physical violence against women, often increase at the end of armed conflicts (Meintjes et al. 2001; Moser and Clark 2001; Pankhurst 2007). Physical

violence against children, sexual minorities or other vulnerable groups in societies may also persist, if not increase, after armed conflicts officially end. Second, even if physical forms of violence have been largely removed in a society in question, it may still be characterised by structural and cultural forms of violence. Therefore, 'post-violence' is also an inaccurate term as it may imply a situation in which all forms of violence have been removed. However, for simplicity's sake, 'post-violence' is used throughout this thesis in the sense of the more accurate but long-winded term 'post-organised-violence'.

Justice and reconciliation are key ingredients of peacebuilding.

How do justice and reconciliation relate to peacebuilding? This thesis considers justice and reconciliation to be fundamental ingredients of peacebuilding, particularly in its post-violence stages, as preceding studies on the subject have suggested (Pankhurst 1999; Abu-Nimer 2001; Lambourne 2002, 2004). As noted above, justice and reconciliation have often been seen as conflicting objectives in the process of peacebuilding in the aftermath of armed conflict or brutal organised violence; they are nevertheless at the heart of the peacebuilding challenge discussed above: that is, to transform both social relationships characterised with hostilities, and underlying social structures characterised with structural forms of violence. In this sense, justice and reconciliation constitute an essential part of a *positive peace* agenda in post-violence peacebuilding that requires a long-term perspective.

3. The Rwandan Quest for Justice and Reconciliation

The world will soon witness a landmark moment in the history of humanity. The government of Rwanda recently announced that its community-based *gacaca* courts would stop taking new cases as of 31 July 2009 and reaffirmed its

intention to complete the entire *gacaca* operations by the end of the year.³ Since it began operation in June 2002, the government claims, the *gacaca*-based justice system has completed over 1.5 million genocide cases, leaving only a small number of trials on appeal and revision to be completed in the coming months (NT 2009d). Before Rwanda, no nation or international body has ever tried such a huge number of people accused of having committed gross human rights violations.

Fifteen years ago, this tiny landlocked country in Central Africa shocked the world with horrifying images of endless massacres and piles of corpses left along road sides, in church buildings or in schools. An estimated 800,000 people⁴ – more than ten percent of the country's population – were brutally massacred in the space of merely 100 days between April and July of 1994. The great majority of the victims were Tutsi, an ethnic minority, who were labelled as enemies of the state by extremists from the country's Hutu ethnic majority. Irrespective of their ethnic identity, those who stood in the way of the massacres were also killed. It was a genocide orchestrated by Hutu extremists who seized state power and then succeeded in 'secur[ing] the broadest and most public popular participation' of Hutus in the implementation of the genocidal massacres (Cobban 2007, 32). It is this mass-participation of ordinary people that distinguishes the Rwandan genocide from other genocides in the twentieth century.

Drumbl (2000) captured a peculiar challenge posed to post-genocide

³ Reported in Focus on Africa Programme on the BBC World Service, broadcast at 17:00-17:45 GMT (19:00-19:45 Rwandan local time), 24 July 2009. Earlier this year, the National Service of Gacaca Courts announced that all the *gacaca* courts would be closed by the end of June (NT 2009d), but it recently reconsidered its schedule with regard to the completion of the *gacaca* process.

⁴ Although this standard international estimate (UN 1999) is used in this thesis, estimates regarding the victims of the 1994 genocide vary enormously from around half a million to over one million. The question of how many and who were killed in the 100 days is at the heart of the controversy surrounding the 1994 genocide. See Rombouts and Vandeginste (2005, 310-11), Straus (2006, 51, 53); Hintjens (2008a, 23).

Rwanda by characterising it as a 'dualist' post-genocidal society. Drumbi classified societies which have experienced genocide into three types: homogenous, dualist and pluralist (1235-41). The homogenous post-genocidal society is one in which the oppressor group has eliminated the victim group either by annihilating (e.g. Latin America and North America) or driving out of the society (e.g. Germany and Austria after the Nazi Holocaust). The dualist post-genocidal society is where the population is largely divided into the victim group and the oppressor group after mass violence in which a large part of the former was victimized by the offences of a large part of the latter; and despite that, both groups coexist in the same territory, sharing the same social, political and economic institutions. Finally, the pluralist post-genocidal society (e.g. Iraq, Bosnia) is one in which 'the oppressor group continues to coexist with a victim group and a third group' or 'there are several victims or oppressors who must coexist within the same territory or polity' (1239).

As Drumbi (1241-52) explained, Rwanda complies with all the major characteristics of a dualist post-genocidal society. Hutus and Tutsis have no choice but to coexist in the same area as it is almost impossible to have territorial divisions, given that the country is already too densely populated and that they have lived in the same geographical areas for generations. However, the deep Hutu/Tutsi divide is undeniable, given that a large proportion of Tutsis who were in the country in 1994 were massacred in the genocide which involved the broad complicity of Hutus at different levels, from enthusiastically slaughtering people to 'following orders' or 'being coerced to participate' and to 'aiding and abetting' or remaining as passive bystanders (1246). According to Drumbi's thesis, a dualist post-genocide society like Rwanda is susceptible to a recurrence of genocidal violence, and therefore, it is critical to design institutional structures 'to

accommodate both groups, allocate responsibility for wrongdoing, and heal the scars of victims'(1239). The critical challenge here is to strike the right balance between reconciling the two groups and punishing the perpetrators of violence with the understanding that the latter may incite more violence in the future.

It was against this backdrop that the post-genocide government of Rwanda began its search for an innovative approach to transitional justice after pursuing highly punitive justice for some years after it took power in July 1994. Having realised, in the late 1990s, the impossibility of coping with the backlog of 120,000 cases of suspected prisoners through its regular courts, the government set up a system of community-based courts modelled after *gacaca* - an institution described by the government as a traditional mechanism of participatory justice – to reveal the truth about the genocide, to speed up the judicial process and to reconcile the people of Rwanda. In June 2002, the *gacaca* system of 'reconciliatory justice' was officially launched with 80 *gacaca* courts in pilot areas. In January 2005, the system was developed into a nationwide system with over 9,000 *gacaca* courts. Over four years later, the Rwandan endeavour of *gacaca*-based justice is now coming to an end.

Because of its uncompromised policy of maximal accountability for those implicated in the genocide through prosecution and trial, some observers characterise the Rwandan approach to transitional justice as that of punitive or retributive justice (Sarkin 2001; E. Daly 2002; Corey and Joireman 2004). In fact, the Rwandan government ruled out the option of a truth commission as a mechanism for addressing accountability and any application of amnesty as used in the South African Truth and Reconciliation Commission (TRC), arguing that 'only when the guilty had been punished, would it be possible for the victims, as well as the non-guilty, to create a joint future together' (Uvin 2001a, 181).

However, the Rwandan approach to transitional justice is not another set of war crime tribunals modelled after the Nuremberg and Tokyo Trials. As discussed in detail later, Rwanda's *gacaca*-based system represents a third way, fitting neither the non-prosecutorial, truth commission model nor the war crimes tribunal model; models which were once considered incompatible (Roht-Arriaza and Mariezcurrena 2006). This thesis considers Rwanda's *gacaca*-based approach to be instead a complementary, 'multi-faceted approach' (Schabas 2008, 208), developed to address a broad range of transitional justice concerns – establishing criminal accountability, truth-telling, reparations for victims, societal healing and reconciliation – by bringing multiple approaches under one system.

Although the *gacaca* system is certainly a centrepiece of the government's response to the justice and reconciliation challenge in post-genocide Rwanda, it is not the only one. This thesis also examines an array of government efforts implemented under the banner of national unity and reconciliation. Because of its 15-year quest for justice and reconciliation under extremely difficult circumstances, Rwanda is an excellent case study country for examining the threefold thesis question presented at the outset of this chapter.

4. Focus of the Study

In searching for answers to the threefold question presented in the introduction, this study has two main analytical focuses: first, dichotomies often underlying conceptual understandings of justice and reconciliation and second, identity change as a central challenge of justice and reconciliation, particularly in the context of identity-based conflict.

The first focus is concerned with re-examination of widely held dualistic

thinking surrounding the issues of justice and reconciliation in post-violence peacebuilding. As noted above, this thesis assumes that potential tensions between justice and reconciliation can be alleviated by adopting a comprehensive framework of peacebuilding in which the twin goals and processes of justice and reconciliation are defined and pursued in a way which reinforces them both. However, in proposing such a comprehensive and compatible framework, there must be vigorous re-examination of the layers of dichotomies: justice vs. peace; retributive justice vs. restorative justice; and punishment vs. forgiveness.⁵ Through an extensive review of related bodies of literature, this thesis first proposes a working conceptual framework of justice and reconciliation that indicates the possibility of transcending the layers of dichotomies. It then presents an in-depth case study of Rwanda's endeavour to pursue justice and reconciliation together in a compatible way.

While this first major focus emerged from the extensive review of related literature, the second major focus of the study emerged from my fieldwork in Rwanda. As I explored issues of justice and reconciliation with specific reference to post-genocide Rwanda, a dominant challenge facing Rwanda's quest for justice and reconciliation clearly emerged: that of deconstructing the racialised and politicised collective identities of the Rwandan people. The modern history of Rwanda, characterised by cycles of deadly conflict, has culminated in a society sharply divided into two groups with highly politicised ethnic identities, Hutu and Tutsi. In fact, how to overcome the Hutu/Tutsi duality has been a widely discussed subject among scholars on Rwanda. Also, replacing the 'divisive' ethnic identities with a 'unified' national identity has been a central theme of the post-genocide government's unity and reconciliation efforts. This study therefore

⁵ See Chapter 3 for further discussion.

paid particular attention to the interplay between this issue of identity change and the issues of justice and reconciliation in post-genocide Rwanda. This thesis explores the potential role of the justice and reconciliation endeavour in transforming people's collective identities, that have not only been shaped by, but have also significantly shaped, the dynamics of violent political conflict in Rwanda.

5. Research Methodology and Experience

This study utilised a framework of qualitative research, characterised by an emergent and flexible research design, purposeful sampling, data collection with primarily qualitative methods, and inductive data analysis (See Lincoln and Guba 1985; Patton 1990; Kvale 1996). Through the use of qualitative data collection methods, I sought to generate a holistic perspective and descriptive account of the justice and reconciliation processes for the case study.

I began my inquiry with the broadly-defined, open-ended questions indicated at the outset of this chapter. They gradually crystallised into more specific questions addressing critical issues that emerged as my fieldwork in Rwanda proceeded. As compared to a conventional, deductive approach (e.g. questionnaire survey) that aims to measure only a limited set of predetermined outcome variables, the inductive approach used in this research is considered more suitable for studies where important but unknown categories, dimensions and interrelations are likely to exist and thus need to be explored vigorously. This was exactly the case in this study.

5.1. Data Collection

This study is based on three interconnected components of research that correspond with the structure of this thesis: Part I (Chapters 2 and 3) on the

conceptual framework of justice and reconciliation, Part II (Chapters 5 and 6)⁶ on grassroots conceptions of justice and reconciliation in Rwanda, and Part III (Chapters 7 and 8) on the government's strategy for justice and reconciliation. Part I is based on research from theoretical literature relating to: identification of various conceptions of justice and reconciliation that are relevant to post-violence peacebuilding, examination of competing views on the relationship between justice and reconciliation and development of a working conceptual framework for exploring the relationship between justice and reconciliation in post-violence peacebuilding. For this, I tried to synthesise literature on justice and reconciliation from a wide range of academic fields, including peace and conflict studies, political philosophy and ethics, criminal justice, international law and human rights and social psychology.

5.1.1. Grassroots Study

Part II of this thesis is based on fieldwork I conducted in two rural communities which I call by their pseudonyms 'Gitara' and 'Kiberama' sectors during two separate periods of 2002 (April – June and September – December). At the time of my fieldwork, Rwanda was divided into 12 provinces which were further divided into 106 districts, 1,545 sectors and 9,013 cells at the lower levels of its territorial administration.⁷ Gitara and Kiberama were two of 1,545 sectors in the country.

I chose these two fieldwork sites for two main reasons. First, they are located in the former Gitarama Province and the former Gisenyi Province in the

⁶ Chapter 4 is a chapter on the background of violent conflict and genocide in Rwanda.

⁷ Prior to the adoption of this particular administrative structure, provinces and districts were called *préfectures* and *communes* respectively, whereas the names of administrative units lower than *commune*/district remained the same. In January 2006, there were major mergers of administrative units in Rwanda. Since then, the territory of Rwanda has been divided into five provinces: Eastern Province, Western Province, Southern Province, Northern Province and Kigali City. These five existing provinces are further divided into 30 districts, 416 sectors and 2,148 cells.

central and north-western parts of Rwanda respectively. These two regions of Rwanda are distinct from each other in their demographic composition with regard to ethnic groups and their experience with political violence in the past, which have significant implications for peacebuilding processes, particularly those aimed at achieving justice and reconciliation. Second, they were among a few areas in which I had established personal connections through preliminary visits in 2000 and 2001. To gain access to Rwandan informants at the grassroots level, it was crucial to establish relationships with intermediaries who were well connected with local people and were capable of playing the role of research assistants as well as Kinyarwanda – English interpreters. With consideration for these methodological and practical issues, Gitera and Kiberama were judged to be the best fieldwork sites for this study.

The grassroots study focused on local accounts of past political violence and various expectations, intentions and concerns held by a cross section of the local population around issues and processes concerning justice and reconciliation. Major data collection activities conducted were: semi-structured interviews, focus groups and direct observations of related activities.

I conducted semi-structured interviews which involved 48 individuals from a cross section of the local communities (See Appendix 1 for the list of interviewees). The strategy I used for choosing my informants was one of purposeful sampling to address two particular concerns:⁸ The first concern was to maximise the diversity of informants with regard to their experience of the genocide. Focusing on this first factor, at the outset of the grassroots study, I created five categories: 1) genocide survivors; 2) prisoners accused of genocide-related crimes; 3) families of prisoners; 4) so-called ‘old caseload’

⁸ See Patton (1990, 169-183) for the description of the logic and various strategies of purposeful sampling.

refugees,⁹ and 5) those who fall in none of the first four categories, in other words, local residents who were neither directly involved in the genocide nor associated as family members with the people suspected or convicted of genocide-related crimes. To identify informants who fit each of these categories, I made lists of people falling in the first four categories based on the information I obtained from local administrative authorities and representatives of genocide survivors' associations. Since these categories are more or less in line with 'politically correct' ways of identifying Rwandans in post-genocide Rwanda (Mamdani 2001, 266-7), I faced no major problem in identifying informants who fell in each specific group.

However, as I continued my fieldwork, it became apparent that this particular way of categorising Rwandan people has serious limitations, primarily due to two profound reasons. First, there were hidden victims of the 1994 atrocities committed under the auspices of the former genocidal regime; they were victims of so-called 'massacres' or killings of non-Tutsi dissidents and their existence is under-recognised in Rwandan society. Second, I came across a significant number of local residents who identified themselves as collective victims of atrocities allegedly committed by the Rwandan Patriotic Front (RPF), as well as the Rwandan Patriotic Army (RPA), the national army created after the RPF took power. Thus, in the latter stages of fieldwork, I carried out data collection to capture the views of these two categories of people, even though they overlapped with each other and with some of other categories discussed above.

The second concern was to seek information from a network of people who

⁹ Tutsi refugees who had fled to neighbouring countries between the late 1950s and the early 1970s and came back to Rwanda after the RPF victory in July 1994. In the two fieldwork sites, I identified only two families which fell into this category.

were connected with each other around issues of justice and reconciliation. This was to gain an organic view of the issues in relation to the specific inter-personal/group context involved through, for example, interviewing one genocide survivor first, then actual or suspected perpetrators who killed his family, and then their family members. Inputs from my research assistants with insider's knowledge about social relationships within the local population were essential in order to gain a general view of who was linked with whom, and in which particular way, in each sector.

The semi-structured interview format was flexible with regard to the number of informants (one individual or a few members of the same family together), the number of times a person was interviewed and the length of each interview (60 to 90 min). Most of the interviews were done inside the house of the informant(s) without the presence of anybody outside his/her household members, myself and my interpreter. Interviews with prisoners were conducted at secluded places, prepared by prison authorities. I conducted follow-up interviews with 16 informants – as many as five interviews with some of them - to expand upon and/or verify information given during the first or subsequent interviews. The interviews were conducted with interview guides prepared beforehand to provide a framework within which I could develop questions to explore their views in depth.

I also conducted four focus groups (90 min. each) with lay judges of local *gacaca* courts (a group of eight for Gitera and a group of nine for Kiberama) and with community mediators (a group of eight for each sector), the people who were elected by local residents to help them resolve various kinds of disputes in their daily lives (a group of eight for each sector). Settings of focus groups varied. I relied on the *conseiller* of each sector to invite the participants of each focus

group. We met in the backyard of the sector office for three of the four focus groups, while for the remaining one, we met in the classroom of a local elementary school. During each of the focus groups, I asked the participants to discuss how they understood their roles either as lay judges or as community mediators and to outline the various challenges or concerns they faced in their roles.

I assured my informants in the grassroots study that I would treat information confidentially and would not reveal their identities in any materials I would produce based on my fieldwork. I did not tape-record interviews and focus groups out of concern that attempting to record their voices would make them taciturn, given the sensitive nature of the research subject. Throughout this thesis, I use pseudonyms for names of most places below the province level and for all the grassroots informants and research assistants/interpreters to protect their identities.

5.1.2. Government Policy Study

Part III is an outcome of the preliminary fieldwork of August – October 2001 and the primary fieldwork in 2002 (April – June and September – December) as well as persistent follow-up research on the evolution of the government's efforts at justice and reconciliation in subsequent years up to August 2009. The analysis of Part III covers a 15-year period from the time the RPF-led transitional government was formed after the 1994 genocide. The focus of the fieldwork in 2002 was to explore the conceptual framework of the government's efforts at justice and reconciliation, particularly the process of 'reconciliatory justice' through *gacaca* courts and an array of efforts under the banner of 'national unity and reconciliation'.

There are five different types of data I used for my description and analysis

in the chapters constituting Part III. First, I conducted semi-structured interviews with a total of 22 officials of various government institutions (See Appendix 2): the National Service of Gacaca Jurisdictions (currently called National Service of Gacaca Courts or NSGC), the National Unity and Reconciliation Commission (NURC), the Ministry of Justice, the Office of the Prosecutor General, the National Executive Secretariat of Community Service (SETIG), the Ministry of Local Government and Social Affairs (MINALOC) and the National Commission for Human Rights (NCHR). I interviewed 18 officials during the primary fieldwork of 2002 and four officials in the follow-up research in January 2009.

The focus of the interview was to explore the conceptual underpinning of the government's justice and reconciliation efforts as well as perceived challenges or tensions in the pursuit of justice and reconciliation. I used a similar flexible interview format as outlined above. Most of the interviews with the government officials at the national level were done in English, while at the provincial level, it was necessary to use an interpreter as informants preferred to speak in Kinyarwanda. Most of the government official's interviews were tape recorded and transcribed later. The average interview length was an hour.

Second, I carried out an extensive review of official documents such as relevant laws, policy and planning documents of concerned government institutions, official addresses, media reports, monitoring reports on the *gacaca* process by judicial/penal reform NGOs working in Rwanda, reports written by human rights bodies and academic articles. To capture the evolution of the government approach to justice and reconciliation over the years, it was necessary to research sources from an extended period from the mid-1990s to the present time.

Third, even though the focus of this study is not on the outcomes or

processes of the *gacaca* system, I carried out some direct observations of *gacaca*-related activities. These included an election of lay judges of *gacaca* courts in October 2001, two three-day training programmes for lay judges in May 2002, two pre-trial hearings of *gacaca* courts during a pilot phase in December 2002, and four *gacaca* proceedings at three different locations after the nationwide trial phase was finally launched in July 2006.¹⁰

Fourth, to investigate specifically the government's effort to induce suspected prisoners to confess to their crimes, during the primary fieldwork of 2002, I conducted semi-structured interviews with 20 prisoners (nine who had confessed and eleven who had not confessed) at three different prisons in the country, namely, Kigali Central Prison, Gitarama Central Prison and Gisenyi Central Prison.

Fifth, besides these data collection activities, the analysis in Part III includes my direct observations of various events in Rwanda, particularly genocide commemoration events for six consecutive years, from the tenth commemoration in April 2004. Since October 2005, I have been working in Rwanda for a local NGO that is engaged in grassroots 'healing and reconciliation' projects aimed at rebuilding the lives and relationships of people deeply affected by the genocide and civil war. My work experience in the NGO, and day to day conversations and interactions with Rwandans for the last four years, have augmented my interpretations of the data presented in Part III and throughout the thesis.

5.2. Challenges and Difficulties during the Fieldwork

In the course of the fieldwork for the grassroots study, I remained attentive to

¹⁰ August 2006 and August 2007 in Muhanga district, November 2007 in Kicukiro district and February 2008 in Nyarugenge district.

how I was perceived by the local population in general and my informants in particular. In both Gitera and Kiberama, some informants initially suspected me of investigating genocide-related cases for the ICTR. In Kiberama, at our first meeting in her house, one informant gave me a list of her relatives who she claimed had been abducted by security forces of the post-genocide RPF regime. She appeared to have taken me for an investigator who was concerned with human rights violations not limited to those related to the genocide. I tried to dispel such suspicions and misunderstandings by telling interviewees that I was a student doing research for my PhD degree and that the purpose of the research was neither judicial nor human rights investigation.

Many informants asked me what would be the use of my research for them personally. Whenever I came across such a question, I tried to be honest and sincere with my informant, telling him or her the following: After the completion of my research, I will start working in Rwanda as a peace worker, and doing this research is crucial for me personally, and probably for many other practitioners, to develop an understanding of the challenge of justice and reconciliation in Rwanda. As I, and my research assistants, established a certain degree of trust by talking about ourselves and asking interviewees about their lives, as well as assuring them of the research's confidentiality and anonymity,¹¹ many of them began to tell their stories, quite often passionately. As I continued my fieldwork, it became apparent that many people I met had a strong unfulfilled desire to tell their stories to others.

Of course, this does not mean that they disclosed any information which was useful for this research. Nor does it mean that they shared their views

¹¹ Here I use 'anonymity' as the separation of the identity of an informant from the information he/she provided and 'confidentiality' as the assurance of not identifying an informant publicly (See Frankfort-Nachmias and Nachmias 1996, 88-90).

without reluctance from the outset. As I anticipated, many pieces of sensitive information emerged during the grassroots study. Most of the genocide-related crimes committed in and around the fieldwork areas had not been tried at the time of fieldwork. None of RPF/A soldiers and commanders responsible for atrocities allegedly committed against the local civilian population had been brought to justice at the time I conducted my fieldwork. In August 2009, this is still the case. In post-genocide Rwanda, talking about the past has been a dangerous act for many Rwandans, which could cause them to be imprisoned, incur neighbours' enmity or revenge, or cause irreparable damage to their relationships with their families. Revealing one's views about post-genocide justice and reconciliation is dangerous too, particularly for those with views that are not in conformity with the official line. Thus, many of my informants appeared to have good reason to withhold some information from us, or even to lie to us, although I do not consider this an insurmountable problem for methodological reasons discussed shortly. Also, it was not unusual to see my informants significantly changing what they told us in the course of fieldwork, or even during the same interview. Several informants, for example, first outlined their views of *gacaca* courts completely in accordance with the official line, but later revealed more personal perspectives, which totally contradicted their earlier description.

Another critical challenge during the fieldwork emanated from the use of research assistants/interpreters. It was critical to be attentive to how they were perceived by different categories of grassroots informants, which would have significant effects on the data generated through interviews interpreted by them. For each of the fieldwork sites, I worked with two different research assistants with different ethno-political backgrounds. In Gitera, I worked with 'Alexis' and 'Daniel'. Being a Hutu who grew up in Gitera, Alexis was well connected with

local Hutu families. He also had a few Tutsi friends who survived the genocide in Gitera. His father was known to have hid some Tutsis at his home during the genocide. Daniel grew up as the son of Hutu parents in a rural village located in Gitarama. Due to his 'Tutsi-looking' physical appearance, according to the ethnic stereotypes of Rwanda, he was hunted by *génocidaires* in 1994, while he was a teacher at a school in Gitarama. I asked Alexis to be my interpreter for interviews with Hutu informants and a few Tutsi informants. I worked with Daniel for interviews with other Tutsi informants. It was Alexis who advised me to do so, based on the concern that some Tutsi informants might not be comfortable with expressing their views in Alexis's presence. It was clear that the local community was polarised along ethnic lines, due to the history of ethno-political conflict.

In Kiberama, I worked mostly with 'Emile' but also with 'Joseph' for several interviews. Emile grew up as the son of Hutu parents in Ruhengeri Province. At the time of fieldwork, he lived in Gisenyi town. Emile was not an insider in the community of Kiberama, however, through his close relatives living there, Emile managed to get us connected to other local residents. Joseph was a Tutsi resident in Gisenyi town at the time of fieldwork. He grew up in a rural village in Butare Province. Due to serious harassment against Tutsi students in the early 1990s, he gave up his education at the National University in Butare and fled to Uganda. He returned to Rwanda after the genocide.

At the time of my entry to Kiberama, I was concerned that local genocide survivors might hesitate to express their views during interviews if I used Emile as my interpreter. I thought they would be reluctant to comment on the role of local Hutu residents in the genocide because they were likely to know of Emile's connection to his relatives there. This was a major reason why I decided to do several interviews using Joseph as my interpreter. I thought genocide survivors'

responses were likely to be different depending on which interpreter I used. Contrary to my expectations, I did not notice any significant difference in the way genocide survivors responded, dependent on interpreter, including to questions concerning the implication of the local Hutu population in the genocide and insurgency of 1997-1999.

Instead, I observed significant interpreter's effects on the ways my informants expressed their views concerning the issue of human rights violations committed by the RPF/A. During the interviews I conducted with the help of Joseph, my informants literally shut up when they were asked about the issue. However, when I returned with Emile to the same informants, some of them spoke loudly about the issue. This striking difference, presumably caused by the involvement of different interpreters in the interview process, led me to believe the following: that some of my informants were afraid of speaking about RPF/A violence in Joseph's presence because they suspected he may have a connection with the RPF regime.

These observations I made with regard to interpreters' effects generated valuable data that were incorporated into the analysis of this study. Conducting interviews with the help of interpreters was a great challenge to my fieldwork, but the process helped me to deepen my understanding of the inter-subjective aspect of the act of interviewing, and to confirm the polarisation over the issues of victimhood, justice and reconciliation along ethno-political lines which exist in post-genocide Rwandan society.

5.3. Data Analysis

I began inductive data analysis as an iterative process during the early stages of the fieldwork in 2002. Data collection in later stages focused on the recurring themes that emerged during the earlier stages. Accordingly, the original,

broadly-defined research questions began to focus on more specific substantive issues that emerged, based on on-going field-based analysis. I began deeper analysis after the completion of the primary fieldwork in December 2002. I organised transcriptions of field notes, taped interviews and other secondary data according to their themes. These different data sets were studied all together to examine recurring themes and their interrelationships. This qualitative data analysis process began with coding the data --- that is, an iterative process in which topics or themes were identified and labelled so that they became the basis for category definition.

With regard to the data generated through the grassroots study, major themes around which the data were analysed and coded included: 1) narratives of victimhood, 2) desires for justice and 3) views of reconciliation. In this study, I did not aim to determine factual accounts of what happened or was happening in the selected fieldwork areas. Nor was it my aim to determine which rival accounts advanced by different categories of informants were more plausible than others. Instead, by comparing one set of narratives with other narratives I first identified areas of convergence, divergence or contention. Then, by interpreting them in relation to both local and broader contexts, I tried to uncover 'patterns of meaning' underlying what people shared with me about the research subject. As Fujii (2009, 42) writes, '[h]ow people talk about the world – whether true or not – gives clues as to how they make sense of that world – how it is and how it ought to be'. By conducting a comparative analysis of the competing narratives advanced by different categories of informants, this study has yielded valuable insights about some fundamental assumptions underlying how people perceive the issues of victimhood, justice and reconciliation, and their interrelations in post-genocide Rwanda.

With regard to the study of the government programmes, the data was analysed around the following themes: 1) the government's logic of 'reconciliatory justice' through the *gacaca* system, 2) key aspects of the government's conception of 'national unity and reconciliation', 3) key components of the government's national identity building effort and 4) constraints and tensions within the government's effort at justice and reconciliation. The evolution of the Rwandan approach to justice and reconciliation caused by changes in the government's conceptions was also examined. Data coded with identified themes was further classified into sub-themes, thereby developing a hierarchical category system – a classification system of the data, based on themes that emerged. It was this category system that formed the basis of descriptions and interpretations in Parts II and III.

6. The Structure of the Thesis

This introductory chapter is followed by the remaining part of Part I (Chapters 2 and 3), then Part II (Chapters 4, 5 and 6), Part III (Chapters 7 and 8) and Part IV (Chapter 9). Part I is devoted to developing a working conceptual framework which shows how we might transcend the layers of dichotomies which characterise the dualistic thinking regarding justice and reconciliation in post-violence peacebuilding. Chapter 2 undertakes the task of conceptualising reconciliation in post-violence peacebuilding. Chapter 3 discusses various conceptions of justice that are deemed relevant to our analysis in this study and examines a spectrum of views on the justice – reconciliation relationship. Chapter 3 then proposes a working conceptual framework which is used in this study.

Part II is the first part of a case study of Rwanda's quest for justice and

reconciliation. Chapter 4 is a background chapter which presents an overview of the history of ethno-political conflict in Rwanda. Chapter 5 presents conflicting narratives of victimhood that were advanced by adversarial ethno-political identity groups, identified in the fieldwork communities. Chapter 5 goes on to examine the nature of contestation over the issues of victimhood and how they interplay with issues of ethnicity in the communities. Chapter 6 presents the grassroots study's results detailing the conceptions of justice and reconciliation, and their relationship, as expressed by people with varied experiences of the genocide and other types of political violence.

Part III constitutes the second part of the case study focusing on government-led justice and reconciliation efforts in post-genocide Rwanda. Chapter 7 outlines a significant policy shift from a punitive approach to a reconciliatory one to post-genocide justice, with particular reference to the *gacaca* system. The chapter discusses *gacaca*'s unique, potentially reconciliatory features but points out a huge discrepancy between reconciliatory *gacaca* justice in theory and in practice. Chapter 8 examines the government's efforts for national unity and reconciliation, focusing on the overarching theme of national identity building. The chapter reveals fundamental tensions within the efforts.

Part IV (Chapter 9) is a closing chapter that synthesises key findings and arguments of the preceding chapters and discusses lessons from Rwanda's experience examined in this study.

PART I

THE CONCEPTUAL FRAMEWORK FOR EXPLORING JUSTICE AND RECONCILIATION IN POST-VIOLENCE PEACEBUILDING

CHAPTER TWO

CONCEPTUALISING RECONCILIATION IN POST-VIOLENCE PEACEBUILDING

1. Introduction

Reconciliation is not only a highly elusive, but also a vigorously contested, concept. Schreiter (1998, 13) writes, '[t]here is no agreed upon definition of reconciliation in human societies'. There are a few major reasons why this is the case. One reason concerns a wide variation in the contexts in which reconciliation takes place. Schreiter observes:

[T]he specific circumstances for which reconciliation is needed have a profound effect on the very meaning of reconciliation itself. Who needs to be involved, what needs to be overcome or undone, what will count for truth and justice in the new situation, and what is deemed to be the end of the process: all of these affect what reconciliation means. (ibid)

Bloomfield (2006, 10) identifies this 'contextual variance' as a major source of terminological confusion surrounding reconciliation. The nature and meaning of reconciliation varies significantly according to which level of reconciliation we talk about: intra-personal, interpersonal, intra-group/communal, inter-groups/communal, national or international.

The lack of a universal definition of reconciliation may also be attributed to the existence of diverse cultures in human societies, each of which shapes people's understanding, attitude and behaviour. Different religious and cultural traditions provide different conceptions of reconciliation (See Augsburg 1992, Gort et al. 2002). Furthermore, there may be a wide variation in how

reconciliation is conceived even within each cultural or religious tradition.¹

The lack of consensus about what reconciliation means is a notable problem among scholars and practitioners of post-violence peacebuilding. A decade ago, Pankhurst (1999, 240-1) pointed out that at least five different meanings of reconciliation – all associated with English linguistic definitions - were being used in different contexts of peacebuilding, with no clear distinction from each other and often in combination:

- 1) Restoration of friendly relations between the parties to conflict;
- 2) Settlement of a dispute;
- 3) Cessation of opposition to, or hostilities against, the other;
- 4) Acceptance of an unpleasant situation or decision, which requires a certain sacrifice or compromise; and
- 5) Harmonisation of two things in conflict, for example, different versions of truth.

This confused use of the term 'reconciliation' is still apparent today despite the fact that in the last decade it has gained much greater recognition among national governments and international organisations alike, as a crucial element of post-violence peacebuilding and reconstruction (Bloomfield 2006, 5).

In the last several years, a number of authors, including international legal scholars, philosophers, psychologists and conflict resolution and peacebuilding scholars, have attempted to provide greater clarity to the concept of reconciliation in the context of post-violence peacebuilding (e.g. Kriesberg 1999, 2001, 2004; Digeser 2001; Govier and Verwoerd 2002; Lambourne 2002; Dwyer 2002; Bloomfield et al. 2003; Bar-Tal and Bennink 2004; Hermann 2004; Villa-Vicencio and Doxtader 2004; Bloomfield 2006; Govier 2006; Daly and Sarkin 2007). These authors have strived to clarify the concept of reconciliation,

¹ See, for example, Schreier who describes differences between Protestant and Catholic conceptions of reconciliation (1998, 13-4).

but remain divided over which particular conception of reconciliation should be promoted in societies emerging from protracted violent conflict and/or the legacies of political oppression and human rights abuses. Some advocate a 'pragmatic' conception of reconciliation, which rejects such notions as psychological healing and forgiveness. Others maintain that, although idealistic, significant psychological and attitudinal changes within the concerned population are essential to reconciliation, if it is to serve as a solid foundation for sustainable peace.

The goal of this chapter is to offer a conceptual framework that is useful for discussing the complex challenge of post-violence reconciliation in this thesis. The chapter first identifies and explains three analytical dimensions that are deemed useful for clarifying various conceptions of reconciliation. Then, the chapter introduces different conceptions of reconciliation from the growing body of reconciliation literature. The purpose of this examining these different conceptions of reconciliation is not to produce a single 'best' definition of reconciliation but rather to highlight the complex nature of reconciliation. The chapter also examines the complex relationship between the distinct, and yet interconnected, concepts of reconciliation and forgiveness. At the end, the chapter presents a conceptual framework of reconciliation which properly recognises its dynamic, multi-dimensional and multi-level nature.

2. Three Analytical Dimensions that Clarify Reconciliation

An examination of the reconciliation literature shows some disagreement regarding the basic vision of reconciliation and other surrounding conceptual issues. However, it is still possible to identify key analytical dimensions that help conceptualise post-violence reconciliation more precisely. The following sections

describe three such analytical dimensions; namely, the level of reconciliation, the degree of reconciliation and reconciliation as a process and/or goal.

2.1. Levels of Reconciliation

Reconciliation may take place in a wide range of contexts. Several authors have stressed the need for distinctions between different levels or units of reconciliation (Kriesberg 1999; Govier and Verwoerd 2002; Hermann 2004; Amstutz 2005; Bloomfield 2006; Govier 2006; Daly and Sarkin 2007). The notion of reconciliation, albeit with different meanings, can be applied to various levels of human societies, from individual to communal, and to national or international. Daly and Sarkin (2007, 41-2) discuss 'reconciliation at the level of the individual who strives to reconcile himself or herself to an event', 'interpersonal reconciliation, as between a victim and a perpetrator of political violence', communal reconciliation 'within or among communities that constitute civil society' and reconciliation at national and international levels. The nature and meaning of reconciliation significantly varies according to the level at which it is sought.

Interpersonal reconciliation is probably most frequently encountered in daily life between, for example, members of the same family (marital partners, siblings, parents and offspring) after a period of estrangement. Examples of such interpersonal reconciliation appear in the parable of the prodigal son in Luke's Gospel and in the Old Testament account of Joseph reconciling with his brothers.² As both of these stories vividly demonstrate, interpersonal reconciliation is often accompanied by richly emotional exchanges between the parties, expressed by apologies, forgiveness, passionate embraces, kisses and

² See Luke 15: 11-32 in the New Testament and Genesis 45: 1-15 in the Old Testament of the Bible.

tears.

Some authors rightly point out the importance of not conflating this familiar form of interpersonal reconciliation with reconciliation between large groups of people at the national or international levels (Govier and Verwoerd 2002; Govier 2006; Bloomfield 2006). While intimate emotional exchanges may characterise interpersonal reconciliation, it does not seem plausible to expect similar psychological ingredients (at least with the same intensity), from reconciliation at the large-group level.

Such reflection led some to consider that 'rich' psychological and attitudinal elements such as mutual acceptance, mutual trust and shared values should be detached from the notion of reconciliation at the macro level. However, this kind of dichotomous understanding of micro versus macro reconciliation seems to be misleading on certain grounds. First, emotions and attitudes are also relevant to large-group reconciliation (Govier and Verwoerd 2002, 198; Govier 2006, 17). Second, reconciliation occurs at various levels which are interconnected and often complementary (Rigby 2001; Govier and Verwoerd 2002; Bloomfield 2006; Govier 2006; Daly and Sarkin 2007). Thus, psychological and attitudinal dimensions remain in analysis of communal and national reconciliation in this thesis.

2.2. Degrees of Reconciliation

The process of reconciliation can be seen as a continuum in the sense that 'there can be degrees of reconciliation rather than just its presence or absence' and that 'there are strong and weak versions of reconciliation (Ross 2004, 200). Crocker (1999, 60) describes reconciliation as a continuum from 'thin' to 'thick' while others prefer the terms 'maximalist', 'intermediary' and 'minimalist' to distinguish between different degrees of reconciliation (Amstutz 2005;

Bloomfield 2006). No matter which specific terms are used, the degree of reconciliation refers to the extent to which the emotions, attitudes and values of conflicting parties change from enmity to friendship or harmony. Thus, 'strong' or 'thick' reconciliation is psychologically more demanding than a 'weak' or 'thin' reconciliation.

Crocker (1999, 60) describes three different forms of reconciliation ranging from 'thinner' to 'thicker'. The least demanding 'thin' form of reconciliation in a post-violence context is non-violent coexistence 'in the sense that former enemies comply with the law instead of killing each other'. Amstutz (2005, 99) says that this minimalist conception is 'a thin, undemanding ethic that involves an end to fighting but not necessarily the resolution of the issues that led to war'.

According to Crocker, at the 'thick' end of the continuum, is a form of reconciliation characterised by notions like 'forgiveness, mercy, a shared comprehensive vision, mutual healing, or harmony' (ibid). Amstutz (2005, 99) says that this maximalist version of reconciliation represents 'a demanding process that involves the ending of enmity and the restoration of friendship through the reformation of people's cultural values and political attitudes'. What matters is not merely behavioural change underlying the cessation of hostility but a profound psychological, attitudinal and moral transformation in a post-violence society towards greater mutual acceptance, trust, shared values and increased cooperation.

Crocker writes of intermediary reconciliation lying between minimalist and maximalist reconciliation, conceived as 'democratic reciprocity' which 'implies a willingness to hear each other out, to enter into a give-and-take about matters of public policy, to build on areas of common concern, and to forge principled compromises with which all can live' (ibid). Amstutz (2005, 100) maintains that

this contrasts with the maximalist conception, which seeks to build a harmonious relationship through the fostering of friendship and shared values. This moderate form of reconciliation seeks peace primarily through enhancing ‘commitment to democratic virtues, including civility, tolerance, and respect for all people, regardless of their political beliefs and interests’ (ibid). Thus, compared to the maximalist conception, it can be seen as an ‘undemanding approach to community order, seeking only a humane, peaceful environment where conflicts are resolved through democratic procedures and where opponents continue respecting each other’s human rights’ (ibid).

Understanding reconciliation as a continuum (from the least demanding thin end to the most demanding thick end) usefully conveys the many different possibilities of reconciliation in various contexts.

2.3. Reconciliation as a Process and Goal

Reconciliation can be defined as either a process or a goal. Whether it should be seen as the former or the latter, or even both, is an ‘unresolved dilemma’ (Hermann 2004, 46). Many authors define reconciliation as a process, albeit from different perspectives. Staub (2000, 376) defines reconciliation as a social-psychological process of ‘coming to accept each other and to develop mutual trust’. Lederach (1997, 151) understands reconciliation primarily as a ‘process of relationship building’ central to every stage of peacebuilding. Govier (2006, 18) defines it similarly as ‘the building or rebuilding of relationships’ in which the development of trust is a fundamental component. Galtung (2001, 3) defines reconciliation primarily as ‘the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relations’. However, reconciliation is often described as a goal or end-state, something to be achieved, for example, harmonious relationships between individuals or

groups characterised by mutual acceptance, respect, trust or even love (Bar-Tal and Bennink 2004, 14-22)³, a state of non-violent coexistence based on tolerance or political compromise to secure a cessation of violence.

Bloomfield, observing that the muddling of these two ideas (reconciliation as a process or a goal) is a major cause of confusion surrounding the term 'reconciliation', proposes a conception of reconciliation with particular emphasis on its process side as relationship-building. He argues that emphasising reconciliation as a goal like 'harmonious existence' creates not only 'unreal expectations of harmony and perfect peace' but also the problem of 'putting pressure, especially on victims, to forgive for the sake of peace' (2006, 28). Govier (2006, 21) rejects the notion of reconciliation as a goal, stating that 'lives and histories do not simply reach a positive goal and remain static' but 'evolve and develop... with further disagreements and ruptures'. She maintains that 'what is crucial for sustainable peace is not that there be no conflicts between individuals and groups but, rather, that within these relationships, people develop the capacity to handle the conflicts that do arise' (ibid). Daly and Sarkin (2007, 258) endorse Govier's view by stating that '[r]econciliation is never achieved but is an ongoing process that nurtures itself'.

The authors who consider reconciliation primarily as a process rightly stress the importance of promoting it as a long-term, and even open-ended, process. Bloomfield (2006, 7) suggests that by doing so, reconciliation as an aspect of post-violence peacebuilding would meet less resistance from stakeholders, especially victim groups who 'rightly suspect a process that might compel them into an end-state which they do not necessarily, or for now, want'.

³ Bar-Tal and Bennink (2004) discuss reconciliation as a psychological process and outcome. Reconciliation as an outcome, in their writing, 'consists of mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes, as well as sensitivity and consideration for the other party's needs and interests' (15).

However, as Bloomfield notes, the conception of reconciliation as a goal may have utility as 'a motivating ideal' or a long-term vision for those striving to overcome the legacies of violent conflict or oppressive regimes (6). Furthermore, as discussed earlier, reconciliation as a goal can be defined without excessive emphasis on social harmony or communal solidarity. Therefore, reconciliation can be discussed as both a process and a goal, provided the long-term and complex nature of the former is rightly recognised and excessive emphasis on the maximalist version of the latter is avoided. The challenge is to avoid conflating these two aspects of reconciliation in analysis of post-violence reconciliation.

This thesis addresses reconciliation primarily as a process of relationship-building underpinned by genuine efforts at transforming unjust structures that often underlie existing relationships between/among parties in conflict. It is important to capture the dynamism and evolution of reconciliation as a gradual process of relationship-building with structural transformation over years, decades or even generations. Rigby (2001, 183) writes:

The necessary conditions for reconciliation between formerly antagonistic parties can only be realized over time. Moving beyond the divisions of the past is a multidimensional process that can take generations, and the different constitutive elements involved in the journey toward reconciliation can rarely be pursued all at the same time.

As Rigby stresses, time is an important dimension of reconciliation.

Understanding reconciliation as a long-term, evolutionary process, this study pays attention to the dimension of *time* as well as those of *level* and *degree of reconciliation*.

3. Many Aspects of Reconciliation

In the literature on reconciliation, different authors approach the concept of reconciliation from various theoretical and cultural/religious perspectives. Some discuss reconciliation from an overtly Christian perspective while others attempt to describe it in secular terms. Some discuss reconciliation with a strong emphasis on its psychological aspect while others discuss it primarily in political terms. This section discusses various aspects of reconciliation which are particularly relevant to the case study of the justice and reconciliation in post-genocide Rwanda.

3.1. Reconciliation as Inner Healing

Reconciliation is often described through the therapeutic metaphor of healing. As already noted, Galtung (2001, 3) uses the term ‘the process of healing the traumas’ in his definition of reconciliation. Assefa (1997, 46-9) uses the term ‘reconciliation with the self’ to depict the psychological aspect of reconciliation, that is, the healing process through which the survivor of violence regains inner peace and harmony within him/herself. The process of reconciliation in question here is the one at ‘the individual level, the smallest unit recognized in society’ (Daly and Sarkin 2007, 43).

In the midst or aftermath of traumatic violent experiences, people demonstrate various reactions to stresses caused by violence, which may ‘include self-blame, vivid re-expression of the event, fear, nightmares, feelings of helplessness, hypervigilance, depression, relationship difficulties, feelings of social disconnectedness [and] anxiety’ (Hamber 2003, 79). Psychologists highlight the need for psychosocial interventions that are geared toward the healing needs of trauma survivors as they undergo related, but distinctive stages, of recovery; namely, establishing safety, addressing needs of acknowledgement

(especially through remembrance, mourning and truth-telling) and reconnecting with the community (Herman 1992; Yoder 2005).

This psychological aspect of reconciliation primarily concerns positive psychological changes at the level of each individual affected by violence, as the phrase 'reconciliation with the self' implies. However, this intra-personal reconciliation is also interrelated with much higher levels of reconciliation in two profound ways. First, efforts at addressing individuals' needs for healing are likely to be more effective if they are linked to much broader efforts at justice and reconciliation at interpersonal, inter-group/communal and national levels.⁴

Hamber (2003, 81) puts a strong emphasis on this very point:

Psychosocial interventions which operate in a vacuum are less effective than, and cannot in themselves replace the need for, truth, acknowledgment and justice. Bringing perpetrators to justice is an important, legitimate and sometimes essential component of a victim's recovery and psychological healing.

Second, the absence of intra-personal reconciliation through psychological healing may affect negatively much broader or higher levels of reconciliation.

Daly and Sarkin (2007, 44-5) write:

Because individuals are the fundamental elements of society, pervasive trauma throughout a population can impede the reconstruction of the nation at every other level. ... It is incumbent on new governments, then, to foster individual reconciliation when personal trauma is widespread; failure to do so can impede national reconciliation and reconstruction.

Thus, intra-personal reconciliation is arguably the foundation of reconciliation at every other level in a post-violence society.

⁴ See Hamber (2003) and Yoder (2005) for descriptions of such psychosocial approaches to healing.

3.2. Reconciliation as Relationship-Building

In the most common usage, 'reconciliation' refers to the restoration of 'friendly' or 'normal' relations between individuals, groups, organisations or nations after a period of estrangement, dispute or war. The conception of reconciliation underlying this common usage primarily concerns the process of rebuilding relationships between parties (individuals or groups) who are in conflict with each other.

Many authors in the field of conflict and peace studies have adopted definitions of reconciliation somewhat in line with this common usage. Lederach (1997, 24) proposed, more than a decade ago, a conceptual framework of peacebuilding that 'address[es] and engage[s] the relational aspects of reconciliation as the central component of peacebuilding'. Defining reconciliation as a 'process of relationship building', Lederach stresses its centrality not only at the post-settlement stage but also at every stage of peacebuilding, 'providing space and opportunity for encounters at various levels, bringing together people from opposing sides and encouraging them to articulate their past pain and to envision an interdependent future' (151). Kriesberg (2001, 48) also defines reconciliation as 'the processes by which parties that have experienced an oppressive relationship or a destructive conflict with each other move to attain or to restore a relationship that they believe to be minimally acceptable'. Under the leadership of Bloomfield (2003, 12), the International Institute for Democracy and Electoral Assistance (International IDEA) also proposed a conceptual framework of reconciliation that articulated the relational aspect of reconciliation as 'a process that redesigns the relationship'.

Although many other thinkers have adopted, broadly speaking,

relationship-oriented definitions,⁵ there is no agreement among them on the nature of the relationship to be envisaged in post-violence settings. Two different versions of the relationship-oriented conception of reconciliation, one centred on forgiveness and the other focusing on trust, are explored next.

3.2.1. Reconciliation Centred on Forgiveness

The South African Truth and Reconciliation Commission (TRC), which was instrumental in the non-violent transition from the apartheid regime, is probably the best known transitional justice endeavour, which explicitly pursued the goal of national reconciliation. Its legacy has had a significant influence on how the term reconciliation is currently understood around the world (Bloomfield 2006, 23). Through the work of the TRC which he chaired, Tutu (1999, 2001) vigorously championed the centrality of forgiveness in reconciliation. The reconciliation he envisioned was primarily a transaction of remorse and apology on the part of the perpetrator and forgiveness for the perpetrator's wrongdoing on the part of the victim. In his view, the TRC served the nation of South Africa in providing the time and space 'where people told their heart-rending stories – victims expressing their willingness to forgive, and perpetrators telling their stories of sordid atrocities while also asking for forgiveness from those they had wronged so grievously' (Tutu 1999, 209-10). Underlying Tutu's vision of reconciliation is fundamental moral and attitudinal transformation on both sides, for both the perpetrator and the victim. It is for this reason that the forgiveness-centred conception is considered as a 'thick', if not the 'thickest', notion of reconciliation (Crocker 1999, 60).

There is no doubt that Tutu's conception of reconciliation (and to some

⁵ See Love 1995, 9-10; Assefa 1997, 46-7; Govier and Verwoerd 2002, 185; Staub 2000, 376; McCandless 2001, 213; Chapman 2002, 1; Lambourne 2002, 203; Bar-Tal and Bennink 2004, 37; Kelman 2004, 120; Amstutz 2005, 98; Govier 2006, 18.

extent the work of the TRC itself) was informed by the Christian notion of reconciliation in which interpersonal forgiveness is heavily emphasised. It is now known that there was an unresolved disagreement among TRC members concerning its mandate to promote such interpersonal forgiveness (Chapman 2001, 252). Forgiveness-centred reconciliation, however, is not just a preoccupation of those who speak from a religious perspective. Writing from a secular perspective, Jeong (2005, 156) says:

Reconciliation can be generally defined as a process of mutual accommodation comprised of acknowledgement of past wrongdoing and contrition from the perpetrators in exchange for forgiveness offered by the victims.

Scholars discussing reconciliation from perspectives of social psychology tend to focus on the transaction of remorse/apology and forgiveness in their descriptions of reconciliation processes. Montville (1993, 120), for example, stresses the necessity of 'a process of transactional contrition and forgiveness between aggressors and victims' in order for enemy groups in identity conflicts to move towards healing and reconciliation. Fisher (1999, 85) identifies acknowledgement, apology, forgiveness and assurance of non-recurrence of violation as sequenced, essential elements of reconciliation at different levels of society.

Forgiveness-centred reconciliation is often presented in what Govier (2006, 105) calls 'a dichotomized and polarized framework in which one person or group occupies only the role of perpetrator and another occupies only the role of victim'. Since conflicts often involve wrongs committed on both or all sides, forgiveness-centred reconciliation may require mutual forgiveness followed by mutual acknowledgment of the wrongs committed in the course of the conflict.

There has been much debate about whether forgiveness, a concept which,

particularly in Western ethics, has long been considered as a private ethic applicable only to individuals, can be applied to large groups or political communities (See Shriver 1995, Appleby 2000, Digeser 2001, Govier 2002, Amstutz 2005). The core question of the debate is whether the collective, as individuals, can feel remorse, admit culpability as well as give up revenge and accept offenders as human beings with dignity (Amstutz 2005, 74-5). More fundamentally, can attitudes and emotions be attributed to the collective? It is notable that many of those who advocate forgiveness-centred reconciliation hold affirmative views to these questions. Accordingly, they believe that the notion of forgiveness is relevant to reconciliation not only between individuals but also between large groups.

3.2.2. Reconciliation as Trust-Building

Govier and Verwoerd (2002) focus on trust in their relationship-oriented conception of reconciliation. They define reconciliation in terms of 'the building or rebuilding of trust' between parties whose relationships are damaged for various reasons such as wrongdoing committed by one party to the other or by both parties against each other. They argue that trust-building is central to the process of reconciliation because trust is 'essential to viable relationships and conspicuously lacking in alienated or tense relationships' (185). For individuals or groups to maintain healthy relationships and engage in different sorts of undertakings together, there must be adequate trust between the parties. A kind of trust required varies in range and depth 'depending on the context and type of relationship involved' (Govier 2006, 20).

Govier and Verwoerd (2002) present three kinds of reconciliation characterised by the degree of trust in the restored relationship after a rift; namely, friendship, cooperation, and non-violent coexistence. The deepest or

thickest end of the continuum is reconciliation as friendship. This maximalist notion of reconciliation involves the rebuilding of deep trust required for an intimate relationship such as one of close friends or partners. After an act of betrayal or disloyalty, reconciliation is likely to entail 'emotional coming together, apologies expressive of sorrow, and forgiveness' (193). The deep psychological process of reconciliation involved here corresponds to the transaction of remorse/apology and forgiveness discussed earlier.

Intermediary reconciliation requires the depth of trust for cooperation, which 'involves the rebuilding of the kind of trust needed to work together' (194). This may be pertinent to a variety of contexts involving individuals or/and groups who need to rebuild 'enough trust to be able to work together effectively'(ibid).

Reconciliation as non-violent coexistence, which is located at the shallowest/thinnest end of the continuum, is 'the rebuilding of a minimal trust between parties' (195). This minimalist notion of reconciliation sounds plausible in the immediate aftermath of protracted violent conflict. The trust characterising non-violent coexistence is minimal, yet significant given the deep-seated, intense animosity and fear prevailing after most periods of violent confrontation between rival groups. When the inter-group relationship is characterised by this kind of minimal trust, the groups in question are not able to work towards common goals. However, they are able to 'coexist without fear of intergroup violence' based on a fair degree of confidence that 'the other' will not attack them (ibid).

Which kind of reconciliation can we pursue in the context of protracted identity-based conflict? Govier and Verwood note that the maximalist notion, reconciliation as friendship, cannot be plausibly applied to reconciliation at the large-group level. Large group relationships cannot be characterised by the

same deep trust that is required for an intimate, interpersonal relationship (196). Accordingly they argue that either non-violent coexistence or cooperation is a more plausible notion of reconciliation at the large-group level. Amstutz (2005, 99), on the other hand, presents a more optimistic view on the possibilities of thicker/deeper reconciliation even between large groups:

Indeed, as groups pursue actions and demonstrate attitudes that are conducive to the rebuilding of mutual trust and cooperation, alienation, enmity, and distrust among groups are likely to be replaced by cooperation, friendship, and trust, leading to a more peaceful and productive society.

As demonstrated above, the trust-centred conception of reconciliation proposed by Govier and Verwoerd accommodates reconciliation of different degrees of 'thickness', which are applicable to a wide spectrum of human relationships at various levels of society. Building on their work, Amstutz (2005) has proposed a useful conceptual model that integrates the two analytical dimensions of degree and level. He uses the terms 'breadth' and 'depth' instead of level and degree which he defines as 'the number of people involved in reconciliation' and 'the degree to which trust and cooperation have been restored' (98). Amstutz's bi-dimensional model clearly shows conceptions of reconciliation from micro (interpersonal, small group) to intermediary (communal) and macro (national, international) levels with different degrees of depth/thickness in terms of trust, cooperation and shared values among the parties involved in the process of relationship-building after violent conflict.

3.3. Reconciliation as Identity Change

Many contemporary violent conflicts have significant overtones of social identity --- ethnic, racial, religious or regional (Conteh-Morgan 2004, 193). Some of the protracted, deep-rooted conflicts in the world (for example, in Palestine, Sri

Lanka, the Balkans and Northern Ireland) are between identity groups. Even though this is not yet widely recognised in the reconciliation literature, issues of identity are central to the process of building or rebuilding relationships between social groups that had developed deep-seated, intense animosity and fear toward each other (Schirch 2001, 152).

Kelman, with more than three decades experience in applying ‘interactive problem solving’ to the Israeli-Palestinian conflict (1996, 2001, 2005a), is the first scholar who advanced a conception of reconciliation with a particular focus on identity change (specifically, transforming the collective identities of conflicting parties).⁶ Kelman (2004, 113) explains his identity-focused conception of reconciliation in a ‘conceptual model based on three qualitatively distinct processes of peacemaking: conflict settlement, conflict resolution and reconciliation’. Conflict settlement is ‘a process yielding an agreement that meets the interests of both parties to the extent that their respective power positions enable them to prevail’ (117). Whether the settlement is respected or not ‘depends on surveillance – by the parties themselves, in keeping with their deterrent capacities, by outside powers, and by international organizations’ (118). This is largely because the settlement may not be adequately underpinned by a change in public attitude that is often characterised by intense animosity and fear towards the adversary. From the perspective of far-reaching peacebuilding, interest-based settlement of the conflict is just the first step towards sustainable peace, even though it is a necessary step for the cessation of physical violence.

Conflict resolution, according to Kelman, is ‘the process of achieving a mutually satisfactory and hence durable agreement between the two societies’

⁶ It may be possible to discuss Kelman’s identity-focused conception as one of the relationship-oriented conceptions of reconciliation discussed above because he sees identity change in the context of relationship-building between conflicting parties. However, this thesis examines his conception separately because of its great relevance to the challenge of post-genocide reconciliation in Rwanda.

(113). While conflict settlement focuses on interests, conflict resolution 'addresses the parties' basic needs and fears and therefore has a greater capacity to sustain itself overtime' (118). Kelman maintains that conflict resolution in the interactive problem solving framework is designed to build 'working trust between the parties – a pragmatic trust in the other's interest in achieving and maintaining peace' (ibid), which provides the foundation of parties' lasting commitment to the agreement. In other words, in contrast to the interest-based conflict settlement which does not address attitudinal and relational aspects of peacemaking, conflict resolution aims to build 'a new relationship between the parties, best described as a partnership, in which the parties are responsive to each other's needs and constraints and are committed to reciprocity' (ibid).

Reconciliation, according to Kelman, 'goes beyond conflict resolution in that it moves past the level of pragmatic partnership' and 'enables the parties to internalize the new relationship, integrating it into their own identities' (120). He argues that the attitudinal change induced by the process of conflict resolution is not deep enough to bring about a fundamental transformation of the relationship required for sustainable, peaceful interaction between the conflicting parties.

This is primarily because:

[t]he new attitudes are not necessarily integrated with one's preexisting value structure and belief-system – with one's worldview. This means that the old attitudes – including attitudes of fundamental distrust and negation of the other – remain intact even as new attitudes, associated with the new relationship, take shape. (118-9)

At the heart of the process of identity change proposed by Kelman is the process of removing 'the negation of the other's identity as an element of its own identity' (2001, 196). Kelman (2004, 119) elaborates this crucial aspect of

reconciliation as follows:

Changing one's collective identity by removing the negation of the other from it implies a degree of acceptance of the other's identity – at least in the sense of acknowledging the legitimacy of the other's narrative without necessarily fully agreeing with that narrative. The change in each party's identity may go further by moving toward the development of a common, transcendent identity – not in lieu of, but alongside of each group's particularistic identity. [...] What is essential to reconciliation, in my view, is that each party revise its own identity just enough to accommodate the identity of the other.

In the context of protracted identity-based conflicts, discarding the negation of the other from one's collective identity cannot be done easily because it constitutes a central element of each party's identity. As Staub (2001, 170) notes, after decades or even centuries of violent exchanges, each group in conflict comes to define its identity around enmity towards the other ('the other is our enemy, and we are the enemy of the other'). Similarly, the identity of each group may come to be defined around victimhood; 'we are the victim of the other group, and they are our victimizers, not victims'. The negation of the other group's identity as victims or the narrative of their victimhood is deeply entrenched in each group's own victim identity or their own narrative of victimhood.

Therefore, working towards reconciliation as identity change in the context of protracted identity-based conflicts is dealing with 'the dilemma of abandoning some elements of identity without threatening the core of their identity' (Kelman 2004, 121). Kelman (2001, 197) suggests that such a difficult process may be facilitated by helping the conflicting parties to engage in 'negotiation of identity', a process in which 'members of the conflicting parties explore and invent ways of accommodating their group identities to one another'. He has identified five conditions for reconciliation that may help groups in conflict 'negotiate' or reformulate 'their identity so as to accommodate to the identity of the other':

mutual acknowledgement of the other's narrative and humanity, development of a common moral basis for peace, confrontation of history, acknowledgement of responsibility and establishment of patterns, and institutional mechanisms for cooperation (2004, 122-4).

Kelman's conception of reconciliation as identity change is an important addition to the reconciliation literature, highlighting the critical importance of the challenge of identity transformation in the process of relationship-building between conflicting parties, particularly those divided by identity-based conflicts. Describing identity change as the process of integrating new attitudes into 'one's preexisting value structure and belief-system' (119), his work strongly suggests that reconciliation as identity change is a very 'deep' process which must take place in the psyche of each identity group who has a stake in post-violence peacebuilding.

3.4. Reconciliation as Construction of New Social Structures

As explained above, those promoting different versions of relationship-oriented reconciliation focus on changes in emotions, attitudes, values and identities that contribute to cooperative or harmonious relationships between formerly conflicting parties. Some authors disagree with this understanding of reconciliation. They argue that reconciliation should be identified with the structures and institutions required for establishing a sustainable peace environment in the aftermath of violent conflict.

Gutmann and Thompson (2000) as well as Crocker (2000) caution against excessive emphasis on notions like social harmony and communal solidarity in the process of reconstructing society after political violence. Gutmann and Thompson (2000, 36) advance the notion of 'democratic reciprocity', which can be seen as a realistic form of political reconciliation where citizens 'try to justify

their political views to one another, and to treat with respect those who make good-faith efforts to engage in this mutual enterprise even when they cannot resolve their disagreements'. According to Crocker (2000), in democratic reciprocity,

former enemies or former perpetrators, victims, and bystanders are reconciled insofar as they respect each other as fellow citizens. Further, all parties play a role in deliberations concerning the past, present, and future of their country.

According to these authors' views, the greatest challenge for post-violence societies is to reconstruct, or construct for the first time, structures for managing disputes through deliberation and democratic decision making. They caution against an attempt to unduly seek consensus which may result in undermining individual rights and freedoms.

Daly and Sarkin (2007, 187-99) call for redirecting the way reconciliation is conceptualised from emphasising its relational, attitudinal and emotional aspects to emphasising its structural aspects. According to them, the latter structure-oriented conception has some important advantages over the former relationship-oriented conception in the context of national reconciliation. The structure-oriented reconciliation requires less interpersonal confrontation between former enemies or perpetrators and victims because the emphasis on psychological and relational aspects is reduced. Daly and Sarkin maintain that this form of reconciliation does not require 'either that victims forgive or that perpetrators atone or be punished or that beneficiaries of prior injustices provide restitution for their ill-gotten gains' (ibid). Instead, it focuses on 'how the society can be structured to promote the values common to an inclusive democratic state' (ibid). Thus, what matters is not the relationship between the individuals, but the relationship between the individual and the nation.

According to Daly and Sarkin, another advantage in the structure-oriented reconciliation stems from its broader focus and forward-looking nature. They maintain that reconciliation in this structure-oriented conception 'does not demand agreement on specific aspects of the past; rather, it forges agreement on a broad vision of the future' (189). Thus, '[i]nstead of insisting on change for the sake of reconciliation, broadening the focus achieves reconciliation for the sake of change in the future' (ibid).

The structure-oriented reconciliation process advocated by these authors is concerned with reconciliation at the large-group level, national or beyond. Looking at reconciliation in terms of structures and institutions, as they advocate, provides some important insights into the multi-dimensional challenge of post-violence reconciliation at the broader societal or political level. The challenge of reconciliation in post-violence societies is clearly much more than attitudinal change among conflicting parties. As Jeong (2005, 157) says, in addition to alleviating social division, 'the greatest challenge is to reconstruct the social and moral systems that have been devastated by violence'.

3.5. Christian Conceptions of Reconciliation

The Judeo-Christian heritage of the West has played a significant role in the evolution of notions of reconciliation and forgiveness today. As Christianity spread throughout the world, including a large portion of Africa, during the colonial era, it shaped the cultural context in which many people around the world conceive of reconciliation. Christianity has been the predominant religion in Rwandan society for nearly a century. Christian churches, especially the Roman Catholic Church, have had an enormous influence in different spheres of society: political, social, cultural, economic and spiritual.⁷ Thus, it is crucial to

⁷ Melvern (2000, 20) sums up the Church's powerful influence in Rwandan society at the time of

have some understanding of Christian notions of reconciliation to make sense of how Rwandans understand the concept.

Although reconciliation is a prevalent theme in both the Old and New Testaments of the Bible, it is St. Paul's writings that articulated reconciliation most clearly as the central theme of gospel and the essence of Christian faith (WCC 2005, 96-8). Paul portrays reconciliation primarily as God's divine initiative, through the redemptive death of Jesus Christ, to mend the broken relationship with human beings who were alienated from God because of human sin and disobedience (de Gruchy 2002, 45-6).⁸ In their alienation from God, humans became alienated from each other.

In Christian theology, spiritual reconciliation or reconciliation with God is considered to be fundamental to reconciliation at different interconnected levels of human society (Van der Kooi 2002, 106). Assefa (1997, 46-9) discusses interconnections between four dimensions of the Christian notion of reconciliation: spiritual, personal-psychological, social and ecological. The second or psychological dimension of reconciliation (reconciliation with the self) is, according to Assefa, 'a consequence of, or spillover from' the spiritual dimension of reconciliation that allows a person to regain inner peace and harmony within him/herself. Assefa maintains that these first two dimensions of

1994 genocide as follows:

The second largest employer after the state, was the Church. Around the churches there grew schools, health clinics and printing presses for religious tracts. Church attendance was high [...]. Not less than 90 % of the population was Christian, and more than half of those were Catholic'. The leadership of many Christian denominations were largely discredited by their implication in the genocide. However, Churches as institutions still register the great majority of the Rwanda population as their followers even in post-genocide Rwanda.

⁸ 'But God demonstrates his own love for us in this: While we were still sinners, Christ died for us. Since we have now been justified by his blood, how much more shall we be saved from God's wrath through him! For if, when we were God's enemies, we were reconciled to him through the death of his Son, how much more, having been reconciled, shall we be saved through his life! Not only is this so, but we also rejoice in God through our Lord Jesus Christ, through whom we have now received reconciliation' (Romans 5: 8-11). Also see other Biblical texts which deal with the notion of reconciliation, particularly, Ephesians 2: 11-22 and Colossians 1: 19-21.

reconciliation are fundamental to the third and social dimension of reconciliation --- reconciliation of human beings and that of different human groups. Those who have been reconciled with God, and thereby acquire inner peace and harmony, are led to share with their fellow human beings the mercy and forgiveness they have been given so that their relationships are also restored. Finally, the fourth and ecological dimension of reconciliation concerns the relationship between humans and the non-human creation of God. This kind of reconciliation is required, says Assefa, for the early three dimensions of reconciliation to be fully realised. First, 'humans cannot be fully reconciled with God while living in conflictual, disrespectful and abusive relationships with His creation'. Second, to fully reconcile with the self and acquire inner peace and harmony s/he has to maintain 'a relationship of respect and care for nature and ecological systems' on which material being depends (48).

The World Council of Churches' Statements on Mission (1980-2005) point out that the Christian notion of reconciliation 'presupposes the experience of broken communion [...] in the form of estrangement, separation, enmity, hatred, exclusion, fragmentation [and] distorted relationships' (WCC 2005, 98). What is considered to be essential for the Christian conception of reconciliation, therefore, is 'a very deep-rooted renewal' and a fundamental 'transformation of human relationships' to God, to fellow human beings and to the natural world (ibid). It is not just 'a superficial fixing of distortions' (ibid) or 'a restoration of *the status quo ante*' (Schreiter 1998, 18). Schreiter (1992, 60) stresses this transformative nature of Christian reconciliation:⁹

Reconciliation is about more than righting wrongs and repenting of evildoing. These are surely included, but the understanding of reconciliation

⁹ See 2 Corinthians 5:16 – 21 for the Christian notion of a new creation based on spiritual reconciliation through Christ.

in the Christian Scriptures sees that we are indeed taken to a new place, a new creation. Reconciliation is not just restoration. It brings us to a place where we have not been before.

When applied to post-violence contexts, this Christian notion of reconciliation seeks a profound psychological, moral and spiritual transformation among individuals and groups who live in estrangement from each other so that they may live in friendship, love and harmony.¹⁰ Christian accounts of reconciliation are usually full of notions that are described by Crocker as ingredients of a 'thick' ethically demanding version of reconciliation: forgiveness, repentance, healing, love and harmony.¹¹ It may be said, therefore, that the Christian conception of reconciliation is one of the most demanding on the 'thick' end of the reconciliation continuum discussed earlier in this chapter.

4. Forgiveness and Reconciliation

Forgiveness can hold a wide variety of meanings, particularly that different religious and cultural traditions provide different conceptions of forgiveness.¹²

Writing on cultural variations in forgiveness, Augsburg (1992, 262) observes:

Each culture shapes its understanding of forgiveness from its central values. Harmony calls for a forgiveness of overlooking; justice for a forgiveness of repentance; solidarity for a forgiveness of ostracism; honor for a forgiveness of repayment; dignity for a forgiveness of principled sacrifice.

This thesis uses a secular definition of forgiveness. Deutsch (2000, 58) defines forgiveness as:

[G]iving up rage, the desire for vengeance, and a grudge toward those who have inflicted grievous harm on you, your loved ones, or the groups with whom you identify. It also implies willingness to accept the other into one's

¹⁰ See Isaiah 11: 6-10 which is often quoted by Christians as a vision of 'reconciled world'.

¹¹ See, for example, Assefa (1997), Tutu (1999) and WCC (2005).

¹² See, for example, Augsburg (1992) and Boleyn-Fitzgerald (2002).

moral community so that he or she is entitled to care and justice.¹³

Forgiving is a conscious process by the offended party who wishes to overcome emotions like anger, resentment and hatred as well as to acknowledge a shared humanity with the offender. It does not require forgetting the wrongdoing; rather it requires the offended to remember not 'in a bitter, grudging, and grievance-cultivating way' (Govier 2006, 99) but in a liberating way in which pains, horrors and resentment caused by the wrongdoing no longer haunt him/her. Forgiving therefore entails transformed memories that 'exclude resentment and allow us to "let go" while retaining the knowledge that these things were done, and they were wrong' (Govier 2002, 61).

Forgiving requires neither condoning nor excusing. Condoning what the person did implies that it was not bad or possibly right. On the contrary, acts of offering and receiving forgiveness 'presuppose that wrongs were committed and the person to be forgiven is accountable for doing these things' (Govier, 2006, 97). Similarly, we cannot excuse and forgive people at the same time because we excuse 'when we no longer hold them accountable' while we forgive 'when we hold them accountable but do not excuse' (Augsburger 1996, 28).

If forgiveness of the offender does not preclude 'personal accountability for wrongdoing' and responsibility for assuming 'forgivee obligations' (Little 1999, 79), arguably, it does not even preclude punishment which may be seen as a necessary condition for receiving forgiveness from victims and being reintegrated into the community. Therefore, forgiving the offender does not mean

¹³ Similarly from a secular perspective, Govier (2006, 96) identifies the following as the 'fundamental elements of forgiveness':

- 1) one overcomes any anger, resentment, and vindictiveness that one has felt in response to being wronged;
- 2) one relinquishes any sense of grievance and injury resulting from that wrong;
- 3) one locates the wrong in the past, as distinct from the present and the future;
- 4) one allows to the wrongdoer a fresh start; and
- 5) one comes to accept the wrongdoer as a human being with positive potential, capable of entering with oneself into a relationship of moral equality.

that the offended must give up the right to justice through legal systems or other means. Deutsch (2000, 59) notes that it does not contradict with punishment so long as the punishment conforms to 'the canons of justice and be directed toward the goal of reforming the harmdoer so that he or she can become a moral participant in the community'. Govier (2002, 175, n9) also maintains that, 'forgiveness is not incompatible with punishment; what forgiveness rules out is enduring resentment and hostility against an offender'.

4.1. Competing Views about Forgiveness and Reconciliation

As noted earlier, forgiveness and reconciliation are considered by many (especially those from societies with a Judeo-Christian history) as closely associated concepts. This does not mean that those who see a close connection between the two concepts support the idea of forgiving a perpetrator who committed a horrible crime for the sake of reconciliation. For example, partly because of a strong influence of Christianity in society, many Rwandans think that reconciliation cannot be completed without the victim's offering forgiveness. This does not mean that all of them support the idea of forgiving perpetrators of serious crimes like genocidal massacres. Instead, those who cannot conceive of forgiving genocide perpetrators equally cannot conceive of the possibility of reconciliation between the victim and the perpetrator because they believe forgiveness is a precondition of reconciliation.

Authors writing about reconciliation are divided in their views on its relationship to forgiveness. Broadly, they adopt three positions. The first position stresses the centrality of forgiveness in reconciliation (described in relation to the forgiveness-centred and Christian conceptions of reconciliation). According to this view, forgiveness is necessary for reconciliation at both the micro and macro levels.

The second position considers forgiveness as only relevant to interpersonal reconciliation but not applicable to reconciliation between large groups or political communities. Bloomfield (2006, 29) argues:

At the broader societal or political level, what is required is a more pragmatic, and less ambitious, process involving the development of effective working relations: “political reconciliation.” This does not require forgiveness or mutual love.

As indicated in this statement, those taking the second position caution against what they see as the erroneous tendency to consider an emotional element like forgiveness as a condition of reconciliation at the macro level.

Those who take the third position argue that reconciliation should not be dependent on forgiveness at either the micro or macro levels. Dwyer (2003, 108) forcefully rejects both the first and second positions as ‘unrealistic’:

It seems to me that any conception of reconciliation – at either the micro- or macro-level – that makes reconciliation dependent on forgiveness, or that emphasizes interpersonal harmony and positive fellow-feeling, will fail to be a realistic model of reconciliation for most creatures like us.

Govier (2006) argues that forgiveness and reconciliation are conceptually independent and therefore, the latter does not depend on the former. According to her trust-centred conception of reconciliation, forgiveness is not necessary for reconciliation (89). Conflicting parties may live in a state of non-violent coexistence without forgiving each other, but they must develop trust enough that each party is confident that the other party will not attack them. As Govier argues, then, ‘there is reconciliation in the absence of forgiveness’ (ibid), if the notion of reconciliation in question is relatively thin. She also argues that ‘forgiveness is not a sufficient condition of reconciliation’ (ibid). To illustrate her position, Govier gives the following example:

For example, an abused woman may forgive her ex-husband and yet be unwilling to reconcile with him to the extent of living with him again and re-establishing their relationship. Such unwillingness could be predicated on the fear that he might lapse and abuse her again. Thus, she could forgive him for injuring her, and yet not trust him to the point of being willing to reconcile. (ibid)

On these grounds, Govier concludes that 'it is possible for people to reconcile without forgiving and to forgive without reconciling' and therefore, '[f]orgiveness is neither necessary nor sufficient for reconciliation' (ibid).

4.2. Forgiveness in Reconciliation at Different Levels

The above accounts show that reconciliation can be conceived in ways that do not require forgiveness as a condition. However, as Govier (2006, 89) points out, it would be a mistake to conclude that 'there is no connection at all between forgiveness and reconciliation'. In various social and cultural contexts, forgiveness plays an important role in reconciliation at different levels. First, at the level of the individual victim, forgiveness may provide psychological healing and liberation from emotions such as rage, grudge and the desire for revenge towards one's victimizer (intra-personal reconciliation as inner healing).

Second, forgiveness may also be helpful for reconciliation at the interpersonal level as mitigation or removal of negative emotions towards the other is likely to help build or rebuild positive relationships between the victim and the perpetrator, or the parties in conflict. Forgiveness, in the sense of coming to 'accept the other into one's moral community' (one of the key elements in Deutsch's definition quoted above) is also very significant for interpersonal reconciliation as relationship-building, since it implies preparedness to enter into the process of reconciliation with an adversary so as to build or rebuild 'a relationship of moral equality' (Govier 2006, 96).

Third, forgiveness may facilitate reconciliation even at the inter-group or broader societal level. As noted earlier, there is a widely held view, especially in western societies, which considers forgiveness merely 'as a private ethic, appropriate for confronting personal moral wrongdoing' (Amstutz 2005, 74). Those sceptical about the notion of inter-group forgiveness ask whether it is possible to apply such a seemingly personal process like forgiveness to inter-group relations, not least because unlike individuals, groups have neither a mind or a conscience.¹⁴ Nevertheless, transactions of remorse/apology and forgiveness by either ordinary members, or representatives, of the conflicting groups may help mitigate psychological barriers which inhibit the building of trust needed in cooperative group relationships.

4.3. The Danger of Obligatory Forgiveness

As discussed above, reconciliation and forgiveness may be seen as independent processes and the former can be conceived in a way that does not require the latter as a condition. Forgiveness may come as the fruit of a long-term process of reconciliation. Bloomfield (2006, 24) argues that 'forgiveness must be a later-stage component of reconciliation that may come at a victim-defined point', whereas Daly and Sarkin (2007, 156) suggest that it is 'the last step' in the process of reconciliation. Both seem to agree that forgiveness is not something that others can demand or even expect from victims.

As also pointed out earlier, although it is neither a necessary nor sufficient condition of reconciliation, forgiveness may play a positive role in the process of reconciliation at different levels. If this is the case, the promotion of forgiveness

¹⁴ Responses to key questions raised by those sceptical about inter-group forgiveness are discussed in Appendix 3, primarily based on the work of Govier (2002).

can be an important aspect of the reconciliation process as the case of the South African TRC illustrates. However, it must be noted that the promotion of forgiveness can also undermine the process of reconciliation. When it is done improperly, resistance to the notion of reconciliation is likely to be augmented in some sections of the population, particularly by groups of victims who vigorously demand retribution, or even vengeance.

Crocker (2000, 7) speaks of 'the freedom to withhold forgiveness' in his critique of Tutu's forgiveness-centred reconciliation. If forgiveness is the victims' prerogative, as noted above, surely they have the freedom or the right to withhold forgiveness. However, in practice this freedom is often infringed in many post-violence contexts. Govier (2006, 105) speaks of 'the problem of directed forgiveness' where influential religious or/and political leaders urge victims to forgive by giving them directives when they are not ready to do so. Nobody, of course, can be forced to forgive because it is ultimately a personal decision. However, it is often difficult for victims to speak against forgiveness, particularly, when those leaders with authority over them present forgiveness as their duty, based on religious commandment or government directive. Govier observes:

A directive to forgive may be felt by many as a harsh and authoritative order. In their crudest form, such directives may threaten people, insisting that their salvation depends on forgiving. Victims, who may be in the mood to undertake furious acts of vengeance, are asked – or even directed – to forgive because it is their religious obligation to do so. (107)

Govier seems to have Christianity in mind when she speaks of the danger of this extreme form of directed forgiveness.¹⁵ Whether forgiveness should be

¹⁵ See Govier (2002, 158-163) for her analysis of how different religions, namely Christianity, Judaism, Islam and Buddhism understand forgiveness. Also see Wiesenthal's volume *The Sunflower*, which vividly illustrates different conceptions of forgiveness according to different religious traditions (Wiesenthal 1997).

considered an obligation or not is debatable even within the Christian tradition. For example, Zehr (1990, 46) speaks of forgiveness as a *gift* which 'cannot simply be willed or forced, but must come in its own time, with God's help'. However, the conception of forgiveness as an obligation – (a view which can be illustrated in a common saying 'We Christians must forgive because we have been forgiven by God!') seems to be widespread among Christians worldwide. Wink (1998) testifies to one such example from South Africa. In 1988, he led a workshop on non-violence for a group of local church leaders, including both Africans and those of European descent. He found that all of the African participants had an experience of being tortured and then had forgiven their torturers. On the way, those participants described how they had come to forgive their torturers, Wink (1998, 15) reports:

The summons to forgive came, as it were, from outside them, as a command of the gospel that they could not avoid. Much as they wanted to hold on to the desire for "sweet revenge," they felt constrained by their commitment to the gospel to forgive. They could not *not* forgive, because they saw forgiveness as their fundamental obligation to God. They forgave, not for their own sakes, but for the sake of the other. They had to forgive the torturers because *God had already done so*, and was calling them to do the same.

These African Christian leaders probably did not consider the idea, Christians' obligation of forgiveness, as problematic. From their perspective, it was not something they were forced to do by somebody else but something they felt compelled to do out of their own faith. Some victims may come to forgive perpetrators not because they were told to do so but based on free will coming out of their faith or the interests of their own mental health. However, the practice of directed, obligatory forgiveness may cause a fierce resentment in others.¹⁶

¹⁶ The following statement of one South African quoted by Montville (2001, 135) vividly illustrates the point:

Furthermore, the notion of obligatory forgiveness may even mean to some victims - particularly those who, out of their religious belief, feel they must but cannot forgive - nothing but a cruel torture in the name of religion.¹⁷

5. A Synthesis

Reconciliation has many faces; depending on one's perspective, it can be conceived of in many different ways. The challenge is to come up with a conception that captures its complexities and yet at the same time, gives focus and clarity. Now, as a synthesis of the discussion above, a conceptual framework of reconciliation is proposed.

5.1. Four Emphases

This conceptual framework has four emphases. First, reconciliation is addressed primarily as a *process*, not an end-state. In this thesis, reconciliation is defined as *a process of transforming the relationships of parties (victim, offender, identity groups, nations, a state and the victims of its oppression,) to a conflict, which has involved distinctive yet interrelated types of violence (direct, structural and cultural).*

The second emphasis is that post-violence reconciliation is a *complex, multi-dimensional* process with political, emotive, social-psychological, cultural and spiritual dimensions. Building cooperative relationships between conflicting parties cannot be realised or sustained without significant changes in many

What really makes me angry about the TRC and Tutu is that they are putting pressure on us to forgive.... I don't know if I will ever be ready to forgive. I carry this ball of anger inside me and I don't even know where to begin dealing with it. The oppression was bad, but what is much worse, what makes me even more angry, is that they are trying to dictate my forgiveness.

¹⁷ The following statement of one Rwandan Roman Catholic priest, a genocide survivor, indicates that this is a real problem in Rwanda:

Everywhere priests are preaching in favour of a superficial, senseless, unilateral and thus impossible act of forgiveness. I think it is a form of torture for the poor genocide survivors. (quoted in AR/REDRESS 2008, 126)

aspects of society. These include positive psychological changes constituting inner healing of the wounded population, changes in perceptions of, and attitudes towards, *the other*, changes in values and social identities and changes in the political, social and economic structures underlying unjust social relationships. This proposed framework synthesises the *relationship-oriented* and *structure-oriented* conceptions of reconciliation discussed earlier.

Third, reconciliation is a *multi-level* process concerned with different levels of societies from individual to communal, national and international. It is important not to conflate interpersonal reconciliation and political reconciliation as if the exchanges between/among the parties involved were similarly intimate. However, analysis of reconciliation at the larger societal level should not disregard psychological and attitudinal dimensions because reconciliation at different social levels is interconnected and often complementary. The challenge is to pay attention to the interconnected nature of reconciliation at different social levels without conflating them.

Fourth, post-violence reconciliation as a complex, multi-dimensional and multi-level process is inevitably *long-term* or even *open-ended*. One of the greatest challenges to post-violence reconciliation is how to engage the sceptics, especially victims who resist the idea of reconciliation as something imposed by others. This legitimate resistance is to be anticipated in the course of a reconciliation effort. It may be tackled by de-emphasising reconciliation as the end-state of an ideal harmonious relationship but instead, by emphasising it as a *long-term, gradual* process evolving from a 'thin' notion of reconciliation as non-violent coexistence towards 'thicker' notions of cooperation and beyond (Bloomfield 2006, 28).

5.2. Integrating the Three Analytical Dimensions

One coherent conceptual framework can accommodate the above four emphases of post-violence reconciliation by integrating the three analytical dimensions of reconciliation of *level*, *degree* and *time*. As discussed above, Amstutz's *bi-dimensional* model integrates the two dimensions of level and degree, thereby demonstrating the possibilities of various forms of reconciliation from micro to macro levels with different degrees of depth/thickness in terms of trust, cooperation and shared values among the parties involved in the process of post-violence reconciliation (2005, 98). Involving much smaller numbers of people than inter-group reconciliation, interpersonal reconciliation can be seen as a 'narrower' form of reconciliation. Interpersonal reconciliation is also more likely to be 'deeper' or 'thicker' than inter-group reconciliation in terms of psychological, attitudinal and moral transformation as 'individuals can communicate their values, attitudes, and loyalties with greater ease and directness' compared to collectives (ibid). However, it is still possible to conceive of 'broad' reconciliation at the large-group level, which is also modestly 'deep', involving significant psychological, attitudinal and moral changes crucial for mending relationships between social, political or ethnic groups in conflict.

To more fully capture the dynamism of reconciliation as a gradual, incremental process from a 'thinner' to a 'thicker' conception, the dimension of time must be added to Amstutz's *bi-dimensional* model. This proposed *tri-dimensional* model considers the continuum of reconciliation from the minimalist conception to the maximalist conception alongside a timeline that stresses a long-term, gradual process of reconciliation. The model does not suggest that a process of reconciliation must start with the 'thinnest' or least demanding form (such as non-violent coexistence). Rather, it suggests that a

reconciliation process may start with a relatively 'thin' conception deemed 'realistic' in its local socio-political and cultural context. Over years or decades, the same process may evolve into one with a 'thicker', more ambitious conception. This *tri-dimensional* model can be operationalized through an incremental programme which first addresses shorter-term reconciliation objectives that are realistic for different levels of society and gradually shifts to longer-term, more ambitious reconciliation objectives set for different levels of society.¹⁸

5.3. Reconciliation as a Differentiated Process

This review of the rapidly growing literature on reconciliation has attempted to synthesise those aspects that are particularly relevant to analysis of the challenge of justice and reconciliation in post-genocide Rwanda. There can be no prescribed formula for post-violence reconciliation. It has to be accepted that, as Patterson (2002) argues, it is 'a highly differentiated process':

Localized and context-specific attempts must reflect the particular needs and resources of specific communities. Instead of looking for "the best" form of reconciliation possible, we should look for as many forms of reconciliation as possible, with attention to both immediate and long-term possibilities, practical and idealistic goals.

Context-specific voices and the ideas of members of a concerned society should never be confined to a rigid, narrow-focused framework of reconciliation even if it might be convenient for policy makers or external analysts. After all, the process and content of reconciliation must be determined through deliberations by members of the society in question, which is indeed a crucial part of the

¹⁸ I borrowed the notion of an 'incremental programme' from Mani's discussion about 'incremental maximalism' as a 'conceptual and practical framework for rule of law restoration in post-conflict societies' (2002, 170). See Chapter 3 of this thesis for description of 'incremental maximalism'.

long-term process of post-violence reconciliation.

CHAPTER THREE

CONCEPTUALISING THE RELATIONSHIP BETWEEN JUSTICE AND RECONCILIATION IN POST-VIOLENCE PEACEBUILDING

1. Introduction

In the widely acclaimed book, *A Theory of Justice*, Rawls (1971, 1999) states:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is unjust; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. [...] [T]he rights secured by justice are not subject to political bargaining or to the calculus of social interests. [...] Being first virtues of human activities, truth and justice are uncompromising. (1999, 3-4)

As Rawls' statement suggests, justice is often discussed as a fundamental virtue of human society. For centuries, philosophers as diverse as Aristotle, Plato, Kant, Hegel and Rawls have attempted to articulate objective moral principles for guiding this 'uncompromising' virtue. While it is often portrayed as firm, stable or universal in philosophical discourses, justice in reality is an elusive, context-sensitive and intrinsically contested concept (Opatow 2002, 207). The contested nature of justice becomes especially salient under conflict situations. In most conflict situations, 'different sides have different conceptions of what would constitute a just outcome, even if they share an understanding of just principles' (Pankhurst 1999, 241). Moreover, conceptions of justice may change

over time as a conflict evolves, which makes the task of conceptualising justice very problematic (Abu-Nimer et al. 2001, 345). Thus, addressing issues of justice in post-violence peacebuilding is inevitably a difficult and complex process. And yet, justice is a crucial element of post-violence peacebuilding.

The goal of this chapter is twofold: to set out various conceptions of justice that are deemed relevant to our analysis of post-violence justice and to explore its relationship with post-violence reconciliation as discussed in Chapter 2. This chapter first sketches an overview of different dimensions of justice, primarily based on a tri-dimensional framework proposed by Mani (2002): legal justice, rectificatory justice and distributive or social justice. The overview is followed by a discussion of what this thesis proposes to call the three 'R's of rectificatory justice - Retribution, Reparation and Restoration. These are distinctive and yet interrelated components of rectificatory justice. The chapter next describes key aspects of the psychology of justice, primarily based on the framework proposed by Opatow (2002).

The final part of this chapter first presents a range of views on the relationship between justice and reconciliation. As stated at the outset of this thesis, justice and reconciliation are often described as incompatible alternatives. This thesis challenges this view by demonstrating that, whether justice and reconciliation can stand together in post-violence peacebuilding or not, depends largely on how each of them is defined. Some of the seemingly competing conceptions concerning post-violence justice and reconciliation are not necessarily contradictory if they are reconceived in the light of a more inclusive and compatible perspective. At the end, the chapter presents a working conceptual framework which is used in this study for exploring the complex relationship between justice and reconciliation in post-genocide Rwanda.

2. The Three Dimensions of Justice in Post-Violence Peacebuilding

Mani (2002, 3) argues that 'it is as much a political imperative as a social necessity to address issues of justice' in the wake of violent conflicts.

Politically, it is difficult if not impossible for rival sides to agree to terminate hostilities and conclude peace until their major grievances are addressed. Socially, the causes, ramifications and effects of conflict on the daily lives and experiences of citizens make it imperative to address their claims for justice. (3-4)

This thesis focuses on the dimension of rectificatory justice – a process to rectify the wrongs committed in the past – and its relation to reconciliation. Before narrowing down our discussion to one on the relationship between rectificatory justice and reconciliation, it is important to present an overview of the different dimensions of justice that are relevant to post-violence peacebuilding. Mani (2002, 5) argues that it is crucial to address three distinctive yet interdependent dimensions of justice – legal, rectificatory and distributive – as an integral part of peacebuilding, to address not only consequences but also symptoms and causes of conflict. Mani's tri-dimensional model of justice is derived from Aristotle's *Nicomachean Ethics*. In *Nicomachean Ethics* Aristotle first makes a distinction between general and particular justice and then further subdivides the latter into two distinctive forms of justice – rectificatory and distributive justice. Each of the three dimensions of justice in Mani's conceptual framework corresponds to Aristotle's general, rectificatory and distributive justice respectively. The aim of this section is to situate rectificatory justice in a comprehensive framework of post-violence justice and highlight its interdependence with the other two dimensions.

2.1. Legal Justice/The Rule of Law

Legal justice is a concept of justice usually referred to as the rule of law. Often

contrasted with the term 'the rule of man', the rule of law is considered as a very if not the most important principle of political thought in western traditions (Shinoda 2003, 30). Crocker (1999, 56) says that it constitutes 'respect for due process, in the sense of procedural fairness, publicity, and impartiality'. While in recent years restoring the rule of law is widely considered as a key objective of reconstruction efforts in post-violence societies, there is currently no consensus among scholars and practitioners about what it actually means (Mani 2002, 25).

Mani observes that despite persistent confusion in the use of the term, one can discern 'two predominant conceptions' that may be called minimalist and maximalist versions of the rule of law. The minimalist conception is close to the position of legal positivism which values 'the source and formal criteria of law rather than its content' (ibid). She writes:

Traced back to the writings of Aristotle and Plato and, more recently, to the Magna Carta, the concept of the rule of law was devised as a means of protection from the arbitrariness of 'rule by man' and from the abuse of power by the state. Its main purpose was to subject human conduct to rules and consequently guarantee predictability in legal relationships and all interactions within the frame of law. (26)

From a minimalist perspective, what matters is not that the law is morally just but that a government 'is subject to and operates within the law', thereby ensuring 'the protection of the individual from the state' (ibid). This implies that, according to the minimalist conception, the rule of law is maintained as long as the established laws are observed according to regular procedures, even if that entails violations of human rights or other morally unjustifiable consequences. It does not mean that they are necessarily indifferent to values such as equality and human rights. Rather, they consider these values as 'distinctive ideals that are independent of the rule of law' (ibid). In other words, they maintain the value-neutral position (Shinoda 2003, 31) with regard to the substance of the

law.

The maximalist conception, on the other hand, is in line with the position of those adhering to the natural law tradition drawing on Thomas Aquinas who declared that 'a Law, properly speaking, regards first and foremost the order to the common good' (quoted in Mani 2002, 25). Insisting that 'the law has a necessary correlation to morality' (Mani 2002, 25), maximalists consider the rule of law as 'more than mere rule *by* law, and requires more than a mechanistic series of structures and procedures for its realization' (27). In their view, substantive justice is inseparable from formal justice (ibid). Following the maximalist conception, the Organisation for Security and Cooperation in Europe (OSCE) defines the rule of law as more than 'formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression' (quoted in Mani 2002, 28).

Mani argues that the minimalist conception of the rule of law which, in her view, underpins mainstream international rule of law reform efforts, rarely suffices in post-violence societies striving to overcome the legacies of 'systematic and sustained violations of justice, dignity and rights' because it is 'more readily susceptible to manipulation in vulnerable political situations, and is more easily infused with the intent and content that suit ruling regimes' (170). She also suggests that rule of law reforms, which focus on the form and institutions without addressing the actual substance of the laws, would hardly be adequate to consolidate positive peace or peace underpinned by justice, in a comprehensive sense of the term (86).

However, Mani acknowledges that pursuing maximalist rule of law may be a

tall order in the contexts of societies emerging from violent conflicts. It is much more ambitious in scope and aspiration than its minimalist counterpart and consequently, a maximalist rule of law reform is deemed less achievable or more susceptible to failure, particularly in a relatively short timeframe. To address this concern, Mani proposes 'incremental maximalism' as a conceptual and practical framework for guiding rule of law reform programmes in post-violence societies.

Incremental maximalism, in Mani's words, is:

a framework which embeds the rule of law in justice, human rights and values, and which concerns itself with both its form and its substance, with both its institutions and its ethos. This conceptual framework would be accompanied by an incremental programme for its realization, which sets realistic, long-term targets for the gradual achievement of its more ambitious goals. (170)

In short, Mani's incremental maximalism calls for a more robust approach to the rule of law through a long-term, incremental programme through which demanding goals of maximalist conception are pursued gradually.

2.2. Rectificatory Justice

Rectificatory justice concerns the process of 'righting wrongs' committed in the past (Mani 2002, 31). It is, in other words, about responses to the past wrong in order to 'undo' the harm it has caused to a society in general and individual victims in particular. It is therefore a central dimension of justice in post-violence societies that are struggling to come to terms with the legacy of gross human rights violations, war crimes and crimes against humanity.

Rectificatory responses to a wrongdoing vary significantly depending on the context (social, political and cultural), the nature of the wrong and the relationship of the offender and the offended. For example, a father who finds his son having caused damage to his car after driving it without his permission

would probably not bring the case to court, even though he may oblige his son to compensate him for the damage done. However, if the same thing was done by a stranger, the father would probably consider prosecution of the offender.

Similarly, a teenage pregnancy from an extra-marital relationship is likely to invite strikingly different social responses in different cultural contexts: in some countries where Islamic laws are strictly observed, the person(s) involved are likely to incur severe physical punishments, whereas in most western countries, they might be censured verbally or suffer social sanctions, but they would rarely be penalised physically.

While people's responses to the wrongdoing may differ significantly, as these examples indicate, it is possible to identify key rectificatory justice concerns that are applicable to various post-violence contexts. They may be summarised as the three 'R's of rectificatory justice: Retribution; Reparation and Restoration. Retribution may be defined as a theory of, or a justification for, punishment based on the following ontological reasoning: 'wrongdoing must be punished simply because the wrongful act merits condemnation and punishment' (Mani 2002, 33). An approach to rectificatory justice which puts a particular emphasis on this idea of retribution is referred to as retributive justice. Retributive justice is often considered as a predominant approach used in formal criminal justice systems whose primary aim is to identify guilt and impose appropriate punishment on the guilty individual through adversarial judicial processes. Reparation concerns the repair of the injuries and losses which were incurred as a result of violations (Vandeginste 2003a, 145). According to this broad definition, reparation encompasses many similar concepts such as restitution, redress, compensation, rehabilitation and satisfaction. Reparation may take either a material or symbolic form even though material reparation

often carries symbolic significance (146-7). Restoration is a central concept of restorative justice – an approach to rectificatory justice which focuses on the restoration of relationships damaged by crime and the reparation of the injuries caused by crime to victims, communities and even offenders (Van Ness 1996, 23). Although restoration and reparation are often conflated in the writings of many authors, restoration in a strict sense as the ‘re-instatement of *status quo ante*’ can be understood as much more than reparation, which generally means making up for loss or damage which cannot be re-established in a strict sense (Duff 2002, 84).

2.3. Distributive Justice

According to Aristotle’s original stipulation in *Nicomachean Ethics*, distributive justice is concerned with ‘the distribution of honours, of material goods, or of anything else that can be divided among those who share in a political system’ (quoted in Mani 2002, 24). Contemporary scholars have extensively explored different approaches to, and principles of, distributive justice (Mani 2002, 38-46; Folger, et al. 1995, 261). The description of distributive justice in this section relies primarily on the writings of Deutsch, a leading scholar on issues of conflict, cooperation and justice.

Deutsch (1985, 1) describes distributive justice as a concept of justice concerning ‘the fairness of the distribution of the conditions and goods that affect individual well-being’. These goods and conditions can either be considered to be benefits (e.g. services, pay, resources, rights, political power) or costs (e.g. tax, labour, penalty and other social obligations). Deutsch (2000, 42) stresses three principles that are important in distributing benefits and costs at the societal level or the interpersonal level: *equity* (receiving benefits in proportion to one’s contribution); *equality* (sharing benefits equally among all the group

members); and *need* (benefits being allocated in proportion to the level of a person's need).

Which particular principle(s) is, or are considered as, more salient than others depends on different individuals, groups, social classes, ideologies as well as different social contexts (43). For example, in a collectivist community like an Israeli kibbutz, its members get the same pay and standard of living irrespective of their individual work productivity, whereas in an individualistic society like the United States, it is considered to be legitimate for the Chief Executive Officer (CEO) of a private company to earn a thousand times more payment than what its ordinary worker does (*ibid*). The Israeli case may be seen as an example of the equality principle favoured, whereas the American case may be considered as an example of the equity principle favoured so long as there is a consensus among the employees of the company that the CEO is making a far greater contribution to the company's productivity than its ordinary individual worker. Deutsch observers:

Equity is most prominent in situations in which economic productivity is the primary goal; equality is dominant when social harmony, cohesiveness, or fostering enjoyable social relations is the primary emphasis; and need is most salient in situations where encouraging personal development and personal welfare is the major goal. (*ibid*)

These distributive principles are potentially contradictory. For example, the equality principle may be stressed to the extent that it totally neglects unique contributions or the needs of some individual members, consequently undermining the group's productivity and social cohesion. In contrast, the equity principle may be pursued narrow-mindedly in a way that erodes the sense of the equal moral value of every individual constituting the group, consequently undermining social harmony and cohesiveness. On the other hand, these

potentially contradictory principles may be applied in a mutually supportive way: individual differences in terms of contributions and needs can be recognised through a socially harmonious honouring or caring for a specific individual which at the same time affirms the equal moral value of every individual member of the group (ibid).

These distributive principles are important criteria for people to judge the fairness of a distributed outcome. However, they are by no means the only parameters on which people judge whether what they have received is fair or not; they make that judgment in consideration of how their outcome compares with the outcome of other people with similar qualifications in similar situations (ibid). People's sense of fairness, or of deprivation, is based not only on their objective circumstances, but also on subjective psychological factors which include, for example, a perceived gap between one's sense of entitlement and one's actual benefits (ibid).

As Mani (2002, 8) points out, in the context of post-violence peacebuilding, the dimension of distributive justice entails tackling the underlying causes of violent conflict that are often rooted in substantial or perceived injustices with socio-economic, political and cultural dimensions. More concretely, it is concerned with addressing the issues of 'inequitable distributions of and access to political and economic resources' underlying violent conflict (9). Mani argues that the rationale for dealing with distributive justice in post-violence peacebuilding is twofold: averting a relapse into violence and building the foundations of peace, each of which corresponds to the imperative of securing *negative peace* and consolidating *positive peace* in societies emerging from years or even decades of violent conflict.

2.4. The Interrelatedness of the Three Dimensions of Justice

The three dimensions of justice briefly discussed above reflect the multi-dimensional demands of justice in the aftermath of protracted violent conflict. It is crucial for those formulating the policies of post-violence peacebuilding to clearly understand the interdependence of the three dimensions of justice. The pursuit of rectificatory justice through various mechanisms (e.g. criminal justice system, truth commission or other reparation-focused mechanisms) largely depends on the establishment of the rule of law. This is because it is the latter which provides the backdrop of law enforcement mechanisms to pursue the former, for example, to prosecute, arrest and try suspects of human rights violations and incarcerate those found guilty as well as to administer a compensation scheme for victims.

The achievement of rectificatory justice also depends on distributive justice. In cases where one section of the population has suffered institutionalised discrimination and human rights violations for a long period of time, some distributive justice measure may be necessary to enable the disadvantaged group to overcome poverty among its members (Lambourne 2001, 313). Furthermore, rectificatory justice through mechanisms like a criminal justice system and a truth commission is not likely to achieve the goal of restoration unless it is accompanied by systematic measures to eliminate deep-rooted socio-economic inequalities created by unjust structures sustained over generations (Mani 2002, 10).

There are also interrelations between distributive justice and the rule of law. The former depends on the latter since equitable distribution of resources and equal political rights 'cannot be meaningfully instituted unless the normative and institutional framework of a rule of law regime is put in place to safeguard

equitable distributions' (ibid).

The intrinsically interdependent relationships of the three dimensions of justice strongly suggest the need for a multi-dimensional and integrated approach to post-violence justice. Which dimension must be prioritised over the others at what particular stage of the long-term peacebuilding process may vary according to the exigencies of different social, economic and political contexts of the particular post-violence society (11). The failure to address any of the three dimensions is likely to cause efforts to fall short of attaining sustainable, *positive peace*.

3. The Three 'R's of Rectificatory Justice

The three 'R's of rectificatory justice – Retribution, Reparation and Restoration - are distinctive and yet interrelated concepts that are all important in understanding the rectificatory dimension of post-violence justice.

3.1. Retribution

Retribution may be defined as a theory of punishment, based on the following ontological reasoning: 'someone who has done wrong should suffer some penalty *as a result of what he has done* because that suffering is the appropriate consequence to him of the wrongdoing for which he is responsible' (Govier 2002, 15). The retributive justification for punishment, says Brunk (2001, 36), 'is probably the oldest theory of criminal punishment'. It can be attributed to religious ideas about divine retribution for humans who committed moral wrongs or 'sins'. More recently, Kant's deontological philosophy, which considered the punishment of the wrongdoer both society's right and its duty, provided an important theoretical basis of the retributive theory (Mani 2002, 34). For Kant and many other retributivists, punishment is an end in itself, as 'it is a moral

obligation to inflict suffering on a wrongdoer' (Mani *ibid*, 33). Retribution may also be defined as a process of inflicting suffering or harm on a wrongdoer based on deontological reasoning, as well as on the principle of proportionality. The principle of proportionality asserts that the severity of the punishment must be proportionate to the seriousness of the wrong committed (Banks 2004, 113).

Retribution is not a synonym for punishment, even though they are often used interchangeably. Retribution is only one predominant theory of, or justification for punishment (Banks 2004; Brunk 2001).¹ Another predominant theory for punishment is the utilitarian deterrence approach which was popularised by influential utilitarian philosophers such as Jeremy Bentham and John Stuart Mill (Brunk 2001, 39). In marked contrast to the view of most retributivists, considering punishment 'only as a means to an end, and not as an end itself', utilitarians justify punishment 'in terms of its ability to reduce crime and do not focus on the punishment that "ought" to be imposed on offenders' (Banks 2004, 107).

In addition to the ontological justification, some theorists consider retributive punishment as a kind of communicative action which is necessary for society to reassert its moral norms violated by the wrongful act of the offender. For example, Hampton (1992, 8) argues that retributive punishment is required to revalidate the victim's worth which was negated by the offender's act. This sent a false message that the victim was less worthy than the offender. In this view, the community must 'reasserts the truth of the victim's value by inflicting a publicly visible defeat on the wrongdoer' (Minow 1998, 12). Falls (cited in Govier 2002, 18) also writes that retributive punishment is justified primarily because of its

¹ Banks (2004) discusses four theoretical approaches to punishment apart from retribution, namely, just desserts, rehabilitation, incapacitation and restorative justice, while Brunk (2001) also discusses four theoretical approaches to punishment other than the retributive approach, namely, the utilitarian deterrence approach, the rehabilitation approach, the restitution approach and the restorative approach.

communicative function to convey a moral message to the offender that what he did was wrong and blameworthy. Von Hirsch (cited in Banks 2004, 110) understands retributive punishment as censure of the offender to convey the message of society's disapproval of his wrongful act. This censure through criminal law plays the role of communicating to members of society reasons why they should not commit acts defined as criminal. In summary, the central function of retribution is 'to reassert the continuing strength and validity of the moral rule that has been violated' by the criminal act, thereby restoring it among the members of a moral community (Deutsch 2000, 48-9).

3.2. Reparation

Reparation may be best understood as encompassing a range of concepts and measures geared towards repairing damage – not only physical and economic, but also emotional or psychological – which was inflicted by the wrongdoer on the victims and the community at large (Vandeginste 2003a, 145). The importance of reparation is often stressed in connection with the limitations of retributive punishment as a means to redress wrongs done to victims. As discussed above, retribution has an important function of restoring the validity of moral rules that were violated by crime. It may also serve other functions – having, for example, a cathartic effect for members of the moral community affected by the wrongdoing, and/or a reformatory or rehabilitative effect on the offender, (particularly when it takes the form of a compulsory reform programme) as well as a deterrent effect. However, the needs of victims are usually far beyond the scope of retribution. Zehr (2003, 69) writes:

Victims have many needs. They need chances to speak their feelings. They need to receive restitution. They need to experience justice: victims need some kind of moral statement of their blamelessness, of who is at fault, that

this thing should not have happened to them. They need answers to the questions that plague them. They need a restoration of power because the offender has taken power away from them.

Most of these victims' needs outlined by Zehr – the need for truth-telling, restitution, vindication, information and empowerment – fall into the category of reparative needs that require different measures of reparation.

There are different forms of reparation. In the legal and social sciences literature, many different terms are used to refer to similar or identical forms of reparation. Authors including Mani (2002, 113-5), Vandeginste (2003a, 145-6) and Govier (2006, 178-80) seek terminological clarification of reparation-related concepts. This thesis follows the conceptual framework proposed by Govier, to which we now turn.

3.2.1. Restitution and Redress

As the first step to clarification of terms referring to various forms of reparation, it is useful to make a distinction between restitution and redress. Restitution, a term often considered almost a synonym of reparation, is generally referred to as the act of giving back to a person something that was lost or stolen. In international law, the term restitution has been used in the sense of 're-establishment of the situation which existed before the wrongful act was committed' and is considered an important form of reparation 'as it relates to essential "belongings", such as the return of property, the restoration of liberty, citizenship and other legal rights, the return to place of residence and the restoration of employment' (Vandeginste 2003a, 145).

Since there are many things that can never be given back or restored, there are many cases in which restitution is impossible: for example, loved ones who were killed; a watch with strong sentimental value destroyed by somebody; and

the 'lost childhood' of a young boy who was forced to be a child soldier. If we understand restitution strictly as the re-establishment of *status quo ante*, rendering it to victims is impossible in the wake of serious violent crimes. For example, a victim of torture may recover from bodily injuries inflicted on her or even from psychological traumas, but she cannot erase the memories associated with the torture she suffered and carry on with her life as if the torture had never taken place.

When restitution is impossible, redress may be considered to be an important form of reparation. Redress is 'an attempt to do something to right the wrong, even though restitution, in the strict sense, is impossible' (Govier 2006, 179).

3.2.2. Symbolic, Rehabilitative and Compensatory Forms of Redress

According to Govier (2006, 179), redress may take three distinctive forms: symbolic, rehabilitative and compensatory. Symbolic redress is 'fundamentally a matter of expressing recognition that what was done was wrong and that it should not have happened' (ibid). What is at the centre of this symbolic redress is the acknowledgement of wrongdoing and of the human beings injured by it. This acknowledgement, for the victims, is of paramount importance in addressing their fundamental needs discussed above.² Symbolic redress may take a variety of forms (including measures that are referred to as satisfaction in international law terminology): efforts to establish the truth; apologies; sanctions against offenders; and various forms of commemoration such as building memorials, establishing museums and observing a day of remembrance to pay tribute to victims (Vandeginste 2003a, 146; Mani 2002, 115).

² Govier (2006, 48-9) argues that these *aversive* and *existential* forms of acknowledgement are closely connected and of paramount importance in reconciliation.

Rehabilitative redress is geared towards the improvement of the physical and mental health of victims (Vandeginste 2003a, 146). It may entail a range of measures to provide victims with medical and psychological care, as well as legal and social services that can help them recover from their physical and psychological wounds (ibid).

Compensatory redress may be understood as a response to recognise and mitigate the negative effects of damage done to victims. Although compensation usually takes the form of monetary payment to victims, some of the things it attempts to 'compensate' cannot be translated into monetary value, particularly in the wake of serious crimes, as they usually entail irreparable damage which money can never remedy (Govier 2006, 179). Thus, the value of compensatory redress often lies more with the symbolic significance of acknowledging the injuries and losses suffered by victims, and in effect, the wrongs which caused them, than with its actual capability to reduce their negative effects (Minow 1998, 93-4).

3.3. Restoration

Restoration is a central concept of restorative justice – an approach to criminal justice that focuses on the restoration of relationships damaged by crime and the reparation of the damage caused by crime to victims, communities as well as offenders (Van Ness 1996, 23). According to Marshall (2003, 30), restorative justice focuses on restoration: 'restoration of the victim, restoration of the offender to a law-abiding life, restoration of the damage caused by crime to the community'. Braithwaite (2003, 86) also writes: 'Restorative justice means restoring victims, a more victim-centred criminal justice system, as well as restoring offenders and restoring community'.

The accounts of the above authors suggest that restoration is a central

concept of restorative justice. But what does 'restoration' actually mean in the wake of serious wrongdoing? With regard to the restoration of victims, Braithwaite speaks of the restoration of things such as property loss, personal injury, dignity, a sense of security and empowerment and social support (86-7). With regard to the restoration of offenders, he discusses the restoration of dignity, a sense of security and empowerment as well as social support (88) while the restoration of community is described as the restoration of 'harmony between victim and offender' (87) as well as social support available for specific victims and offenders (89).

The main problem with the accounts of Braithwaite and many other proponents of restorative justice is that they tend to conflate restoration with reparation. Both terms may mean the act of mending, rebuilding or giving back something damaged, lost or removed and in some contexts, they are almost synonymous. But restoration is usually understood as a term which, compared to reparation, has more emphasis on a sense of bringing something back to the *status quo ante*. Duff (2002, 84) argues that restoration in a strict sense 'must thus be distinguished from such concepts as reparation and compensation'. He writes:

Restoration requires the reinstatement of the *status quo ante*. A harm was caused, a wrong was done, and its memory might remain: but when restoration is achieved, it is now (apart from memory) as if the harm or wrong had never occurred. Reparation and compensation, by contrast, seek to make up for the loss of what cannot thus be restored. (84-5)

There are indeed significant overlaps between restoration as defined by Duff and restitution defined above as one of the two components of reparation. However, restoration as it is used in the restorative justice literature is a much broader concept than restitution. Restoration encompasses things which are not usually

considered to be issues of restitution: most notably, the restoration of the offender's humanity and the restoration of social relationships damaged by his/her wrongdoing. These include relationships between the offender and his direct victim(s) and between the offender and the community to which he and his victim(s) belong.

Duff argues that the restoration needed after a criminal wrongdoing is not so much related to the material or psychological harm as it is to the normative relationships – relationships defined by normative values such as mutual respect and concern - damaged by the wrongdoing (93). It is indeed inconceivable to restore many of the material things destroyed, damaged or removed by serious crimes such as genocide and other gross human rights violations (for example, lives lost and human bodies disabled). Reparation in the sense of redress might be possible for some of these things, but never restoration in a strict sense. To have greater clarity in our discussion, this thesis adopts a conception of restoration which is clearly distinguished from reparation: restoration that is primarily concerned with the aim of healing social relationships damaged by violations.

3.4. Exploring the Interrelatedness of the Three 'R's

As stated above, the three 'R's of rectificatory justice are considered in this thesis as distinctive and yet interconnected concepts. They are key components of rectificatory justice which warrant due consideration in our analysis of post-violence justice and reconciliation. This does not mean, however, that they are important to the same extent in every context. Rather, different social, political and cultural contexts would require different approaches to rectificatory justice with a varied emphasis on each of the components.

The proposition that the three 'R's are key interconnected components of

rectificatory justice is deeply controversial among scholars and practitioners in the field of criminal justice. While being less concerned with reparation than retribution, many proponents of retributive justice, who demand the imposition of punishment based primarily on the deontological justification, would not reject various reparative measures discussed above so long as such measures remain secondary to retributive punishment. However, they would fervently reject the restoration of a victim-offender relationship, as they believe it is acutely incompatible with their pursuit of retributive punishment. For example, Ashworth (cited in Duff 2002, 83) once argued that we must choose the 'punishment paradigm' over the 'restorative paradigm' based on the premise that 'the pursuit of restorative aims is incompatible with the demands of penal justice' which is understood in retributive terms.

On the other hand, many proponents of restorative justice, especially in their early writings, have stressed the need for rejecting retributive punishment in their endeavour to achieve 'restoration', claiming that 'punitive retribution cannot serve the aim of restoration' (Duff 2002, 83). As Johnstone (2002) and Roche (2007, 82-3) point out, based on their critical review of the restorative justice literature, the tendency to portray retribution and restoration in a crude dichotomy owes much to the writings of some leading scholars of restorative justice who advocated it as an alternative justice paradigm that must replace the conventional retributive paradigm (See Zehr 1990; Braithwaite 2002; Walgrave 2002). Johnstone (2002, 109) summarises key features of the retributive/restorative dichotomy assumed by restorative justice proponents as follows:

Restorative justice is presented as an alternative to punishment; an alternative which eschews any intentional imposition of pain. Hence, restorative justice is distinguished sharply from even the most constructive

versions of retributive justice.

Consequently, these proponents reject retributive punishment or intentional infliction of suffering on the offender as counterproductive to the goals of establishing accountability, repairing material and emotional damage inflicted on victims, and restoring the social relationships ruptured by criminal wrongdoing.

3.4.1. *Beyond the Retributive/Restorative Dichotomy*

In recent years, there has been an increasing awareness in the field of restorative justice that the way retributive and restorative approaches are contrasted as a dichotomy of incompatible alternatives is too simplistic and misleading (Johnstone 2002, 106-10; Roche 2007, 82-5). One significant example of this is Zehr (2002, 58), an influential restorative justice thinker, who shifted ground to acknowledge that his polarised representation of the two approaches was misleading, obscuring substantial areas of common ground. Noting that retribution and restoration 'are not the polar opposites' but 'have much in common', Zehr writes:

Both retributive and restorative theories of justice acknowledge a basic moral intuition that a balance has been thrown off by a wrongdoing. Consequently, the victim deserves something and the offender owes something. (59)

If Zehr's observation is correct, not only restoration, but also retribution, is essentially about the righting of the relationship between the victim and the offender which was ruptured by the wrongdoing. Amstutz (2005, 106) explains this clearly as follows:

According to retributive justice theory, when perpetrators commit an offense against other people, they destroy the fundamental moral and legal equality among human beings. To repair ruptured relationships between victims and victimizers and restore their moral equality, offenders must be diminished through public condemnation, and victims must regain the former moral

status.

As Amstutz argues, if 'retribution is the process by which this fundamental equality is restored' (ibid), it may be conceived as an integral part of restoration.

Increased recognition of the important overlaps between retributive and restorative theories of justice has not settled all the controversies about their relationship. The most prominent controversy seems to be over the role of punishment in the restoration of victims and offenders. In his relative recent writing, Zehr (2002, 59) maintains:

Retributive theory believes that pain will vindicate, but in practice that is often counterproductive for both victim and offender. Restorative justice theory, on the other hand, argues that what truly vindicates is acknowledgement of victims' harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs, and address the causes of their behavior.

In Zehr's view, therefore, retributive punishment, or the intentional infliction of pain on the offender, is a negative and often counterproductive way of addressing the victims' fundamental need for vindication, whereas reparative measures employed in restorative justice constitute a positive and productive way of doing it. Many other proponents of restorative justice seem to have maintained a similar view (Johnstone 2002, 109).

This negative view of retributive punishment among restorative justice proponents has been challenged by retributive theorists who are concerned with restorative aims of criminal justice (Duff 2002, 2003; K. Daly 2002; Miller and Blackler 2000). Duff (2002, 2003) argues for the compatibility between retribution and restoration, as well as on the essential role of retribution for the achievement of restoration. Conceiving of restoration primarily in terms of healing normative

relationships ruptured by the wrongdoing,³ Duff argues that 'restoration is not only compatible with retribution and punishment, but requires it' (2002, 83), as the former is best achieved through the latter, in which the offender is 'burdened by criticism, by remorse, and by the need to make apologetic reparation' (97).

Duff explains that while there can be different ways of repairing the normative harm, what is commonly called for in reparation is a sincere apology by the offender, one which expresses his recognition of the wrong he has committed, his remorse and his desire to reconcile with those harmed by the wrongdoing (87-8). However, the offender's verbal apology alone often does not suffice, especially in the wake of serious wrongdoing; his apology needs to be 'made forceful' by some kind of moral reparation that is necessarily burdensome – 'something that symbolizes the burden of moral injury' imposed on his victims which now he desires to carry himself (90).

Duff (1999, 51-2) argues that this moral reparation can be best achieved through imposing censure on the offender for inducing his moral reform. As a form of such communicative censure, which is best suited for pursuing restorative goals, Duff (2003, 53-4) describes what he calls 'criminal mediation':

It focuses on the offender to be suffered *for* the crime: on what he must do to repair the moral damage wrought by his crime. It is intended to be painful or burdensome, and the pain or burden is to be suffered *for* the crime. The mediation process itself aims to confront the offender with the fact and implications of what he had done, and to bring him to repent it as a wrong: a process which must be painful. The reparation that he is then to undertake must be burdensome if it is to serve its proper purpose. The aim is not to 'make the offender suffer' just for its own sake: but it is to induce an appropriate kind of suffering – the suffering intrinsic to confronting and

³ Duff (2002, 93) writes:

The offender's crime damaged his relationships both with his victim, as a fellow citizen, and with his fellow citizens more generally, by denying those values – of mutual respect and concern – that are supposed to define their civic relations, and that make civic life possible; it is that damage that must be repaired, to restore those relationships.

repenting one's own wrongdoing and to making reparation for it.

The kind of retributive punishment advocated by Duff is very different from that being practiced in regular criminal justice systems that, in his view, are 'neither designed nor apt to serve the properly restorative ends' (2002, 98). For punishment to properly serve the restorative aims, he acknowledges the need for major changes to the current mode of punishment towards one 'with less emphasis on highly coercive and exclusionary sanctions such as imprisonment, and more on community-based communicative sanctions, involving reparation, of the kind which proponents of restorative justice recommend' (Johnstone 2002, 108).

3.4.2. The Possibility of an Integrated Conception of the Three 'R's

Duff's theory of restoration through retribution shows that it is possible to conceive of retribution, reparation and restoration as compatible and closely interconnected components of rectificatory justice. The above discussion suggests that the retributive/restorative dichotomy as described earlier is a false one which is simplistic and misleading, obscuring important similarities and intrinsic relationships between them. Retribution can be conceived of as a means to restoration, particularly when it takes a form which induces moral reparation. As for the relationship between reparation and restoration, distinctions can be made between reparation as a comprehensive concept concerning the repair of the damage caused by the wrongdoing, and restoration as a concept which signifies the re-establishment of *the status quo ante* and which primarily concerns the healing of social relationships ruptured by the wrongdoing. Various forms of reparation discussed above can be seen as an essential means to restoration. These observations suggest that both retribution and reparation can be an integral part of the rectificatory justice process towards

restoration.

4. The Three Contingencies of the Psychology of Justice

This thesis pays special attention to the psychological dimension of justice and its relation to reconciliation. As stated earlier, justice is a context-sensitive, contested concept that is contingent on people's subjective judgments, rather than a certain set of universal moral principles that can be applied to varied socio-economic, political and cultural contexts. Opatow (2002, 207) writes that 'while it is a comfortable convention to describe justice as firm, stable, and unwavering, in reality justice is sensitive to contextual contingencies'. She suggests that these contingencies have been addressed in three lines of psychological research examining 'justice as *what*, *how* and *who*'.

4.1. Justice as What – Distributive Justice

A set of contingencies concerning 'justice as *what*' is addressed in distributive justice, which, as outlined above, is concerned with 'the distribution of the conditions and goods that affect individual well-being' (Deutsch 1985, 1). Conditions and goods that are the objects of distribution can be either those considered to be benefits or those considered as costs. They can also be either concrete or abstract. From a psychological perspective, distributive justice occurs when people in a certain context perceive that the distribution of what is owed and paid is fair. For people to make a judgment about whether or not a distributed outcome is fair, a set of principles are employed consciously or unconsciously for allocating benefits and costs, most prominent of which are, as discussed above, *equity*, *equality* and *need*. These principles are not fixed and are not always deemed to be fair. They are considered 'fair and appropriate when they are attuned to the type, quantity, and quality of goods being

distributed as well as to the social context in which these distributions occur' (Opotow 2002, 207).

4.2. Justice as How – Procedural Justice

Factors concerning 'justice as *how*' relate to procedural justice. Procedural justice is concerned with the fairness of the procedures followed to determine outcomes (Deutsch 2000, 44). Key criteria of procedural fairness include: *consistency* or consistent application of procedures across persons and over time; *bias suppression* or avoidance of self-interest or ideological preconceptions; *accuracy* or use of good, accurate information; *correctability* or provision of opportunities for correcting errors; *representativeness* or participation of all parties in decision making; and *ethicality* or compatibility with basic moral and ethical values (Leventhal 1980 cited in Tyler, et al. 1997, 90-1). Which, amongst these criteria, are considered the most important depends on different social contexts as well as different social goals (Tyler, et al. 1997, 91-2). This suggests that there is no universally fair procedure.

While fair procedures are, in a sense, a means to produce fair outcomes, procedures are psychologically important in their own right (Opotow 2002, 207). The application of fair procedures is known to be an important contributor in building trust in the fairness of outcomes, particularly in situations where it is not clear what fair outcomes actually are (Deutsch 2000, 44). An outcome resulting from procedures that are deemed fair, respectful and allow the voices of participants to be heard, is more likely to be accepted by people even if it is a negative one from their viewpoint (Opotow 2002, 207-8).

4.3. Justice as Who – The Scope of Justice

The scope of justice addresses a set of contingencies concerning 'justice as

who'. It is concerned with who is included in the scope of justice (Deutsch 2000, 49). The scope of justice refers to 'who is inside or outside our psychological boundary for justice' (Opotow 2002, 208). Opotow describes a startling contrast in how we human beings respond differently to injustices affecting those included and excluded from our moral community:

For those inside, concerns about fairness, rights, entitlements, and well-being govern our conduct. For those outside, concerns about fairness, rights, entitlements, and well-being are deemed irrelevant; instead, people who are *morally excluded* from our scope of justice are seen as undeserving, expendable nonentities, or as hated enemies deserving extermination (2002, 208).

Human history is full of cases of oppressed groups who have been excluded from the scope of justice by dominant groups, consequently suffering from inhumane treatment by others: slaves by their owners, indigenous people by colonisers, Jews by Nazis, women by men, children by adults, the physically handicapped by those who are not, sexual minorities by heterosexuals, political dissidents by political authorities, and one ethnic or religious group by another (Deutsch 2000, 50). As Opotow (1995, 348) notes, the bases of social exclusion are diverse, including: ideology, skin colour, gender, age, physical or mental disability, sexual orientation, and ethnic or religious identity.

Opotow (2002, 208) points out that exclusion from the scope of justice becomes particularly salient in the context of violent conflict 'characterized by extreme violence, violations of human rights, and impunity'. As for the consequences of moral exclusion, Opotow explains:

Targets of violence are viewed as outside the scope of justice and eligible for harm; indeed, harm visited upon them can be cause for celebration. Further, because considerations of fairness do not apply to them, their resources can be usurped or destroyed and their family can share their fate. Moral exclusion not only denigrates victims and normalizes and glorifies

violence, but it also justifies impunity. (ibid)

In situations of protracted violent conflict, perpetrating atrocities with impunity against 'enemies' or those *outside* one's moral community may become norms shared by those *inside*.

4.4. The Relevance of Justice as What, How and Who in Post-Violence

Justice

The analytical framework of the three psychology of justice contingencies offers useful insights into our analysis of different approaches to rectificatory justice in post-violence peacebuilding. As noted earlier, even though they are often portrayed as incompatible alternatives, both retributive and restorative approaches to rectificatory justice are concerned with righting the wrongs committed in the past. In order to achieve the common goal of righting past wrongs, both retributive and restorative approaches to justice address 'justice as *what*' and 'justice as *how*', albeit in significantly different manners.

Retributive justice strives for 'justice as *what*' by producing distributive outcomes in terms of just or fair punishments to 'reestablish equity such that the harm offenders have caused will be balanced by harm done to those offenders' (Estrada-Hollenbeck 2001, 68). In order to attain fair outcomes in these terms, retributive justice strives to achieve 'justice as *how*' through strict observance of what is known as due process. Restorative justice, on the other hand, strives for 'justice as *what*' primarily in terms of repaired damage and restored social relationships through reparative measures such as acknowledgment of the wrong and the suffering of victims, or community service and monetary payment as compensation (ibid). From a perspective of restorative justice, 'justice as *how*' is best attained through 'active participation by victims, offenders, and their communities' (74).

When we choose from various models of post-violence justice, such as a retributive model like a trial, a restorative model like a truth-commission or a hybrid model which involves both, we make explicit choices about *what* and *how*. However, as Opatow warns (2002, 212), choices about *who* should be involved in the scope of justice can remain less explicit, particularly in the contexts of deeply divided societies emerging from violent conflicts. Consequently, no matter how retributive or restorative its approach seems, a post-violence justice effort may end up reinforcing impunity concerning the crimes committed against those excluded from the scope of justice, unless the issue of *who* is explicitly addressed and the scope of justice is made fully inclusive. ‘Without moral inclusion’, argues Opatow, ‘procedural and distributive justice may remain inapplicable to victims of violence and may continue to advantage those who were perpetrators of direct and structural violence during conflict’ (215).

5. Conceptualising the Relationship between Justice and Reconciliation

As illustrated, both justice and reconciliation are complex concepts with many faces. Thus, it is not easy to examine the relationships between them without clarifying what we mean by each term and which particular aspects of each we focus on in our exploration. Now that key concepts have been clarified regarding reconciliation and justice, the relationship between justice and reconciliation is explored at the conceptual level.

5.1. Competing Views on the Justice – Reconciliation Relationship

In the still limited, but growing body of literature on this complex subject, there are three competing views on the relationship between justice and reconciliation in peacebuilding: justice and reconciliation as competing alternatives, justice as a precondition of reconciliation, and justice as a component of reconciliation.

5.1.1. Justice and Reconciliation as Competing Alternatives

As discussed earlier, in the immediate aftermath of extreme violence or brutal political oppression, justice and reconciliation are often conceived to be competing alternatives, one of which must be prioritised over the other in the process of reconstructing societies. This kind of dichotomous view on justice and reconciliation seems to underlie some of the recent transitional justice efforts in different parts of the world. The first case in point is the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993. According to accounts provided by Boraine (2000, 389-400), many of those who held key positions in the Hague-based tribunal consistently opposed, or even actively obstructed, the proposal of a joint truth commission put forward by leaders of three ethnic groups on the grounds that such an effort would undermine the work of the tribunal. Hayner (2001, 207-8) also reports that in late 1998, the then Chief Prosecutor, Justice Louis Arbour, lobbied donor countries not to support the Bosnian initiative, or any other reconciliation mechanisms that could interfere with the pursuit of justice through the ICTY, which consequently set back the inception of a truth and reconciliation commission there. These accounts do not necessarily indicate that those opposed to the inception of a TRC in Bosnia assumed that justice and reconciliation were incompatible alternatives. It suggests, however, that they preferred to maintain the ICTY as the only formal rectificatory justice response, at least by the time it completes its work, to the war crimes and other human rights violations committed in the former Yugoslavian republics. They failed to see that the TRC and other possible restorative justice responses could actually complement the work of the tribunal; rather, they saw such non-prosecutorial approaches as something that would undermine or compete with the ICTY's criminal prosecution and trial – the model they believed

to be the best approach to post-violence justice.

Drumbl (2000, 1312-4) criticises this kind of narrow-minded attitude demonstrated by many international lawyers and activists as a symptom of what he calls ‘the globalitarianism of retributive retroactive justice’ – the ideological trend to advocate a universal, legalistic response to genocide and crimes against humanity. According to Drumbl (2002, 7), in the 1990s, ‘[t]here has emerged a dominant (although not watertight) consensus’ within the communities of international lawyers and activists ‘that trials of selected individuals, preferably undertaken at the international level, constitutes the favored and often exclusive remedy to respond to all situations of genocide and crimes against humanity’. This consensus, says Drumbl, entailed the Rome Statute of the International Criminal Court (ICC), the ICTY and the International Criminal Tribunal for Rwanda (ICTR), all of which followed a uniform retributive approach to rectificatory justice after mass atrocities. For those considering the prosecution and trial model as the exclusive remedy for various post-violence situations, the pursuit of justice, in their eyes, is ‘reduced to’ retributive justice. A truth-seeking and reconciliatory mechanism such as a TRC is then considered to be incompatible with their version of justice.

The second case in point comes from post-genocide Rwanda. As will be discussed later, Rwanda’s response to the 1994 genocide was once described by some commentators as ‘justice without reconciliation’ not least because of its firm commitment to prosecute numerous suspects accused of being implicated in the genocide, despite severe criticism from the international community about prolonged detentions without formal charges and trials (Pankhurst 1999, 252; Sarkin 2001, 146). In the immediate aftermath of the genocide, the term ‘justice’ was used with overtones of vengeance on those who shared responsibility for

the mass murder in which approximately 800,000 Rwandans perished. The term 'reconciliation' was considered to be a dirty word with a negative connotation of 'forgive and forget' about a crime which should never be forgotten.

Dichotomous understanding of justice and reconciliation as illustrated by the above examples can be, in many cases, attributable to narrow definitions of each of the concepts employed in such a discourse: justice as retributive punishment of perpetrators of horrible atrocities, and reconciliation as a hasty attempt to make *negative peace* by turning a blind eye to those atrocities committed and their consequences.

5.1.2. Justice as a Precondition of Reconciliation

The literature review of this thesis reveals an emerging consensus in the field of peace and conflict studies that it is difficult to reach authentic reconciliation unless issues of justice are adequately addressed (Assefa 1999, 2001; Estrada-Hollenbeck 2001; van der Merwe 2001; McCandless 2001; Lambourne 2001, 2002, 2004; Bloomfield 2006). Few scholars in the field explicitly support the justice/reconciliation dichotomy discussed above; rather, many scholars acknowledge the central importance of justice to reconciliation.

Among those who agree on the centrality of justice to reconciliation, one prominent view is to understand justice as a precondition of reconciliation. Advocates of criminal prosecution and trial as a primary mechanism of transitional justice in particular, tend to claim that establishing individual criminal accountability for perpetrators of human rights violations is a necessary condition of sustainable peace and reconciliation. There seem to be at least three key elements in their argument. First, in the wake of violent crimes, it is important to address the victims' need to see the perpetrators punished, which 'will bring satisfaction and a sense of closure to the victims, presumably offering

them vindication, acknowledgement, and a sense that “justice has been done” (Govier 2006, 135). Second, it is crucial for a post-violence society to reassert legal norms, which will contribute to eradicating a culture of impunity and to facilitating the emergence of a society based on the rule of law (ibid). Third, it is crucial to establish individual accountability for acts of violence committed in order to alleviate the problem of collective guilt by differentiating between the individuals criminally responsible and those who are not (Fletcher and Weinstein 2002, 598). Without establishing such individual accountability, ‘the entire group of those in whose name atrocities were committed will be deemed collectively accountable’ (589), which would contribute to maintaining, or further entrenching, existing social divisions.

Based on these grounds, the notion of ‘justice as a precondition of reconciliation’ might sound plausible to many people. Few well-intentioned observers dare to argue that reconciliation can be achieved without justice in the midst of a public outcry for justice. However, if the notion is understood in a strict sense, it becomes far more problematic, given that no complete justice can be realised under most circumstances, not only in retributive but also in reparative terms, as discussed above.⁴ The problematic nature of the notion becomes more evident when it is turned into the idea that we must first achieve justice and only then start pursuing reconciliation. Amstutz (2004, 104) argues that this ‘first justice, then reconciliation’ approach cannot be a viable strategy for post-violence peacebuilding because:

the conditions of strict justice – that is, the provisions that insist that punishment should be commensurate with the nature of the offences – can never be fully fulfilled. In effect, by making reconciliation conditional on the prior fulfilment of justice, this approach relegates community healing and

⁴ Govier (2006, 134-5) discusses the problem of a similar notion ‘justice as a necessary condition of peace’ by focusing on the impossibility of complete justice in retributive terms.

the promotion of national unity to a subsidiary role.

Daly and Sarkin (2007, 179) make a more forceful argument against the notion of justice as a necessary condition of reconciliation by maintaining that reconciliation, in many cases, must be 'emerging out of a climate of injustice'.

They go on to argue:

In many instances of transitional "justice," there is no justice – either because there are no trials, or the trials don't produce convictions, or perhaps because there can be no justice for some of the most horrendous crimes that attend political transitions. Yet it is nonetheless necessary for reconciliation to rise up out of the ashes. People must learn to live with each other even though (or because) the state is not accepting the responsibility of ensuring peace. In these cases, reconciliation and justice cannot be interdependent; reconciliation must evolve even in the absence of justice.

As Daly and Sarkin note, what we can consider as a requirement for reconciliation is at best 'some form of *partial* justice' (ibid) and even such partial justice cannot be guaranteed in many contexts of post-violence peacebuilding as a strict condition for initiating the process of reconciliation.

5.1.3. Beyond Truth vs. Justice

Amstutz (2004, 104) claims that the 'first justice, then reconciliation' approach has been 'the prevailing worldview on transitional justice'. However, there seems to have been a remarkable shift in international responses to post-violence justice in the last ten or more years. As Drumbl pointed out, the rise of the 'globalitarianism' of retributive justice yielded the establishment of ad hoc international criminal tribunals for the former Yugoslavia and Rwanda and then the permanent International Criminal Court (ICC). However, during the same period, the world witnessed the well-publicised work of the South African TRC whose architectures and supporters presented it as a promising restorative

alternative to the criminal justice approach. During most of the 1990s, central debates among scholars and activists of transitional justice were more or less characterised by the dichotomous thinking of 'justice versus truth' or 'justice versus peace' (Lutz 2006, 327). However, towards the beginning of the new century, the mode of international responses to post-violence justice has significantly shifted from an *either/or* approach to a *both/and* approach which attempts to address multiple, interdependent goals of justice, truth and reconciliation through a combination of different transitional justice mechanisms, as exemplified in a 'hybrid model' – a TRC coexisting with criminal trials of the most serious perpetrators - adopted in Sierra Leone and East Timor (Roht-Arriaza and Mariezcurrena 2006).

Roht-Arriaza (2006, 8) describes the shift:

The debate about truth versus justice seemed to be resolving in favor of an approach that recognized them as complementary. Even those who had argued strenuously in favor of a non-prosecutorial, "truth-centered" approach recognized exceptions for crimes against humanity, while advocates of prosecution recognized that a truth-seeking and truth-telling exercise could serve as a valuable precursor or complement, even if not a substitute, for prosecutions. This mutual recognition combined with increasing attention at the international level to issues of reparations and structural reform. [...]

This shift is quite significant as a step forward in the direction of a complementary approach to post-violence justice and reconciliation. However, there seems to be a strong need for a sound conceptual framework which underpins the approach.

5.1.4. Justice as a Component of Reconciliation

Over the last ten or more years, several scholars of peace and conflict studies have made a significant contribution to advancing the conceptual understanding

of positive interrelations between justice and reconciliation by promoting the view that justice is a central component of a much broader process of reconciliation. Prominent proponents of this view include Lederach (1997, 23-35), Kriesberg (1998, 1999, 2001) and Bloomfield (2003, 2006).

According to Lederach's conception of reconciliation, justice (in terms of equality, right relationships, making things right and restitution) can be understood as one of the four components of reconciliation, along with truth (in terms of acknowledgement, transparency, revelation and clarity), mercy (in terms of acceptance, forgiveness, support, compassion and healing) and peace (in terms of harmony, unity, well-being, security, and respect). Lederach (1997, 31) recognises 'three specific paradoxes' involved in the pursuit of reconciliation as the overarching process of justice, truth, mercy and peace. The first paradox is concerned particularly with the tension between 'the open expression of the painful past' (the element of truth) and 'the search for the articulation of a long-term interdependent future' (the elements of peace and mercy). The second paradox lies between the act of 'exposing what has happened' (the element of truth) and that of 'letting go in favor of renewed relationship' (the element of mercy). Finally, the third paradox is concerned with the tension between 'redressing wrong' (the element of justice) and 'the envisioning of a common, connected future' (the element of peace). In Lederach's conception, therefore, justice is a component of reconciliation which is in tension with the component of peace, even though, he suggests, they are interdependent and mutually reinforcing ingredients of reconciliation.

Kriesberg (2001, 60) also presents a similar view in his discussion about the four major dimensions of reconciliation: the recognition of the truth; the advancement of peace in terms of individual and group safety and security; the

attainment of justice; and the expression of remorse and forgiveness.

McCandless (2001, 214), on the other hand, proposes a justice-reconciliation conceptual framework that 'prioritizes justice concerns in a process of constructive intergroup relationship building' and 'recognizes that the two share a dynamic interdependent relationship, mutually informing and benefiting each other'. More recently, International IDEA's handbook on reconciliation has proposed the use of reconciliation as an umbrella term for the 'over-arching process which includes the search for truth, justice, forgiveness, healing and so on' (Bloomfield 2003, 12). According to this conceptual framework, justice is an integral part of the 'complementary and interdependent instruments of the overall relationship-building process of reconciliation' (Bloomfield 2006, 11).

Underlying these authors' views of the justice-reconciliation relationship is a conception of justice that is much broader than a singular notion of retributive justice. Lederach's conception of justice in his framework of reconciliation stresses both relational and restorative aspects of justice: equal rights of individuals and groups; relationships based on social justice; righting the wrongs committed; and making redress and restitution (1997, 29-30). McCandless (2001, 212-3) considers three categories of justice: justice of 'ends' or outcomes (distributive justice); justice of 'means' or 'the ways in which justice processes are undertaken' (procedural justice); and 'relational justice' which seeks 'the restoration of the relationship between the victim(s) and the offender(s)'. Bloomfield (2006, 21) proposes a multi-dimensional conception of justice which encompasses notions of retributive justice, restorative justice, 'regulatory justice' or the rule of law, and social or distributive justice. He writes:

Reconciliation and justice are not oppositional. Rather, justice is a core – perhaps, even *the* core – dimension of reconciliation, along with truth-seeking, healing, reparations and development. If justice is defined

multidimensionally, to include not only crime-and-punishment but also the restoration of broken relationships and the underpinning of equality of treatment, of fairness of access, of the rule of consensual law – in short, as the basis of a fair society – then it is possible to relocate the so-called trade-off between reconciliation and justice as a less problematic calculus between different (and complementary) aspects of justice. (29)

By adopting a multi-dimensional definition of justice and conceiving it as a critical component of reconciliation, the tension between justice and peace – two important goals in peacebuilding that are often mistakenly described as competing alternatives – can be alleviated.

6. Beyond the Dichotomies: The Working Conceptual Framework

The following conceptual framework has emerged as a synthesis of the discussions of Chapter 2 and the present chapter. The framework advances an inclusive and compatible approach to post-violence justice and reconciliation by re-considering the dichotomous thinking of the relationships between some of the key related concepts addressed in the two chapters. It has the following four emphases.

6.1. Justice as a Component of Reconciliation, not a Precondition

Justice is a *component* of reconciliation defined as a long-term/gradual, multi-dimensional and multi-level process of relationship-building in societies deeply divided by the legacies of violent conflicts. While justice is a critical component of reconciliation, the framework does not consider justice a necessary precondition for reconciliation in the sense that no reconciliation effort can be initiated before full justice is achieved. It is clear that there is no authentic reconciliation without the achievement of an optimal degree of justice. However, justice *should not* and in fact *cannot* be seen as a strict precondition for

reconciliation, because, as discussed above, the requirements for full justice cannot be fulfilled in most, if not all, post-violence situations.

6.2. A Multi-dimensional Conception of Justice

In the context of post-violence peacebuilding, justice is better understood as a *multi-dimensional* process towards the realisation of, not only retribution, but also reparation and restoration in the domain of rectificatory justice and the rule of law, and distributive or social justice in societies struggling to overcome the legacies of armed conflicts, political oppression and exclusion. These multiple dimensions of justice are intrinsically interdependent in post-violence peacebuilding. Consequently, an effort at post-violence justice requires a multi-dimensional, integrated approach with a long-term perspective.

6.3. A Relationship of Dynamic Interaction

The proposed conceptual framework considers justice and reconciliation to be in a relationship of *dynamic* interaction, which is not to suggest that the two are always mutually reinforcing in positive ways. The framework rejects this notion as well as the notion of 'justice and reconciliation as incompatible alternatives'. Rather, it recognises the need to pay attention to the complex interactions between justice and reconciliation, either potentially reinforcing, or undermining/competing with each other in different socio-economic, political and cultural contexts.

The pursuit of justice influences the process of reconciliation, and at the same time, the process of reconciliation influences the process of pursuing justice. As Abu-Nimer et al. (2001, 345) rightly point out, parties who have been in conflict often 'redefine their sense of justice' in reaching reconciliation. On the other hand, a particular conception of justice pursued as part of national

reconstruction policies would partly determine the nature of reconciliation in a given post-violence society. Thus, it is important to conceptualise the justice – reconciliation relationship in terms of dynamic interactions.

6.4. Beyond Dichotomous Thinking

The proposed framework recognises potential tensions which may arise in the pursuit of justice and reconciliation in post-violence peacebuilding. However, it postulates that such potential tensions can be alleviated to a significant extent, or overcome, by re-considering the dichotomous thinking of the relationships between some of the key concepts addressed in Chapter 2 and the present chapter.

First, we addressed the peace/justice dichotomy. While the tension between justice and peace in the reconciliation process is a real concern for many people in different post-violence contexts, it is not a fundamental contradiction. As discussed above, this particular kind of tension can be largely alleviated by defining and then pursuing justice as a multi-dimensional concept encompassing the notions of retribution, reparation and restoration in the domain of rectificatory justice as well as the rule of law and social or distributive justice.

Second, we also addressed the retributive/restorative dichotomy, which is, as indicated above, still pervasive among proponents of the restorative justice movement. However, as Duff maintains, retribution and restoration are not necessarily incompatible concepts. The working conceptual framework for this thesis rejects the simplistic retributive/restorative dichotomy and instead, recognises the possibility of integrating *retribution, reparation and restoration* into a long-term gradual process of post-violence reconciliation.

Third, as an issue closely related to the retribution/restoration dichotomy,

we addressed the punishment/forgiveness dichotomy, which is often presented as the basis of the dichotomous view of justice and reconciliation. Chapter 2 demonstrated that forgiveness and reconciliation are conceptually independent and in a strict sense, the former is not a necessary condition of the latter, even though the two are closely interconnected and often mutually reinforcing processes. There is a common perception that one cannot punish and forgive a wrongdoer at the same time, and thus there is no reconciliation unless the victim gives up the right to see the victimizer punished. However, forgiving someone does not necessarily mean that one has to abandon the need for retributive punishment which, according to Duff, is fundamental for restoring relationships that were damaged by the wrongdoing.

In the following chapters, this working conceptual framework will guide our exploration of a case study of the post-genocide Rwandan effort at justice and reconciliation. At the same time, the validity of the framework will be assessed in the light of specific challenges that emerged during field research in Rwanda.

PART II

**GRASSROOTS VIEWS OF JUSTICE AND
RECONCILIATION
IN POST-GENOCIDE RWANDA**

CHAPTER FOUR

BACKGROUND:

ETHNO-POLITICAL CONFLICT AND GENOCIDE IN RWANDA

1. Introduction - Genocide, not Tribal Violence

In 1994, Rwanda, a tiny landlocked country in Central Africa, became the scene of unspeakable horrors of human cruelty. In the space of merely 100 days after the shooting down of the aircraft carrying President Juvénal Habyarimana on 6 April 1994, some 800,000 people,¹ more than ten percent of the country's national population, were brutally slaughtered. The victims were mostly from the country's Tutsi minority, the prime target of the genocide. However, tens of thousands of people, at the very least, from the country's Hutu majority and a tiny minority of Twa were also murdered for various reasons, including not participating in the genocide and/or being members of the political opposition which were inclined to share power with the Rwandan Patriotic Front (RPF), a Tutsi-dominated armed political movement at war with the Hutu-dominated government. Perpetrators of the brutal killings, torture, rapes and destruction of victims' properties during the genocide were almost exclusively Hutus and the vast majority of them were 'ordinary people' with no prior records of violent crime (Straus 2006). The number of the perpetrators has not been established to date, but the number of those convicted for genocide-related crimes seems likely to be at least several hundred thousand by the time the *gacaca* courts complete their

¹ As mentioned in Chapter 1, there is no consensus over how many people were killed in the genocide (See footnote 4 of Chapter 1).

operations.²

Many of the perpetrators committed brutal killings in labour intensive ways using low-tech methods such as machetes, nailed clubs or knives. The killings took place, not in concealed places like remote concentration camps, but in schools, churches, hospitals, by the road side or on hilltops, in front of the eyes of the public (Mamdani 2001, 5-6). These gruesome images of seemingly endless massacres led many outside observers to think that the horrifying violence was being driven by 'ancient tribal hatred' (Straus 2006, 18-9). But this 'tribal version of events' was actually one which Hutu hard-line political elites, then orchestrating the genocidal massacres, were trying to disseminate in order to 'diminish their own responsibility' (19). What happened in 1994 was not a spontaneous outburst of tribal violence based on primordial animosities triggered by the murder of the Hutu President. Rather, it was a genocide organised by radicalised Hutu elites as their desperate measure to cling to power in the face of a deepening, multi-faceted crisis.

2. The Evolution of Ethno-political Conflict in Rwanda

The 1994 Rwandan genocide has a complex historical, social, economic and political background. Instead of addressing all the factors which led to the genocide, this chapter focuses on an analysis of the nature of the Rwandan conflict which culminated in the genocide. This thesis considers the history of political violence in Rwanda as a process of deepening ethno-political conflict. When referring to the term 'ethno-political', this thesis puts an emphasis on

² Many academics estimate the number of Hutu perpetrators of the genocide as something between tens of thousands and a few hundred thousand, for example: Prunier 80,000–100,000 (1995, 342 n60); Jefremovas 75,000–150,000 (1995, 28); Straus 175,000–210,000 (2006, 117). The highest academic estimate comes from René Lemarchand who suggests about 10 percent of the Hutu population of 6.5 million participated in the genocide in one way or another (cited in Eltringham 2004, 69).

'political' rather than 'ethnic', since ethnic difference by itself does not cause a conflict. As Conteh-Morgan (2004, 194) notes, ethnic conflict, as such, arguably does not exist: 'What does exist is political, socioeconomic, and other sources of conflict between groups that manifest themselves along ethnic or identity lines'. At the same time, however, due attention to the ethnic dimension of conflict is critical because ethnicity is often used as a 'powerful mobilizing symbol', thereby making ethnic discrimination 'a significant factor in the scope, intensity, and even duration of the conflict' (ibid).

2.1. Primordialist vs. Constructivist Views of Ethnicity

Before setting out our discussion on how ethno-political conflict developed in Rwanda, two opposed views of ethnicity are briefly addressed: primordialism and constructivism. Primordialists consider ethnicity as something given and rooted in common biological and/or cultural heritages shared by the group. According to their view, the group identity is determined by 'factors and endowments held in common by the group, which keep resurfacing to reassert the common emotional bond of the group vis-à-vis other groups' (Conteh-Morgan 2004, 197). Smith, for example, focuses on the following five factors as traits characterising an ethnic group: 'a group name, a believed common descent, common historical memories, elements of shared culture such as language or religion, and either actual, historical, or sentimental attachment to a specific territory' (Smith 1981 cited in Conteh-Morgan 2004, 198).

On the other hand, constructivists consider ethnicity a social construct. Ethnic identities, in the view of constructivists, are not given and fixed but 'formed and re-formed only as instruments to achieve a specific goal' (199). Constructivists maintain that origins of ethnic identities can be often attributed to the consequence of ethnic manipulation by political elites seeking their political

and/or economic objectives. Elites often 'ethnicize' politics to the extent that they 'redefine even nonethnic issues in ethnic terms' (198). Thus, it is 'ethnic elites who play the critical role in influencing the nature of ethnic identities' (ibid).

Although they seem to be totally conflicting analytical perspectives, both primordialism and constructivism may provide useful insights into understanding the complexities of some ethno-political conflicts. For example, constructivism is a useful theoretical framework for analysing the changing nature of ethnicity, its relation to political processes, and its manipulation by elites; primordialism, by focusing on psychological sources of ethnic identity, provides a useful insight into understanding why masses respond to such manipulation by elites, as well as why some people demonstrate strong and durable attachments to their ethnic group (ibid).

2.2. The Emergence of the Hutu/Tutsi Divide

How can we understand the nature of ethnicity in Rwanda? What are Hutu and Tutsi? Is it correct to use them as terms representing ethnic categories? If so, in what sense? There is a great deal of literature on the origins of the terms Hutu and Tutsi, and it is beyond the scope of this thesis to fully examine it.³ Only key aspects of the debate over these terms are outlined here, which is necessary to understand the formation and evolution of the ethno-political conflict in Rwanda.

According to the official discourse of the current Rwandan government, there is, and was, no ethnic difference between Hutus, Tutsis and Twas. They all belong(ed) to one ethnic group, *Banyarwanda*. In pre-colonial times, these social categories of Rwandans were differentiated in terms of occupation and social status. Hutus were farmers; Tutsis were herders; and Twas were

³ See for example, Vansina (2004), Chrétien (2003), Newbury (1988, 1998) and Mamdani (2001).

hunter-gatherers living in forests. Since, in Rwanda, one's social status and wealth was generally measured by the number of cows one owns, Tutsis, who were herders, had higher social status than the other two groups.

Vansina (2004, 134-5), prominent scholar of Rwandan history, explains the background of how 'Hutu' and 'Tutsi' developed into the words indicating farmers and herders respectively. The word 'Tutsi' was first used by a small group of Rwandan herders to distinguish themselves from others. By the time the Nyiginya Kingdom was founded in the seventeenth century it had become a word to indicate the political elite. On the other hand, the term 'Hutu' was first used by Tutsi aristocrats in the court – those calling themselves 'Tutsi' in the sense of political elite - as a name for their servants, with a connotation of people who are 'rough' or 'rude' (134, n35). Then, after the mid-eighteenth century, under Rujugiro's rule, 'Tutsi' and 'Hutu' began to signify 'combatant' and 'noncombatant' in the army respectively. Vansina writes, 'As most noncombatants happened to stem from lineages of farmers, the elite eventually began to call all farmers "Hutu" and to contrast this word with "Tutsi," now applied to all herders, whether they were of Tutsi origin or not' (135). This particular understanding of 'Hutu' as farmers and 'Tutsi' as herders gained greater prominence as the kingdom, controlled by Tutsi aristocrats, was enlarged and the influence of the central court increased.

By the latter half of the nineteenth century, however, Hutu and Tutsi as occupational or class categories were transformed into 'hierarchized social categories' through the introduction of exploitative institutions by the central court. Vansina stresses *uburetwa*, the system of obligatory labour that the chief imposed on his tenants, because of its divisive impact on the Rwandan society. The problem with *uburetwa* lies in its discriminatory nature: only Hutu farmers

were 'obliged to perform the menial work required by the chief of the land, in contrast to the less humiliating obligations of his Tutsi clients'. This system 'seems to have provoked a new awareness across the whole society that resulted in the emergence of the two hierarchized social categories' (135-6). To what extent this 'new awareness' over the Hutu/Tutsi distinctions had gained social and political significance vis-à-vis other social identities by the end of the nineteenth century (before the European colonisation) is contested. Newbury (1998, 10), for example, says that '[c]lan, lineage, and family ties were more important for political interaction', particularly in some regions in which the control of the state had not been fully established. She also maintains that in some areas, it was difficult to differentiate Hutus and Tutsis in terms of their life styles or occupations in pre-colonial Rwanda.

Whatever the origin of the two words is, Hutus and Tutsis do not constitute different ethnic groups in the strict primordialist's sense discussed earlier. Hutus and Tutsis have many social and cultural characteristics in common: They speak the same language, share the same cultural practices and myths, live in the same geographical location and, in most areas, form integrated communities; share the same religions, and belong to the same clans. Moreover, Hutus and Tutsis intermarry even though in most cases such intermarriages take place between Hutu men and Tutsi women (Prunier 1995, 36).⁴ Arguably, in pre-colonial Rwanda, they were not even different class categories in a strict sense. As the previously mentioned explanation by Vansina indicates, not all Tutsis were wealthy aristocrats, while not all Hutus were poor farmers. In some areas, many Hutus owned cows, while many Tutsis cultivated their land

⁴ In pre-colonial and early colonial periods, Taylor notes (1999, 167), 'taking a Tutsi wife was often perceived as a sign of social advancement on the part of a Hutu man' for, to obtain a wife from a Tutsi lineage, which was generally considered to have a high social status, 'one had to become wealthy in bovine capital'.

(Newbury 1998, 10). There was significant variation in social status and wealth within each of the categories. Furthermore, the identities of Hutu and Tutsi were not fixed but fluid. It was possible for a Hutu to obtain the higher socio-political status of Tutsi or for a Tutsi to lose that status by losing his property (Mamdani 2001, 70). Also, by marrying a Tutsi woman after accumulating cattle, a Hutu man could have his children become Tutsis (Taylor 1999, 167-8). In summary, two important observations can be noted. First, Hutu and Tutsi are complex, socially constructed identities, whose social and political salience and meaning changed over time, even during pre-colonial times. Second, Hutu and Tutsi were not fixed social categories with rigid boundaries.

2.3. Racialisation of Ethnicity under the European Colonial Rule

Few scholars dispute the significance of colonial rule in Rwandan politics and society, particularly, on the polarisation between Hutus and Tutsis. Rwanda was first colonised by Germans (1897-1916) and then by Belgians (1916-1962). The Germans exercised indirect rule without interfering with the authority of the king and the existing ruling elites (Gasana et al. 1999, 146). By providing military assistance, German authorities helped the king to conquer the people in peripheral regions, particularly in the north, where there had been many rebellions. The central court had attempted to subjugate people in the north by taking away control over land from local lineages, demanding rents for the use of land and imposing *uburetwa* as a condition for access to the land. This 'created a situation of hatred against Tutsi chiefs and their attendants, and war was avoided only through the fear of German guns' (ibid).

The Belgian colonial administration in Rwanda also adopted the system of indirect rule using the authority of the king and his chiefs. Underlying this indirect rule policy was the shared European understanding of Rwandan society: 'the

Tutsi', a 'superior' minority race originally from north-east Africa was ruling over 'the Hutu', an 'inferior' majority race of native Bantu (Prunier 1995, 10-1). Belgian and German colonisers, missionaries and colonial administrators alike, were under the strong influence of a racial, social evolutionary theory of the time, the Hamitic Hypothesis which attributed all signs of civilisation in Bantu Africa to the Hamite, a 'superior Caucasoid race' (Gatwa 2005; Mamdani 2001; Chrétien 2003). This racist ideology was, in fact, the ideological underpinning of the Europeans' colonial enterprise. It offered a justification for colonial rule in the name of civilising Africa, the land of an 'inferior' race.

In contrast with Germans, who did not interfere with the existing administrative structures established by the Rwandan monarchy, Belgians carried out a number of administrative reforms 'to structure social order, to rationalize and standardize heterogeneous social relations, and to reinforce the powers of the "natural rulers"' (Newbury 1998, 11).⁵ In 1926, the Belgian authorities initiated a reform to streamline the existing complex administrative structures of the kingdom by collapsing three separate types of chieftaincy (over land, cattle and the military) into a single chieftain position, assisted by sub-chiefs (Gasana et al. 1999, 149). In effecting this reform, the Belgian authorities not only reduced the number of chiefs, but also eliminated all the existing Hutu chiefs by giving the posts of chiefs and sub-chiefs exclusively to Tutsis. This system of discriminatory governance necessitated that the Belgian authorities determined exactly who belonged to a 'race to rule' and who did not (Takeuchi 2009, 154). Accordingly, in 1933, the Belgian authorities introduced identity cards that specified a person's 'racial' category. This became a tool for discriminative treatment of Rwandans, based on 'racial' identities. The colonial

⁵ Needless to say, this was not out of goodwill toward the ruling elites of the Rwandan kingdom, but in order to pursue exploitative colonial policies efficiently.

authority favoured Tutsis over Hutus and Twas in formal education, particularly post-primary education. It also disseminated the racial ideology in schools and seminaries, and through official documents (Hintjens 2001, 30).

Consequently, the Belgian colonial rule, which lasted over 40 years, transformed the nature of ethnicity in Rwanda: it *racialised* the meaning of 'Hutu' and 'Tutsi' as distinctive racial groups; institutionalised these identities through the introduction of ethnic identity cards and in turn *rigidified* the two categories which had previously been rather fluid; and *politicised* them by 'intensify[ing] the connection between race and power' (Straus 2006, 22). Newbury (1998, 11) describes these effects of colonial rule as 'the propagation of a corporate vision of ethnic groups':

Tutsi, Hutu, and Twa came to be viewed as internally homogeneous groups, and their members came to be treated in distinctive ways by the state. This made groups that had previously shown more internal flexibility appear more like biological groups.

In other words, this transformation of ethnicity in Rwanda can be seen as a process through which Hutu, Tutsi and Twa as primarily social constructs (ethnicity in a constructivist's sense) came to be defined as racial categories or ethnic groups in a primordialist's sense. European colonial rulers neither invented these social categories nor created inequalities between them in the first place. However, their rule over 60 years in Rwanda deepened and *racialised* the inequalities in Rwandan society.

2.4. The 'Hutu Revolution' - The Rise of Ethno-Political Violence

After World War II, the Belgian administration made a major policy shift to increase political representation of the majority Hutus, partly due to mounting pressure from the newly created United Nations (Straus 2006, 21). By the

mid-1950s, with support from a new generation of Catholic missionaries with 'social catholicism', a Hutu counter-elite emerged from within Catholic Church circles (Linden 1977, 240). The most prominent figure in this newly emerged Hutu political elite was Grégoire Kayibanda, then the editor-in-chief of an influential Catholic newspaper *Kinyamateka*, who later became the President of the First Republic. The late 1950s was characterised by fierce political competition between the ruling Tutsi monarchists who called for independence through 'a rapid transfer of power to the king and his council' and the Hutu counter-elite led by Kayibanda, who demanded democratic change before independence, although there were moderates on both sides (Mamdani 2001, 116-22). Racially provocative language used by both sides inflamed the politically charged situation.

In 1957, Kayibanda and eight other Hutu intellectuals issued a *Bahutu Manifesto*, the original title of which was 'Notes on the Social Aspect of the Racial Native Problem in Rwanda' (116). The *Bahutu Manifesto* was essentially a denunciation of the 'political monopoly which is held by one race, the Tutsi' and a call for the redistribution of power and privilege (ibid). Anticipating the upcoming national elections as part of the process of decolonisation, different political parties were formed in the late 1950s. By late 1959, there were four dominant parties: *Parti du Mouvement et de l'Emancipation Hutu* (PARMEHUTU) established by Kayibanda as a radical political party oriented towards a Hutu revolution, *Association pour la Promotion Sociale de la Masse* (APROSOMA), a Hutu-dominated party which sought a multi-ethnic constituency, *Union Nationale Rwandaise* (UNAR), a party representing the interests of Tutsi monarchists, and *Rassemblement Démocratique Rwandais* (RADER), a reformist Tutsi party (120-3).

With the volatile political atmosphere of the day, in November 1959, violence broke out between the militants of UNAR and those of PARMEHUTU; UNAR militants attacked a Hutu sub-chief who was a leader of PARMEHUTU in Gitarama territory and then local Hutu militants assaulted Tutsi notables in retaliation (Newbury 1988, 194-5). This incident rapidly developed into a major Hutu uprising in several parts of the country (ibid). The violence was directed mainly at those Tutsis in administrative posts and in many cases, limited to the destruction of their properties. As a result, hundreds lost their lives in Hutu attacks and Tutsi reprisals (Prunier 1995, 49). Mamdani (2001, 105) stresses the significance of the 1959 violence as a historic event which divided Hutus and Tutsis into two opposing sides of violent conflict for the first time in Rwandan society.

The Belgian colonial administration managed to restore calm by dispatching Colonel Logiest. Siding with the Hutu political movement, the administration appointed 'over 300 Hutu chiefs and subchiefs, in late 1959 and early 1960, to occupy the posts which the Tutsi authorities had left' even though the new Hutu appointees were ill-equipped for their new responsibilities (Lemarchand 1970, 173). Then, the revolutionary force spearheaded by PARMEHUTU achieved an overwhelming victory in both the communal election held in June/July of 1960 and the parliamentary elections held in September of 1961 (Mamdani 2001, 128-9). Political violence primarily targeting Tutsi notables forced them and their families to flee to neighbouring countries. By early 1962, Tutsi refugees amounted to around 120,000 (Prunier 1995, 61). In subsequent years, a faction of this first wave of refugees would carry out armed cross-border incursions into Rwandan territory.

Following the 'Hutu Revolution', Rwanda gained independence on 1 July

1962. Before independence, in May 1962, Kayibanda's PARMEHUTU formed a coalition government with three other parties, including a moderate faction of UNAR. However, this coalition government was short-lived. By the end of 1963, the First Republic under the leadership of Kayibanda had evolved into a dictatorial regime which upheld the supremacy of Hutus in the politics of Rwanda as a single native race (Mamdani 2001, 134). Mamdani asserts that the racial ideology of the First Republic is a mirror image of the ideology of the colonial rulers: 'the Hutu were indigenous, the Tutsi were alien. Whereas the Tutsi had been treated preferentially by the colonial state as a nonindigenous civilizing influence, the First Republic considered this claim reason enough to treat them as politically illegitimate' (ibid). The same racial ideology which once justified the rule through Tutsi as a 'superior foreign race' was turned around to justify the domination of Hutu as a 'native legitimate race' and the exclusion of Tutsis from political life. In short, the racialisation of ethnicity was further entrenched by Rwandans themselves in post-colonial Rwanda.

Ethno-political conflict along the Hutu/Tutsi divide was further deepened by cross-border incursions by Tutsi guerrilla fighters, which took place several times between March 1961 and November 1966 (Lemarchand 1970, 218). This armed group called themselves *Inyenzi*, or 'cockroaches', and was composed of Tutsi refugees who went into exile in the first exodus in 1959/1960. They targeted the Hutu officials of local authorities loyal to the new regime. Each armed raid was followed by arrests and killings of Tutsi civilians, including women and children, under the authorisation of local government officials or leaders of PARMEHUTU. The killings were mostly committed by members of 'self-defence' groups organised by local administrative authorities. The massacres which were committed in the name of defending the Hutu nation had a genocidal character

(Lemarchand 1970, 223-36). Scholars estimate that between 10,000 and 20,000 Tutsis were murdered in reprisal killings (Mamdani 2001, 130). The massacres and the repression which followed instigated the second mass exodus of Tutsi refugees – over 200,000 people - into neighbouring countries.⁶ Three decades later, the descendants of the first and second waves of refugees living in Uganda formed the RPF in 1987 and invaded Rwanda in October 1990, seeking an armed return to their mother land.

2.5. Intra-Hutu Conflict and Scapegoating of the Tutsi Minority

The Kayibanda regime soon faced growing discontent within the Hutu population, who accused his government of indulging in corruption, nepotism and failing to realise the promises of the ‘revolution’. There were at least two major groups of Hutus who were particularly frustrated and began to challenge the regime. The first group consisted of Hutu elites from the north who were marginalised by Kayibanda and his entourage from the centre/south who monopolised the benefits of power during the First Republic (Gasana et al. 1999, 157). The second group consisted of newly emerging Hutu intellectuals, particularly junior civil servants, primary school teachers and students who had serious grievances concerning low salaries or lack of employment opportunities (Lemarchand 1970, 238-9). In the view of this second group, although Tutsis had been ousted from political power, their representation in higher education and employment, particularly in the private sector, was much higher than they deserved.⁷

Anti-Tutsi sentiments were also heightened in the general Hutu public because of the massacre of around 200,000 Hutus in neighbouring Burundi, by their

⁶ Prunier (1995, 61-2) notes that the refugee figure had increased from 120,000 in early 1962 to 336,000 by late 1964.

⁷ In the middle and late 1960s, Tutsis comprised nearly 90 percent of university enrollment, despite the government policy to limit the ratio to 10 percent (Mamdani 2001, 136).

Tutsi-dominated army in 1972.

It was under these volatile circumstances that, in 1973, severe anti-Tutsi persecution broke out in Rwanda. A group of educated 'angry young men' was the driving force behind persecution which was directed at Tutsi students, teachers and workers, particularly in the private sector (238). Lists of Tutsis to be expelled were posted on the notice boards of educational institutions, which forced many Tutsi students and teachers to leave their schools. Tens of thousands of them went into exile (Gasana et al. 1999, 158). Many Tutsi workers were also expelled from their work places. The Kayibanda regime was very slow to respond to the crisis which resulted in the death of between five and six hundred Tutsis (Mamdani 2001, 137). Some observers suggest that the regime, dominated by southerners, let the situation worsen for several weeks in order to 'minimize differences with northerners by reminding them of the common enemy' (Des Forges 1999, 40). Other observers suggest a northern conspiracy to create social disorder in order to justify a *coup d'état* by the army dominated by northerners, which actually took place later in the same year (ibid). Whatever the case, innocent Tutsis were scapegoated to resolve intra-Hutu differences (41). Essentially the same tactic of ethnic manipulation and mobilisation would be used about 20 years later to unite Hutus during the deepening crisis of the early 1990s.

2.6. Personalisation of Power under the Guise of One Party System

On 5 July 1973, Juvénal Habyarimana, the Minister of Defence and the Army Chief of Staff, seized power through a bloodless coup. Some scholars note that this regime change was welcomed by a broad range of Rwandan people who hoped for an end to insecurity based on factional politics (Prunier 1995, 75; Mamdani 2001, 138). Habyarimana's Second Republic favoured Hutus from the

northern region, in the distribution of education and employment opportunities, by adding a regional dimension to a quota system introduced during the First Republic (Mamdani 2001, 139). Institutional discrimination against Tutsis was maintained, restricting Tutsi representation in education and employment, through the use of the quota system, which served the function of uniting the Hutu majority against the Tutsi minority (ibid), another tactic of ethnic manipulation by those in power. The lives of Tutsis continued to be difficult because of this ethnic discrimination, but there was no major physical violence targeting Tutsis under Habyarimana's regime until 1990.

Immediately after seizing power, Habyarimana banned political parties and formed the *Mouvement Révolutionnaire National pour le Développement* (MRND) in 1974, the only party in the country. The MRND imposed a dictatorial rule on the population, defining all Rwandans as its members, putting all the administrative posts under its control and intervening in all spheres of people's lives (Prunier 1995, 76-7).⁸ 'Administrative control was probably the tightest in the world among non-communist countries' (77). Under the guise of the one party system, Habyarimana personalised state power. After eliminating his political allies based in the army in 1980, he established an oligarchy with those from his home region, particularly his wife's family members who were from an influential lineage (Gasana et al. 1999, 159). Habyarimana's informal council, which came to be known as the *akazu*, concentrated political power and the country's wealth in their hands and later played a central role in orchestrating the genocide.

⁸ MRND's rule reached into the religious sphere of people's lives by integrating the Church institutions, Catholic and Protestant alike, into its structures. See Gatwa (1998, 135-57) for a detailed analysis of the role of the churches as supporting organs of the ruling party.

3. Deepening Crisis in the Early 1990s, Civil War and Genocide

For over a decade after Habyarimana took power, Rwanda enjoyed political stability, significant economic growth and a modest improvement in the availability of social services (Uvin 1998, 47-8). Rwanda established a positive reputation among the international donor community for its 'political stability', 'the government's concern for the rural population, its effective administration, and its prudent, sound, realistic management' (World Bank cited in Uvin 1998, 44). This enabled the country to become a major recipient of international aid in East and Central Africa.⁹

3.1. Multi-faceted Crisis

From the mid-1980s on, however, relative stability and a positive economic outlook under the Habyarimana regime began to erode in the face of a deepening, multi-faceted crisis with economic, military and political dimensions, which were closely interwoven. With regard to the economic crisis, the collapse of the mining sector and the sharp fall in world coffee prices caused a huge decrease in the foreign exchange earnings of the state which had persistently faced a balance-of-payment deficit since the early 1980s (Uvin 1998, 57). This forced the government to significantly tighten its expenditure by, for example, lowering the producer price of coffee and reducing the number of civil servants. Moreover, in November 1990, due to pressure from the IMF, the World Bank and donor countries, the government was compelled to accept - as part of a structural adjustment programme - the devaluation of the Rwandese franc, which resulted in high inflation (58). All of this hit the urban and rural population very hard.

⁹ See Uvin (1998, Ch3) for Rwanda's economic development indicators in the 1980s and a detailed account of the highly positive image of the country in the eyes of the development community.

In the midst of this economic crisis, on 1 October 1990, the RPF invaded Rwanda from Uganda, seeking a return to their mother country by force to 'liberate Rwandans' from decades of military dictatorship. As mentioned earlier, the rebels were primarily descendants of Tutsi families in exile who had fled the country after the 'revolution'.¹⁰ This was the beginning of a civil war between the Hutu-dominated government and the Tutsi-dominated rebel movement, which lasted until the latter defeated the former militarily in July 1994, although there were periods of ceasefire during the four-year war.

The civil war prompted mass displacement of the population – around one seventh of the country's population - from the war-affected region in the north; from around 80,000 following the first attack in late 1990, to 350,000 after the offensive in 1992, then approximately 950,000 following the resumed offensive in February 1993 (Mamdani 2001, 187).¹¹ Many of these northerners who were pushed southward as internally displaced persons (IDPs) would later join genocidal massacres in the southern regions (AR 1995, 708; Des Forges 1999, 275, 559). The civil war deepened the economic crisis, having a devastating impact on the production of food crops, coffee and tea, which reduced government revenue, at the same time as there was a huge demand for resources to be allocated to the war effort (Uvin 1998, 56).¹²

To Tutsis in Rwanda, the beginning of the civil war meant the end of the relative tranquillity which had been maintained since Habyarimana came to power in 1973. After the October attack, the government arrested 13,000 mainly

¹⁰ See Mamdani (2001, Ch 6) for the social and political background as to why and how Tutsi refugees launched their armed struggle by forming the RPF.

¹¹ Human rights organisations accuse the RPF of widespread human rights violations, including massacres of civilians, during the period of October 1990 to April 1994 (AI 1994, 2; Des Forges 1999, 701-2). See also Umutesi (2004, 23-8) who provides detailed accounts of RPF massacres which victimized her relatives and friends in Byumba.

¹² Consequently, the number of soldiers in the Rwanda army increased nearly ten times from 3,000 – 5,000 to 30,000 – 40,000, and 'military expenditure rose from 1.6 percent of the GNP between 1985 and 1990 to 7.6 percent in 1993' (Uvin 1998, 56).

Tutsi citizens without formal charge; many of them were tortured and dozens murdered (Des Forges 1999, 49). Calling Tutsis inside the country *ibytso* or 'accomplices' of the Tutsi-dominated rebels, Hutu extremists intensified their anti-Tutsi persecution. For three and a half years, between the RPF invasion in October 1990 and the onset of genocide in April 1994, there were four major massacres that were 'carefully timed and deliberately organized' by Hutu extremists (Mamdani 2001, 192).

The year 1990 also marked the beginning of democratisation in Rwanda, which was induced by strong pressure from Western donor countries, in the wake of the end of the cold war. Domestically too, in the face of the dramatic economic downturn, coupled with evidence of rampant corruption in the regime, the government was under increasing criticism from politicians, intellectuals and journalists who unanimously called for political reforms (Des Forges 1999, 47). In July 1990, Habyarimana announced his decision to create a national commission for studying the possibility of democratisation (ibid). Prompted by increasing pressure, both internally and externally, particularly from Rwanda's principal international backer France, Habyarimana accepted the end of one-party dictatorship. After adopting a new constitution in June 1991, Rwanda formally returned to a multi-party system (Mamdani 2001, 154). Immediately after the introduction of the multi-party democracy, opposition parties quickly established themselves to challenge the one-party rule of MRND. There were four major opposition parties created in 1991, which formed a coalition in July: the *Mouvement Démocratique Républicain* (MDR); the *Parti Social Démocrate* (PSD); the *Parti Libéral* (PL) and *Parti Démocrate-Chrétien* (PDC).¹³ These opposition parties launched vigorous campaigns to recruit members and the

¹³ See Mamdani (2001, 154-5) for descriptions of these opposition parties.

MRND responded by reactivating its political activities in order not to lose its members. While the opposition pressed Habyarimana hard for power-sharing, a group of Hutu extremists formed a radical Hutu nationalist party, the *Coalition pour la Défense de la République* (CDR), which began to denounce Habyarimana for yielding too much to the demands of the internal opposition and the RPF (Des Forges 1999, 52-3). Political competition among these parties became increasingly violent. Youth wings of the parties often used violence as a means to exert influence on the local population and dominate its political rivals (55-6). In some parts of the country, particularly in the central and southern regions, the opposition parties expanded their influence rapidly, undermining the MRND/government's authority over the local populations.

In April 1992, Habyarimana reluctantly formed a coalition government with the parties forming the internal opposition. In July 1992, through UN-mediated peace negotiations in Arusha, Tanzania, the coalition government and the RPF reached a ceasefire agreement.¹⁴ In February 1993, while the Arusha talks were going on, the RPF broke the agreement and launched a massive offensive along the northern front, causing a major setback for government troops.¹⁵ In August 1993, both sides signed an agreement known as the Arusha Agreement which stipulated a power sharing arrangement of transitional government, the deployment of a UN peacekeeping force during the period of transition, the repatriation of refugees, the resettlement of internally displaced persons, the integration of government army and rebel forces and so forth. The RPF gained the most from the Agreement, securing 50 percent of commander positions and 40 percent of the regular personnel in the integrated national army, five of

¹⁴ For a detailed account of Arusha negotiations, see Jones (2001).

¹⁵ The RPF claimed that it was an intervention to stop the massacres against Tutsi civilians in early 1993, but some observers suggest that the real motive behind the RPF's military advance was to gain the upper hand in the on-going negotiations (Des Forges 1999, 109; Jones 2001, 82-3).

twenty-one ministerial positions, including the crucial Ministry of the Interior in charge of police forces, and eleven of seventy parliamentary seats (Mamdani 2001, 210-1). The internal opposition (MDR, PL, PSD and PDC) also made moderate gains by securing the posts of nine ministries and the post of prime minister (Des Forges 1999, 124). The ruling MRND was clearly the loser since it reduced its representation in the army, cabinet and parliament. Crucially however, the radical Hutu nationalist party CDR was totally excluded, both from the negotiation table and from the transitional government proposed in the Arusha Agreement (Mamdani 2001, 211).

3.2. Extremists' Responses and the Groundwork of Genocide

For the MRND leadership and Habyarimana's informal council, the *akazu*, as well as radical Hutu nationalists based in the CDR, the implementation of the Arusha Agreement meant the loss of power and all sorts of vested interests. Their fear of losing power was augmented by an event which took place in neighbouring Burundi in October 1993: the democratically elected first Hutu president was assassinated by Tutsi military officials. This was followed by the killing of thousands of civilians in violent clashes between Hutus and Tutsis (Des Forges 1999, 134-5). It was under these extremely volatile circumstances that the increasingly desperate and radicalised ruling elites began to fight back more intensely.

Straus (2006, 25-30) identified six types of extremists' responses to the threat of the RPF's military challenge coupled with the expansion of the internal political opposition. Each of the responses underscores the radicalisation of ethno-political violence which paved the way for the 1994 genocide. First, the extremists explicitly identified the Tutsi-dominated RPF rebels with Tutsi residents of Rwanda. As already noted, immediately after the first RPF attack in

October 1990, the government carried out mass arrest of Tutsis, claiming that they were connected with the rebels. In December 1991, a military commission chaired by Colonel Théoneste Bagosora, a person widely considered as the principal organiser of the genocide, issued a document which defined the 'principal enemy' of the country as 'Tutsi inside or outside the country' (25). The extremists disseminated propaganda that all Tutsis, inside and outside, were united in bringing back Tutsi rule over the Hutu population.

Second, efforts at military defence were strengthened by expanding the national army from 7,000 to 31,000, and launching a civilian defence programme which consisted of neighbourhood patrols, the distribution of firearms to administrative officials and the army, and training in firearms use for some officials. It is through this civilian defence programme that ordinary Hutus were effectively mobilised into the war against the rebels, which, Straus notes, 'set the stage for civilian participation in the genocide' (26).

Third, in 1992 and 1993, extremists in the MRND and the military formed and trained a militia which drew members from the MRND's youth wing called *Interahamwe*. As noted above, youth wings of other parties often used violence in their political campaigns. However, the *Interahamwe* became distinct from its competitors as it received special military training funded by the extremists. The number of the *Interahamwe* militias grew to several thousand by early 1994 in various parts of the country and spearheaded numerous attacks against Tutsis and so-called moderate Hutus during the genocide.

Fourth, extremists prepared for assassinations of leading Hutu opposition politicians and RPF supporters. The lists of these 'accomplices' who were considered to be a threat to the Hutu regime had been prepared well before the genocide started; in fact, they were the people who were massacred before

anybody else during the first days of the genocide. Along with the 'death lists', extremists in the military formed 'death squads' apart from the *Interahamwe* militias.

Fifth, a racist propaganda campaign was intensified through various means including the print media and the radio station controlled by extremists.¹⁶ A weekly magazine, *Kangura*, and the private radio station *Radio Télévision Libre des Mille Collines* (RTLM), are known as the most notorious sources of racist propaganda closely linked to the *akazu*, even though there were also many other magazines/newspapers that spread racial hate messages during the years before the genocide.¹⁷ Soon after the 1990 RPF invasion, *Kangura* published 'what is perhaps the most succinct statement of Hutu extremist ideology' (Taylor 1999, 174), the 'Hutu Ten Commandments', calling for Hutus to break off relationships with Tutsis in all spheres of life and to defend what Hutus acquired through the 'revolution' in 1959.¹⁸ The RTLM began airing its programme in August 1993, soon after the Arusha Agreement was signed (Des Forges 2007, 44). It reiterated the same elements of racist propaganda developed by the extremist print media: for example, 'the inherent differences between Hutu and Tutsi, the foreign origin of Tutsi and, hence, their lack of rights to claim to be Rwandan, the disproportionate share of wealth and power held by Tutsi and the horrors of past Tutsi rule' (45). Having acquired many listeners across the country, this extremist radio station became an effective tool for the extremists 'to incite and mobilize, then to give specific directions for carrying out killings' (47-8).

Sixth, in November 1993, a cross-party Hutu coalition called 'Hutu Power' was created. In the context of this extremely volatile atmosphere, due to the

¹⁶ On the crucial role played by the media in the 1994 genocide, see a recent volume of essays edited by Thompson (2007).

¹⁷ For example, among 42 new magazines/newspapers founded in 1991, eleven of them were associated with the *akazu* (Chrétien et al. 1995, 45 cited in Des Forges 1999, 67).

¹⁸ See AR (1995, 42-3) for the texts of the 'Ten Commandments'.

defeat in Arusha and the massacres of Hutus in Burundi, extremists of the MRND and the CDR succeeded in forming this broad coalition of Hutus espousing a radical Hutu nationalist ideology across pre-existing regional and political divisions, drawing support from members of opposition parties such as the MDR and the PL (Des Forges 1999, 137-40; Mamdani 2001, 191-6). The formation of Hutu Power meant that a much broader spectrum of Hutus across the country became mobilised in the war against Tutsis as a common enemy of Hutus. There was also a feeling of defending the Hutu nation as established in the 1959 'Hutu Revolution'.

3.3. Racial Ideology and the Genocide

A few hours after the aircraft carrying Habyarimana was shot down by still unidentified assailants on 6 April 1994,¹⁹ Hutu extremists seized control of the Rwandan government and military. Then, a massive campaign for exterminating all 'the enemies of the Hutu nation' began, beginning with leading Hutu opposition politicians and RPF supporters already on the 'death lists', then ordinary Tutsis and others (Hutus and Twas) seen as standing in the way of genocide. Because all the groundwork had already been done, as discussed above, the genocidal killings quickly gained momentum, spreading from Kigali to some rural areas, which reacted spontaneously to the call for extermination. In other areas, particularly in the southern region where opposition parties were strong, it took some weeks for extremists to get the local population under control and initiate the killings.

From the outset this chapter stressed that what happened in 1994 was not

¹⁹ There are currently two competing theories about the assassination of Habyarimana which have not been resolved. The first theory blames Hutu extremists who allegedly eliminated the former president due to his concessions to the RPF in the Arusha Accords. The second theory blames the RPF who allegedly chose a military solution rather than negotiated settlement. See Eltringham (2004, 111-8) and Straus (2006, 44).

a spontaneous outburst of 'ancient tribal hatred', but systematic political violence organised by Hutu extremists who seized control of the state. As noted in the above sections, ethnicity has been repeatedly exploited by political elites for their political gains, particularly after the racialisation of ethnicity under the Belgium colonial rule. Leaders of the 'Hutu Revolution' and extremists behind the genocide both espoused the ideology of radical ethno-nationalism based on the construction of a racialised ethnicity, portraying Tutsi as a 'foreign race' which has no legitimacy in public life and Hutu as a 'native race' which is exclusively entitled to power in Rwanda. During the period leading to the genocide, the extremists projected their power struggle in racial terms as a zero-sum battle of 'Tutsi versus Hutu'. This ethnicization of politics helped them achieve two things. First, it helped them to broaden their political alliance to transcend the pre-existing intra-Hutu divisions. Second, it helped them to exacerbate the profound fear among the Hutu population that losing the battle would mean the return of Tutsi rule and the confiscation of their lands (Mamdani 2001, 191).

This particular explanation of the Rwandan genocide, which is in line with the constructivist's view of ethno-nationalist conflict discussed above, is in fact a primary argument adopted by many authors in their efforts to account for the genocide (Uvin 2001b, 80). This is an important explanation of the genocide because, first, as Straus (2006, 33) notes, it corrects the misleading, yet widely held, understanding of the genocide based on 'ancient tribal hatred' and second, as Uvin (2001b, 80) notes, it is crucial to account for the critical roles played by the state actors, since '[a]ll genocides in history have been instigated, organized, and legitimized by the state'. However, elite manipulation of ethnicity alone, of course, cannot explain the complex dynamics of genocide and leaves us with many unanswered questions, including the question of why numerous ordinary

Rwandans participated in the genocide (Uvin 2001b, 80-1; Straus 2006, 33-5).

Many of those who adopt the argument centred on elite manipulation of ethnicity emphasise the role of racial ideology in driving the genocidal killings in 1994 (Prunier 1995; Des Forges 1995; Gourevitch 1998; Mamdani 2001).

However, recent studies indicate that it was not as significant as it was widely believed in causing ordinary Hutus to take part in the massacres (Longman and Rutagengwa 2004; Mironko 2006; Straus 2006; Fujii 2009). Straus (2006) demonstrates that neither inter-ethnic relations nor racial ideology were major factors in leading ordinary Rwandans to participate in the genocide. Through his research, which involved systematic interviews with more than 200 perpetrators of the genocide, Straus found within almost all, or most, of his respondents: 1) no indication of ethnic distance with, or antipathy towards, Tutsis; 2) fairly limited knowledge about the contents of the racist propaganda during the genocide; and 3) little commitment to the cause of Hutu nationalism (127-34). Straus maintains:

Most Rwandans did not participate in the genocide because they hated Tutsis as despicable “others,” because they adhered to an ethnic nationalist vision of society, or because racist propaganda had instilled racism in them. The perpetrators had an awareness of different ethnic categories, but that awareness did not create ethnic hatred or directly lead to violence. (134)

Importantly, the study also revealed that ‘the better-educated respondents demonstrate greater awareness, understanding, and belief in racial ideology than the less-educated respondents’ (ibid), and the former group consisted of local authorities or other rural elites who directed the killings at the local level (114).

Straus’s study gives us two important insights that are relevant to our discussion. First, it shows the limitation of the explanation of the Rwandan genocide, particularly its aspect of mass participation, based solely on ethnic

manipulation by elites and their racist ideology. A sound explanation of the genocide and its mass participatory aspect requires a multi-dimensional analysis which also takes various other factors into account: power struggles at different levels of society, fears, not only caused by civil war, but also fears of being harassed or penalised by local power holders, the pursuit of personal economic gain, state machinery, social networks and media as mechanisms for mobilisation and memories of past violent conflict (See Uvin 2001b; Straus 2006; Takeuchi 2009). Second, Straus's study confirms that though it is not a primary factor in causing the genocide, the history of racialised ethnicity played an important role in making genocide possible in Rwanda. It was the ethno-nationalist ideology with which Hutu elites, at the national and local levels, justified, organised and instigated genocidal violence. Moreover, it can be said that socially constructed racial categories 'underpinned the premise of genocide in Rwanda'. As Straus maintains, '[w]ithout those preexisting categories and without a history of ethnic or racial political ideologies, the call to attack Tutsis would not have resonated, and genocide would not likely have happened' (226).

4. Revelation of RPF Atrocities and Violence in Post-Genocide Rwanda

The seemingly endless genocidal killing was finally halted by the RPF forces which put the entire country under its military control by July 1994. The genocidal government forces were either crushed or chased out of Rwanda to neighbouring countries. After achieving an outright victory by military means, on 19 July 1994, the RPF formed a coalition government with the opposition parties who had signed the Arusha Agreement. However, the end of the war and the genocide was also the beginning of a refugee crisis of unprecedented scale. The defeated genocidal government, its armed forces *Forces Armées Rwandaises*

(FAR) and militias, fled to neighbouring countries, mainly Zaire (the current Democratic Republic of Congo/DRC) and Tanzania, taking with them around two million Rwandans. The militarisation of the refugee camps, particularly those located near the Zaire - Rwanda border, posed a serious security threat to the newly created government. These UN-assisted refugee camps in eastern Zaire, especially those in North Kivu, became well 'nourished' and 'shielded' bases for extremist elements of the former government 'to regroup, rearm and launch incursions into Rwanda' (HRW 1998).²⁰

Inside Rwanda, after the RPF's takeover, the dynamics of violence shifted to one which put the Hutu population who chose to stay in the country under extremely adverse circumstances due to mass arrests of persons accused of genocide-related crimes and unknown numbers of revenge killings or summary executions at the hands of RPF soldiers (Des Forges 1999, 724-35; Prunier 2009, 11-22; Eltringham 2004, 101-8). A part of the picture of the RPF atrocities against the civilian population, both during and after the genocide, was brought to light by the Gersony Report, a leaked unpublished report commissioned by United Nations High Commissioner for Refugees (UNHCR). Based on around 200 interviews in 41 of Rwanda's 145 communes conducted in August and September of 1994, the author of the report Robert Gersony, estimated that between 25,000 and 45,000 people, mostly Hutus but also Tutsis, were killed by the RPF in the space of less than six months between early April and mid-September 1994 (Prunier 2009, 15-6). It is difficult not only to judge the accuracy of this estimation but also to establish how many of them were killed as a result of military engagement against the RPF forces (Des Forges 1999, 734). However, many observers, including the UN Commission of Experts established

²⁰ On the problems associated with these militarised refugee camps, see African Rights (1995, 1088-100), Prunier (1995, 312-21) and Prunier (2009, 24-9).

for investigating various grave violations of international humanitarian law in Rwanda, believe that most of the massacres were not 'provoked by individuals suspected of participation in the massacres of Tutsis' (UN 1994, para 44; also see Des Forges 1999, 734; Prunier 2009, 16-7).

According to Prunier (2009, 20), RPF killings in the hills in different parts of the country ceased for a few months after September 1994, but they resumed in January 1995, targeting those associated with genocide perpetrators, such as family or friends, educated people, those who used to be PARMEHUTU members and those considered to be dissidents. Later in 1995, massacres took place at the IDP camps in the 'Safe Humanitarian Zone' created in southwestern Rwanda by the controversial *Opération Turquoise*, a so-called 'humanitarian operation' by the French military whose real intention was suspected to be one of supporting the genocidal regime.²¹ Considering these IDP camps, which sheltered around 350,000 people, a security threat, the RPF-led government decided to close them down. However, the IDPs refused to return to their home areas due to fears of widespread RPF killings. Then, in April 1995, as the government dismantled the camps, its army massacred thousands of IDPs, including women and children, at Kibeho Camp in Gikongoro Prefecture (Prunier 2009, 38-42).²²

The war and genocide in Rwanda, and the subsequent influx of Rwandan refugees into eastern Zaire had a huge impact on the dynamics of violent conflict there, which had persisted since 1993, involving local Kinyarwanda speakers²³

²¹ On the controversial nature of *Opération Turquoise*, see Des Forges (1999, 668-91).

²² The number of IDPs killed has never been established, even though the government's 'official' account claims that it is only 338 (Prunier 2009, 42). However, Prunier estimates over 5,000 casualties, based on the account of the Australian Medical Corps of the UN peacekeeping force, which counted up to 4,200 victims' bodies and estimated that there were still between 400 and 500 uncounted bodies on the site, and that the government army had already buried the bodies of further victims (41). See also Pottier (2000).

²³ The Kivu region of the DRC has a large proportion of Kinyarwanda speakers – those in the North Kivu region are called *Banyarwanda*, whereas those in the South Kivu are called

and other ethnic groups. One of its effects was to carry over the Hutu/Tutsi dimension of conflict into eastern Zaire. In the North Kivu region, for example, local Kinyarwanda speakers called *Banyarwanda* (both Hutu and Tutsi), who had been the common target of local Zairian militia since 1993, became divided along ethnic lines; Zairian Hutu militia from the *Banyarwanda* community formed a 'new *interahamwe*' militia with Rwandan Hutu refugees and began attacking both Zairian Tutsis (*Banyarwanda*) and Rwandan Tutsi refugees who had been in exile since the 1960s/70s (HRW 1996 cited in Eltringham 2004, 122).²⁴

In September 1996, the RPA invaded Zaire and attacked the armed refugee camps in collaboration with RPF-backed Zairian rebel forces, the most well-known of which was the *Alliance des Forces Démocratiques pour la Libération* (AFDL) which later ousted Zaire's dictator Mobutu Sese Seko from power.²⁵ Tens of thousands of Rwandan refugees were killed in a series of attacks in late 1996 (Kisangani 2000). In November 1996, the violent dismantling of the camps triggered a mass repatriation of over 500,000 refugees back to Rwanda.²⁶ Hundreds of thousands of other refugees who remained in Zaire are believed to have died, either from military attacks by the RPA/AFDL alliance, or from a combination of hunger and disease on their flight west, or northwestwards, deep into the country.²⁷

Banyamulenge) whose ancestors migrated from the current territory of Rwanda in different historical periods, the first of which was as early as the seventeenth century (Eltringham 2004, 119).

²⁴ See Prunier (2009) for the role of Kinyarwanda speakers in violent conflicts in both Rwanda and the Congo.

²⁵ While the role of Laurent Kabila's AFDL has been much highlighted in the attacks on refugee-related targets such as camps and hospitals in eastern Zaire/Congo, in many reports, 'a complex mixture of forces' backed by Kigali were involved in some of the attacks, particularly in North Kivu (Prunier 1997, 384-5). For more detailed accounts of the Kivu crisis and the attacks on refugees which triggered the mass repatriation in late 1996, see UN (1997, para. 38-48), Prunier (1997, 379-87; 2009 Ch 4); AI (1997), Mamdani (2001, 253-63) and Eltringham (2004, 124-42).

²⁶ Human Rights Watch's 1998 report (HRW 1998) indicates that about 600,000 refugees returned while Amnesty International (AI 1997) estimates the number to be 500,000.

²⁷ Human Rights Watch (1998) made a serious allegation against the Rwandan government and its allies in Congo: 'For the next six months, AFDL forces, often led by Rwandans, hunted down

After the massive influx of Hutu refugees in late 1996, the security situation in Rwanda's northwest region rapidly deteriorated because of what is known as the Hutu insurgency of rebel fighters who infiltrated Rwandan territory and carried out attacks against local government officials and Tutsi civilians. These Hutu rebel fighters were under the command of Gen. Augustin Bizimungu, former commander in chief of the FAR. The rebel attacks and the RPA's counter-insurgency offensives turned the region in a war zone, causing the deaths of at least several thousand civilians from 1997 –1999 (AR 1998; UN 1998b).

After the pacification of the region by military means, Rwanda secured *negative peace* in its territory by 2000.²⁸ However, the Rwandan government and its armed forces continued to be deeply involved in the conflict in the DRC (UN 2008; Lemarchand 2009; Prunier 2009), and Hutu rebels, including the remnants of the genocidal forces of 1994, are still active in Kivu today (HRW 2009d), despite a joint DRC/Rwandan military operation to disarm them from December 2008 – January 2009.

5. Conclusion

As stated, Hutu and Tutsi were not, and are not, ethnic groups with rigid boundaries in the primordialist sense. Rather, they are social constructs whose meanings and inter-relations have been shaped by the politics and policies of those in power. Ethno-political violence along the Hutu/Tutsi divide is a relatively modern phenomena, which became apparent only after the racialisation of

those in flight, killing civilians as well as armed elements and preventing humanitarian agencies from delivering the food, water and medicine needed to keep them alive'. Also see related UN investigation reports (UN 1997a, 1998a), Eltringham (2004, 124-42), Prunier (2009) as well as Umutesi (2004), who gives an account of her own ordeal as a Rwandan Hutu refugee in Zaire/Congo.

²⁸ See Chapter 1 for the distinction between *negative peace* and *positive peace* first proposed by Galtung.

ethnicity through Belgian colonial rule in the twentieth century. Van Hoyweghen and Vlassenroot (2000, 111) argue that 'ethnic conflict is, in origin, not a conflict between ethnic groups' but rather, that 'ethnic groups with rigid boundaries are the outcome of violence'. If they are right, the cycles of brutal ethno-political violence that the Rwandan people have experienced since the late 1950s should have made the ethnic identities of many Rwandans more salient and rigid than before. The next two chapters will examine how this ethnic polarisation overshadowed people's perceptions of victimhood, justice and reconciliation in the two fieldwork communities.

CHAPTER FIVE

CONTESTED VICTIMHOOD AND THE FILTER OF ETHNICITY

1. Introduction

In societies emerging from years of violent conflict, there is usually a complex web of victims whose lives have been torn apart through atrocities, abuses and criminal acts. In such situations, who should be acknowledged as victims is a central but often highly controversial issue in the quest for justice and reconciliation (Huyse 2003).¹ Even victims of the same atrocity often compete with each other for greater recognition and restitution for their suffering.² Such 'victim competition' may be further intensified where there are mutual accusations of atrocities between adversarial identity groups who often deny the victimhood of members of the opposing group.

After decades of ethno-political violence, civil war and genocide, Rwanda is certainly one of those deeply divided societies where competing claims for victimhood do exist. In the words of Van Hoyweghen (2000, 212) who carried out field research in the country in 1998, 'Rwanda remains a highly fragmented society in which there is no agreement as to who is justified in claiming to have been a "victim" of the events since 1994'. This observation was found to remain valid at the time of the primary fieldwork for this study in 2002.

This chapter describes the nature of contestation over the issue of

¹ Analysis in this chapter owes much to the analytical framework delineated by Huyse (2003, 54-66).

² On this complex issue, Huyse (2003, 64) states:

[V]ictims frequently compete fiercely with each other for recognition, for material resources such as compensation and positive discrimination in the areas of housing and education, and for symbolic goods such as monuments, medals, memorial days and other types of commemoration.

victimhood in two rural communities, one in the central and the other in the north-western part of the country - where I conducted a grassroots study for exploring various expectations, intentions and concerns held by different categories of Rwandan people at the grassroots level around issues and processes concerning justice and reconciliation. The fieldwork revealed close connections between the people's sense of victimhood shaped by their experiences during periods of violent conflict in the past years and the ways they perceived issues of justice and reconciliation. This chapter, therefore, lays a foundation for our discussion on contested views of justice and reconciliation at the grassroots level in the next chapter.

After brief descriptions of the two fieldwork communities, the chapter presents an overview of the local history of ethno-political violence since the social and political upheaval on the eve of Rwandan independence. The overview highlights principal areas of dispute as well as key features of the local-level ethno-political violence in the past decades. The chapter then explores the nature of contestation over the issue of victimhood within the communities and how issues of ethnicity are interwoven with the issue of victimhood.

2. Fieldwork Communities

The fieldwork for the grassroots study were conducted in two rural communities:³ the sector of 'Gitera', part of 'Rukundo' district of Gitarama Province (currently a

³ As stated in Chapter 1, at the time of my fieldwork in 2002, Rwanda was divided into 12 provinces which were further divided into 106 districts, 1,545 sectors, and 9,013 cells at the lower levels of its territorial administration. Each cell included dozens of *nyumba kumi* or a unit of ten households depending on the size of its population. In January 2006, there were major mergers of administrative units in Rwanda. Since then, the territory of Rwanda is divided into five provinces: Eastern Province, Western Province, Southern Province, Northern Province and Kigali City. As also stated in Chapter 1, pseudonyms are used for indicating the two sectors to protect identities of grassroots informants interviewed during the fieldwork.

part of the Southern Province) and the sector of 'Kiberama', part of 'Mahoro' district of Gisenyi Province (currently a part of the Western Province). Located in the central and north-western parts of the country, the two former provinces in which the sectors under study are situated are distinct from each other in their demographic composition with regard to ethnic groups and their experience of political violence in the past decades. Gitarama was the centre of the Tutsi kingdom until it was abolished in 1961 after the 'revolution'. The people in this region were incorporated into the kingdom for centuries before the European colonisation began in the late nineteenth century. With a relatively high concentration of Tutsis, intermarriages between Hutus and Tutsis were more common in this region than the northern regions (Jefremovas 1997, 101).

Even after the abolition of the Tutsi monarchy, the region continued to be the centre of political power where most of the Hutu elites who dominated the First Republic came from. In the early 1990s, together with the most southern region of Butare, Gitarama formed the centre of the political opposition to the government led by Habyarimana. During the 1994 genocide, the major violence there ended by early June as the RPF established its military control in the region.

On the other hand, the region of Gisenyi along with Ruhengeri, was brought under central rule relatively recently in the late nineteenth century – only after the arrival of the colonialists whose support enabled the Tutsi king to accomplish his military conquest. United under indigenous Hutu elites who used to control access to land, the local people repeatedly revolted against the Tutsi chiefs. Even during the colonial period, the degree of control by the central authority remained less prominent in the region. Compared with the central and southern regions, there were fewer Tutsis concentrated in a few enclaves surrounded by

predominantly Hutu areas (Newbury 1988, 290).⁴ Also, Hutus and Tutsis in this region were less integrated with each other (Jefremovas 1997, 101). In 1973, the north-western region became the home of new power holders with the coup led by Habyarimana and other northern Hutu elites who dominated the leadership of the Second Republic. It was also known as the home of Hutu extremists who masterminded the genocide. Even though the violence associated with the 1994 genocide ended there by July of that year with the military victory of the RPF, the region became a war zone for the period of 1997–1999 due to the insurgency by Hutu rebel fighters under the command of the former General of the *Forces Armées Rwandaises* (FAR) based in eastern Congo.

2.1. Profiles of Gitera and Kiberama

The sector of Gitera is in a rural area not far from the outskirts of Gitarama town. At the time of fieldwork in 2002, the sector comprised 627 households scattered across three hills, each of which represented a lower administrative unit called ‘cell’ or ‘*cellule*’.⁵ The locally registered population of the sector was 3,006.

While a great majority of the local households earn their livelihood from subsistence agriculture, there was also a small but significant minority whose members were engaged in occupations other than farming such as government workers, teachers, and those employed by a medical institution and schools established by the Catholic Church. More than 80 percent of the local population were Catholic while the remaining people were associated with various Protestant denominations.

The Kiberama sector is also in a rural part of Gisenyi Province where a

⁴ Based on the work of d’Hertefelt (1971), Newbury (1988, 290 n5, n7) notes that in 1960 Tutsis accounted for 6.06 percent of the population in Gisenyi –much lower than a national average of 15.91 percent. Also see Gasana, et al. 1999.

⁵ Following many other authors writing on Rwanda, this thesis uses the term ‘hill’ to describe a residential unit in which ‘families are often linked by historical ties and common residence’ (Newbury 1988, 219).

great majority of the local households depend for their livelihood largely on subsistence agriculture, but significant proportions of the local population work as temporary labourers at a large-scale tea plantation as well as workers for small-scale, privately owned brick-making enterprises. At the time of my fieldwork, the sector comprised 862 households residing on five different hills. The total population was 3,776. The entire local population belonged to Christian churches with the Catholic Church as the largest denomination but also significant minorities of Protestant denominations.

2.2. Ethnic Types of the Local Households

In post-genocide Rwanda, the identification of its citizens with ethnic labels of Hutu, Tutsi and Twa is prohibited by law. The assumption is that these ethnic identities have been used as a tool for discrimination, exclusion and genocide and therefore must be replaced by a national identity for all – ‘Rwandans’.

Rwanda’s National Unity and Reconciliation Commission (NURC) listed in its evaluation report ‘no more ethnic mention in identity card’ as one of the signs of peaceful coexistence achieved between the people of Rwanda since the new government came to power (2002a,13). In the official language of the post-genocide government, people are classified by ‘politically correct’ categories (i.e. ‘survivors’, ‘new caseload’ returnees, ‘old caseload’ returnees) that are derived from what Eltringham and Van Hoyweghen (2000) called the ‘genocide framework’. Despite the government’s effort at forging a unified national identity among its citizens, most of the informants in the two sectors were conscious of their own ethnic identities and those of residents around them. During individual interviews or private conversations, they often used the ethnic labels.

Table 1 Local households classified by ethnic types in fieldwork communities

Ethnic Type	Gitera		Kiberama	
	No. of HHs	Percentage	No. of HHs	Percentage
Hutu	595	94.9%	859	99.7%
Tutsi	13	2.1%	1	0.1%
Mixed	19	3.0%	2	0.2%
Total	627	100%	862	100%

Source: produced by the author based on the information collected from key grassroots informants including *conseillers* of Gitera and Kiberama and representative of local genocide survivors' associations.

The table above shows the number of households in each of the three 'ethnic types' identified in the two sectors. The first type (labelled as 'Hutu') refers primarily to households with Hutu husband – Hutu wife union, but those households headed either by a Hutu widow whose spouse was a Hutu or a Hutu person not married yet are also included. The second type (labelled as 'Tutsi') refers to households with Tutsi husband – Tutsi wife union as well as those headed either by a Tutsi widow whose spouse was a Tutsi or a Tutsi never married. Finally, the third type (labelled as 'mixed') refers to households with an ethnically mixed union, including both Hutu husband – Tutsi wife and Tutsi husband – Hutu wife. There was no household involving Twa in either of the sectors.

In both Gitera and Kiberama, the overwhelming majority of the local households were 'Hutu' (94.9% and 99.7%) whereas those classified as 'Tutsi' (2.1% and 0.1%) and 'mixed' (3.0% and 0.2%) were small minorities, although the percentages of 'Tutsi' and 'mixed' were much smaller in Kiberama. In Gitera, of the 13 'Tutsi' households, those in 12 had been in the country at the time of the genocide while those in the remaining one household were 'returnees' -

former Tutsi exiles who returned to the country – in this case from Uganda - after the RPF military victory/the end of the genocide in July 1994. In Kiberama, on the other hand, the only ‘Tutsi’ household was that of two Tutsi returnees (a father and his daughter) who came back from exile in eastern Congo (the former Zaire) in 2000, after the Insurgency in north-western Rwanda died down. In Kiberama, these two Tutsi returnees and two Tutsi wives who belonged to ethnically mixed families – only four individuals out of the total population of approximately 4,000 – constituted the entire Tutsi population residing in the sector.

As for the ‘mixed’ households, most of them (17 out of 19 in Gitera and two out of two in Kiberama) had a Hutu husband – Tutsi wife combination as opposed to that of Tutsi husband – Hutu wife.⁶ Persons of mixed parentage are called *ibyimanyi* or ‘hybrids’, but according to the principle of patrilineal descent, like others they are considered either Hutus or Tutsis, depending on their fathers’ identity. Thus, most of the *ibyimanyi* from the concerned ethnically mixed families in both sectors were Hutus, reflecting the predominant pattern of intermarriages in Rwanda.

There is one more clarification regarding ethnic composition of the local households found in the two sectors. As already noted, the number of ethnically mixed households was 19 and two in Gitera and Kiberama respectively. However, this explanation alone is somehow misleading, giving an impression that they were the only households with ethnically mixed background in the sectors. On the contrary, it is possible for even those households classified as

⁶ This pattern is actually a nation-wide phenomena, not limited to this particular sector. Taylor (1999) notes that in pre-colonial and early colonial eras, ‘taking a Tutsi wife was often perceived as a sign of social advancement on the part of a Hutu man’ (167) while ‘Tutsi hypogamy was justified on their part for they would often absorb rich Hutu into their lineages in this way’ (168). Taylor also examines possible reasons why the same intermarriage pattern continued even after the revolution which completely altered power relation between Hutus and Tutsis (168-70).

'Hutu' or 'Tutsi' to have members with an ethnically mixed background. In fact, in Kiberama there were nine 'Hutu' households with members who were known to be *ibyimanyi* having parents composed of a Hutu father and a Tutsi mother. Although the fieldwork did not confirm any household like these in Gitera, it does not mean that there was no such case there. It seems to suggest that compared with the people of Kiberama, the people of Gitera give less attention to the category of *ibyimanyi*. As noted above, inter-ethnic marriages between Hutus and Tutsis have been more common in the centre and the south than the north. Given the fact that inter-ethnic marriage has been practised for centuries, there were likely to be many more 'children of generations of intermarriage', although many of them seemed not to be recognised as such in the local community.

3. Accounts of Ethno-Political Violence

There are 'contested histories' of Rwanda with conflicting interpretations of events, statehood, identities of various social groups and their interrelations, and the cause and nature of violent conflict in the past (Newbury, 1998). This section describes local people's perceptions of the contested Rwandan history, focusing on specific periods of the recent past that grassroots informants of each sector described as the most turbulent ones. In order to place them in regional and national contexts, informants' accounts of local-level violence are occasionally supplemented by those documented in academic sources and human rights reports.

3.1. Political Violence on the Eve of Independence

At the time of the fieldwork, there were only a few Tutsi residents in Gitera sector who could give first hand accounts of the events during the period of political turmoil in the last years of Belgian colonial rule in the late 1950s and early

1960s.⁷ According to these Tutsi informants, sporadic violence against Tutsis began in some parts of Gitarama in 1957 – the year the *Bahutu Manifesto* was issued. The violence escalated in November 1959 due to confrontations between supporters of PARMEHUTU led by Kayibanda and those of the UNAR championed by Tutsi chiefs. Houses of Tutsi chiefs were burnt down, which consequently led them and their families to flee the country.

According to the Tutsi informants, however, local hills within the boundary of Gitera sector were not directly affected by the political violence in 1959. Violent attacks against Tutsis were carried out by local Hutus for the first time in Gitera after communal elections organised by the Belgian colonial authorities in 1960. 'After the voting ended', said an elderly Tutsi man, 'people started to attack us'.⁸ He accused his neighbours of launching an attack on his house and looting his property. Subsequently, he fled to Uganda with his family and stayed there until 1963. Another Tutsi survivor who was a six-year-old boy at the time of the 1960 violence said that its primary target was Tutsi notables – those who were associated with the central court. In his own hill, there were two families of such high-lineage Tutsi and houses of both were set on fire by local Hutus. By contrast, his family was not attacked because – according to his perception – his father was on good terms with his Hutu neighbours. Although several Tutsi houses were destroyed and looted in the local hills, no one was killed or severely injured during this period.

In November 1959, the Hutu uprising started first in a limited part of Gitarama region but spread rapidly to other areas of Gitarama and then to the north-western regions, including Gisenyi within five days after the first violence (Newbury 1988, 194). The fieldwork confirmed that Kiberama was one of the

⁷ The eldest informant interviewed in Kiberama sector was 72 years old at the time of interview.

⁸ Interview with Felix, Gitera, 14 Nov 2002.

areas in Gisenyi which was seriously affected by the wave of violence. According to four local residents – two Tutsis and two Hutus – who were old enough to provide first hand accounts of violent events during the upheaval on the eve of Rwanda's independence, in Kiberama and surrounding areas, at least several Tutsi houses were set on fire and their properties pillaged by local Hutu militants. An elderly Tutsi man interviewed, a returnee from the Congo, said that his house was burnt down while he and his family were hiding in a house of Hutu neighbours.⁹ He and his family fled to the Congo to evade further attacks. A Tutsi genocide survivor who had been living in one of the neighbouring sectors with her parents at the time said that several houses of Tutsis in her locality were pillaged and set on fire, even though her family's house was left intact because, in her view, her father was on good terms with his Hutu neighbours.¹⁰ None of her immediate family members were forced to go into exile.

In Kiberama, the November violence did not die down with these attacks on individual Tutsi families. According to grassroots informants, a Tutsi chief in charge of the area dispatched troops based in Gisenyi town to suppress the uprising in Kiberama and surrounding areas, and a confrontation between the two sides developed into a violent clash - 'war between soldiers of *umwami* (king) and soldiers of Kayibanda (armed peasants supporting PARMEHUTU)' in which several people on both sides were killed.¹¹ By the end of 1959, many local Tutsis fled to Congo; those Tutsis who remained in the local hills of Kiberama after the period of upheaval were only Tutsi women who had married local Hutu men.

As noted earlier, Hutu inhabitants of the north-western regions of Rwanda

⁹ Interview with Aimable, Kiberama, 5 Dec 2002.

¹⁰ Interview with Alice, Kiberama, 7 Dec 2002.

¹¹ Interview with Muze, Kiberama, 7 Dec 2002.

were brought under control of the Tutsi central court only after the arrival of colonialists who extended military support to the Tutsi king. Among the local Hutu population in general and indigenous Hutu elites who used to control access to land in particular, there was strong animosity against Tutsi chiefs and their Tutsi clients who were brought into the predominantly Hutu areas. An elderly Hutu man interviewed in Kiberama showed this anti-Tutsi sentiment when he portrayed pre-independence Rwanda as a period of absolute oppression over the Hutu population, characterised by confiscation of crops, bananas and chickens, heavy taxes and forced labour. He said, 'If people couldn't pay taxes, they were beaten and got jailed till their relatives paid them [...] They often gave people impossible tasks, for example, ordering one person to cultivate two hectares of land within three days. Sometimes people had to work late at night'.¹²

During the political upheaval on the eve of independence, violence was directed primarily at Tutsi power holders or those closely linked with them; most ordinary Tutsis were not targeted, and even those targeted were not killed but chased out of the country.¹³

3.2. Escalated Persecution against Tutsis in 1973

The next tide of violence hit local hills in Gitera in 1973. As noted in Chapter 4, the First Republic led by Kayibanda and other Hutu elites from the centre and the south was facing a political crisis due to the increasing discontent among Hutus in the north who complained about the monopoly of the benefits of power enjoyed by their rivals in the centre/south. In early 1973, a campaign of anti-Tutsi violence was instigated by Hutu political leaders in different parts of the country. Branded as the common enemy of 'the Hutu nation', people suspected of Tutsi

¹² Interview with Muze, Kiberama, 5 December 2002.

¹³ These characteristics of the violence against Tutsis during the revolutionary period are supported by Newbury (1988, 195) and Des Forges (1995, 45; 1999, 39).

ancestry were used as a scapegoat to 'resolve differences among Hutu' (Des Forges 1999, 41). While violence on the eve of independence was directed primarily at Tutsi power holders and those closely linked with them, during the anti-Tutsi campaign in 1973, all the ordinary Tutsis became potential targets of violent attacks.¹⁴ It is estimated that across the country up to 600 Tutsis were massacred by Hutus who were incited by broadcast on a public radio programme 'to rise up and avenge themselves' (Mamdani 2001, 137).

The persecution of Tutsis in 1973 most seriously affected those working in institutions such as government offices, churches, schools and cooperatives.¹⁵ For example, all the Tutsi employees were dismissed from TRAFIPRO (*Travail, Fidélité, Progrès*), an influential cooperative based in Gitarama. Also, about ten Tutsi Catholic brothers and seminary students based in Kabgayi were killed by secondary school students from two rural areas (Shyogwe and Byimana) who were armed with machetes. The students were mobilised by one Gitarama-based politician who was also the most influential leader of the TRAFIPRO.

Being anxious about possible assaults, many Tutsis in Gitera stayed outside over-night during the period of violence while some were hidden by local Hutu families. The violence continued for about two weeks. During this period, no one was killed but a Tutsi man was injured in an attack by local Hutu residents, his house destroyed and several other houses of Tutsis looted. According to one genocide survivor, some of the perpetrators of the Tutsi man's assault were jailed but released after three months. Although the court ordered them to repair the damage they had inflicted on the property of the man, the

¹⁴ Although neither Gitera nor Kiberama was directly affected, massacres of ordinary Tutsis had already begun in the early 1960s as reprisals against a series of cross-border attacks by guerrilla groups of Tutsi exiles (Des Forges 1995, 45; Des Forges 1999, 39; Mamdani 2001, 129).

¹⁵ Interview with Bosco, Gitera, 13 Nov 2002.

decision was never enforced.

Unlike the situation in Gitera described above, Kiberama was not affected much by the anti-Tutsi campaign in early 1973, not least because there were no longer any Tutsis in the local hills except those women married to Hutu men. Grassroots informants, including a Tutsi widow, confirmed there was no political violence in 1973 in the local hills; as she put it, 'the fighting was between students or intellectuals, so it didn't affect the areas dominated by peasants like this one'.¹⁶

Under the rule of Habyarimana who ousted Kayibanda from power through a bloodless coup on 5 July 1973, local hills in Gitera and Kiberama witnessed no major violence for more than a decade.

3.3. The RPF Invasion in 1990 and the Prelude to Genocide

Years of relative calm in Gitera and Kiberama were finally brought to an end with the RPF invasion in October 1990. As the civil war intensified in the northern region, Tutsis in both Gitera and Kiberama were increasingly castigated for their presumed connection with the RPF. In Gitera, houses of local Tutsi families were often searched by local Hutus mobilised for a system of civil defense to make sure that no *Inkotanyi* (RPF fighters) were hiding.¹⁷ Although both communities were affected by the rise of ethno-political violence in the period leading up to the genocide, there were notable regional differences in the intensity of violence. According to several Tutsi genocide survivors in Gitera, no Tutsi was assaulted physically in the local hills during the period between October 1990 and April 1994 – the period separating the RPF invasion and the onset of a full-scale genocide. Kiberama, by contrast, witnessed a series of violent attacks against

¹⁶ Interview with Alice, Kiberama, 7 Dec 2002.

¹⁷ Interview with Pierre, Gitera, 23 Nov 2002.

those 'internal enemies' in the same period. Local Hutus began to seize the lands of some of Tutsi women who had been widowed or divorced and verbally abused them as well as their children, calling them *ibytso*¹⁸ or 'accomplices' of the RPF.¹⁹

In early 1993, Hutu militant MRND supporters physically assaulted those suspected of Tutsi ancestry as well as Hutu members of the opposition.²⁰ Those targeted by Hutu perpetrators based on their ethnicity consisted of two groups: Tutsi women married to Hutu men and the offspring of such intermarriages between Hutu men and Tutsi women (thus considered as Hutu, according to the principle of patrilineal descent discussed earlier). As noted above, the latter category of people – those of mixed parentage are called *ibyimanyi* or *imvange* which means 'hybrids'. In other words, all the local people who were known to have connection with Tutsi ancestry were considered as 'internal enemies', consequently becoming prime targets of political violence. In Kiberama, this was the first time for these categories of people to be subjected to anti-Tutsi violence.

During the same period of early 1993, the political opposition in the north-western regions received a fatal blow. In Gisenyi Prefecture, members of the opposition were crushed by Hutu militants in February 1993, leaving about 300 people dead (Mamdani 2001, 192). In Kiberama, at least several members of the PSD were assaulted by local MRND supporters; one of them, a teacher at a local elementary school, was beaten to death and his house was destroyed.²¹

3.4. The Genocide in 1994

The genocidal violence in 1994 hit both Gitera and Kiberama, but there are

¹⁸ *Ibyitso* (*icyitso* in singular) is a label used to blame Tutsis living in Rwanda as collaborators of the RPF.

¹⁹ Interview with Pascal, Kiberama, 5 June 2002.

²⁰ Interview with Alice, Kiberama, 7 Dec 2002.

²¹ Interview with Alice, Kiberama, 7 Dec 2002.

notable differences in how the violence unfolded, its intensity and its targets. These differences reflected regional differences between the central and southern regions and the north-western regions in terms of demography and political affiliation of the local population. At the time of the genocide (and historically as well), there was high concentration of Tutsis in the centre/south, whereas in post-1990 Rwanda, only a small number of Tutsi residents remained in rural parts of the north-west because many had been killed or forced to leave by the preceding attacks discussed above. Another important difference between the two is the presence of political opposition within the local population. The central and southern regions, particularly Gitarama and Butare, constituted the base of the strong political opposition to the Habyarimana regime dominated by the northern elites.

In the case of Gitarama, members of the opposition, especially those of the MDR, occupied key positions in the local government at different levels. In contrast, as stated above, in the north-western regions, the political opposition had been eliminated by the end of 1993. Consequently, genocidal killings began in the north-west a very short time after the plane crash on 6 April 1994, in the centre/south, the onset of genocide was much later – 18 April in Gitarama - because of notable local resistance to the orders to hunt down and kill Tutsis.²² In the centre/south, the Hutu extremists now controlling the transitional government had to first replace 'moderate' local government leaders – many of them affiliated with the opposition - with those conforming to the order of

²² In her discussion about regional differences in the genocide, based on the information reported by various scholars and human rights organisations, Jefremovas (1997, 99) points out that the prefectures in the centre and south, namely, 'Butare and Gitarama were effectively left alone between 1991-93 and resisted the call for genocide the longest'. African Rights (1995, 153) also reported: 'More than in any other region except Butare, the people in Gitarama, including administrative officers, initially resisted participation in the killing. ... However the geographical position of the préfecture made it easy for killers to be imported from elsewhere'. See also Des Forges (1999, 270-8).

genocide. Then, in order to instigate genocidal violence, the *Interahamwe* and the FAR were brought in from outside the regions (Jefremovas 1997, 101).

3.4.1. Genocidal Killings in Gitera

The genocidal orders reached to local administrative leaders of Gitera sector only after the governor (*préfet*) of Gitarama Prefecture and some of his subordinates at the commune level (*bourgmestres*) were replaced, resulting in a significant shift in power because the local administrative leadership had been dominated by opposition members with moderate views on the Hutu – Tutsi relationship.²³ The *conseiller* (sector head) of Gitera, who was reluctant to give the orders to the local population,²⁴ was also replaced with a new one, a fervent MRND supporter. On 26 April 1994, the first genocidal attack inside Gitera was carried out on one of the three local hills by a gang of local unemployed youths led by two members of *Interahamwe*; they set fire to the houses of Tutsis and plundered their cattle. At least two separate gangs composed of unemployed youths authorised by extremists now fully in charge of the local leadership played an instrumental role in not only hunting down Tutsis but also intimidating or actually beating up Hutus who refused to follow the genocidal orders.

On the day the genocidal attack was launched in Gitera, Bosco, the representative of a local genocide survivors' association but then a leader of the youth wing of PSD, a party supported by local Tutsis, approached Eric, a local leader of MDR, a party drawing the support of many local Hutus, to urge them to fight against the genocidal gangs. Eric had command over the party's youth wing

²³ According to multiple Hutu informants, the MDR was the most influential in Gitera, enjoying support from more than half of the population, followed by the ruling party MRND, whose supporters constituted approximately a quarter of the population. Although less influential than these two parties, the PL and the PSD also constituted significant minorities. For descriptions of political tendencies of opposition parties, see Prunier (1995, 122-6) and Mamdani (2001, 154).

²⁴ This person is known to have hidden his son-in-law and grandchildren who are all Tutsis, during the genocide.

armed with machetes, spears and even some grenades.²⁵ For the next two days, a fierce battle took place between these two allied groups of opposition and the genocidal gangs. The battle ended with total defeat of the allied groups because the genocidal gangs drew support from FAR soldiers from their base in Kabgayi. The genocidal gangs, which by then had grown to the size of about 60 people, demolished Eric's house.

Many of the local Tutsis had sensed imminent danger long before the killings actually began in their hills; thus some, particularly women and children, had tried to find a place to hide with local Hutu families they trusted or had taken refuge at one of the 'refugee camps' developed in different compounds of the Catholic Church facilities located in Kabgayi.²⁶ Many Tutsi men stayed at their homes, some of them with a few of their children, until the genocide started. As a relentless search for Tutsis continued, many of these Tutsis who had managed to survive ended up in one of the 'refugee camps'.

One male genocide survivor, who lost his wife, a son and three other close relatives in the genocide, said that there were at least 50,000 displaced people taking refuge in the compounds of the Catholic Church facilities (schools, a health centre and a dormitory of Catholic brothers).²⁷ They had turned into massive camps for terrified Tutsis (the overwhelming majority) but also smaller numbers of Hutus (i.e. those associated with the opposition as well as those married with Tutsis) from hills all over Gitarama as well as other provinces. The people came to these places desperately searching for safety, but '[i]nstead they became prisoners at the mercy of soldiers who were often drunk, *interahamwe*, and thugs among the people from Byumba who had been displaced by the war

²⁵ Interview with Eric, Gitera, 23 Nov 2002.

²⁶ There were four such camps in Kabgayi at the time of the genocide. See AR (1995, 708-18).

²⁷ Interview with Pierre, Gitera, 24 May 2002.

in 1993 [...]’ (AR 1995, 708). The genocide survivors said that FAR soldiers and *Interahamwe* came almost every day to pick some Tutsis up and took them away. These soldiers often took girls and women away to rape them or keep them as sex slaves (ibid). On several occasions - when buildings the people used as shelters were locked from inside – soldiers climbed up to the top of the roof and shot downwards to the people inside.²⁸

It is hard to estimate how many people died in these camps due to genocidal killings, hunger and disease. What is known is that approximately 30,000 people survived when they were finally liberated by the RPF forces on 2 June 1994 (717). In late May, the camps were surrounded by FAR soldiers, *Interahamwe* and Hutus displaced from Byumba who aimed to mount a massive attack on those already exhausted people inside the camps. However, with the RPF’s imminent advancement, all of them fled in fear, leaving tens of thousands of their de facto hostages behind. Many local genocide survivors said they could have all perished at the hands of *génocidaires* if the RPF forces had arrived even a few days late. ‘I survived by chance’ said one genocide survivor.²⁹

Victims of Genocide in Gitera

Bosco, the representative of local genocide survivors’ association, estimated that at least 18 people were killed in Gitera in the genocide: 17 Tutsis and one person of mixed parentage (in this case, a Hutu father and a Tutsi mother).³⁰ All of these people counted as victims of genocide by Bosco are those who were killed because perpetrators considered them as ‘Tutsi’. On the other hand, according to the information obtained from Hutu residents,³¹ there were at least

²⁸ Interview with Bosco, Gitera, 17 May 2002.

²⁹ Interview with Bosco, Gitera, 17 May 2002.

³⁰ Interview with Bosco, Gitera, 13 Nov 2002.

³¹ Information compiled by Alexis/research assistant

five local Hutus who were killed in the genocide and yet not recognised by the local genocide survivors' association. Reasons for their being killed as understood by the Hutu informants were: 1) refusing to give money to a gang of perpetrators (three persons); 2) trying to protect a wife suspected of being a Tutsi (one person); and 3) quarreling with perpetrators (one person). This shows that the genocide perpetrators in Gitera massacred Rwandans who were perceived to stand in the way of the genocide, irrespective of their ethnic identity.³²

With regard to the people who survived the genocide in Gitera, Bosco said that he had registered members of 11 households headed by Tutsis, including widows whose Tutsi husbands were killed during the genocide.³³ According to the Hutu informants, however, at least seven local Hutu households suffered physical and/or financial damage inflicted by genocide perpetrators, although they were not recognised as genocide survivors. Types of and reasons for the victimizations include: 1) a house demolished in retaliation for putting up armed resistance to genocide (one case); 2) family members beaten up for sheltering Tutsis (two cases); 3) property looted or money confiscated in a struggle to protect family members or relatives (i.e. Tutsi wife, Tutsi grandchildren, a godchild who is Tutsi) (three cases); 4) property looted as a harassment because of their 'Tutsi-looking physical appearances' (one case).

Perpetrators of Genocide in Gitera

At the time of fieldwork, no single trial had been held concerning genocide cases

³² Mamdani (2001, 219) writes:

The predicament of ordinary Hutu is clear from a single fact: it is not only the political opposition that got massacred in the days that followed the president's assassination. As they grew in scope, the massacres targeted anyone, peasant or professional, who refused to join in the *melée*.

³³ Five other households of genocide survivors left Gitera sector and settled in other areas after the genocide.

directly related to the killings that took place in Gitera sector, and given that situation, there was no consensus within the local population about who participated in the genocide at the local level. However, accounts provided by three different groups of grassroots informants, namely, Tutsi genocide survivors, Hutus also attacked in the genocide but not recognised as survivors, and Hutu prisoners (including one prisoner who had confessed his involvement in the genocide) strongly suggest the following three points about the perpetrators of genocide in Gitera sector:

Perpetrators from the local hills: The first point is the central role played by people from within the local hills. At the time of fieldwork, there were 19 so-called 'genocide prisoners' (prison detainees suspected of participation in genocide) – 18 men and one woman - from Gitera sector. Most of them were the members of the two separate gangs of unemployed youths, one led by two local members of *Interahamwe* and the other led by Fabien who had been engaged in various criminal activities (for example, stealing and robbery) prior to the genocide. According to Fabien and several local genocide survivors, dozens more Hutu residents were 'walking freely' in the local hills at the time of the fieldwork despite their participation in the genocide.³⁴

Elements within local administrative leadership: Second, there seems to be no doubt about the organising role played by local administrative leaders. According to some allegations, some local administrative leaders at both sector and cell levels at the time of the genocide did play a vital role in mobilising the local population into carrying out the genocide, setting up roadblocks to catch Tutsis trying to flee, appointing or recruiting people for tasks such as overseeing the roadblocks and taking part in patrols searching for Tutsis in hiding. Those

³⁴ Interview with Fabien, Gitarama Central Prison, 21 May 2002.

leaders who were reluctant to give the genocidal orders to the local population were either replaced with more enthusiastic ones or marginalised as the extremists took power. Before the assault on local Tutsis started, there was a public meeting led by a newly appointed *bourgmestre* at a sector office where local level leaders were appointed specifically for accomplishing the genocidal task according to instructions given by higher authorities.³⁵

Links with external militias and FAR soldiers: Finally, these local perpetrators were linked with external *Interahamwe* militias and FAR soldiers who were based in Kabgayi and Gitarama town. When needed, the former called for support of the latter to crush active resistance as indicated above. Also, both parties collaborated at the main roadblock in the sector where unknown numbers of Tutsis were brought down and slaughtered. Soldiers often came with a truck fully loaded with terrified Tutsis and displayed killings in front of local perpetrators so that they would follow the examples.³⁶

3.4.2. Genocidal Killings in Kiberama

The orders to wipe out all of those 'left to kill' were immediately put into action at the local level in Gisenyi Prefecture; genocidal killings in Gisenyi began on 7 April, the day following the airplane crash which caused the death of Habyarimana.³⁷ In Kiberama sector, there were only three Tutsi residents before the genocide began: a wife of a Hutu man, a widow whose Hutu husband had died before and a woman divorced from a Hutu man. However, those hunted down during the 1994 genocide were not limited to these Tutsi women; they

³⁵ Interview with Fabien, Gitarama Central Prison, 22 May 2002.

³⁶ Interview with Fabien, Gitarama Central Prison, 23 May 2002.

³⁷ One of the major massacres in the prefecture took place in Nyundo - the centre of Catholic Diocese of Nyundo – not very far from Kiberama. During the period between 7 April and 1 May, more than 500 Tutsis were brutally massacred in and around a large complex of church facilities which belonged to the diocese. Detailed accounts of the massacre in Nyundo are documented by AR (1995, 543-55).

involved those categorised as *ibyimanyi*. As noted above, all of these *ibyimanyi* were Hutu according to the principle of patrilineal descent, having Hutu fathers (and Tutsi mothers). At the time of the genocide, there were ten such people of mixed parentage in Kiberama. At the time of the fieldwork, nine of them were residential members of the local genocide survivors' association while the remaining one was living outside the sector. As noted above, these people had already been subjected to anti-Tutsi violence well before the onset of full-scale genocide in 1994.

The order to wipe out all the Tutsis and their accomplices reached the local administrative authorities of Kiberama sector from the *bourgmestre* of 'Mahoro' commune by 8 April. According to Olivier, a confessed genocide prisoner interviewed in Gisenyi Central Prison, the local authorities – a *conseiller* (sector head) and *responsables* (cell-level representatives) began the sensitisation of the local population on 8 April, telling him – a 24-year-old unemployed man at the time of the genocide – and his fellow villagers to 'kill all the Tutsis because they killed our President'.³⁸

Many of the local residents in Kiberama heard the news of Habyarimana's death announced in a public radio broadcast as early as 7 April and the rumors of the massive attack on Tutsis in Nyundo (the centre of Catholic Diocese of Nyundo which was not very far from Kiberama) as it unfolded. So did those Tutsi women and *ibyimanyi*, who, sensing danger, went into hiding in the houses of Hutu families they trusted. Unlike Gitera, there was no overt local people's resistance to genocide occurred in Kiberama, not least because the already weak opposition had been destroyed by the supporters of MRND in 1993. Nevertheless, thanks to an unknown number of Hutu individuals and families,

³⁸ Interview with Olivier, Gisenyi Central Prison, 8 June 2002.

including their own relatives, who hid them and/or gave warning to them about when and where a house-to-house search was likely to be made, most of the local Tutsi women and *ibyimanyi*, managed to keep themselves out of the sight of the genocide perpetrators.

In the case of Odette, one of those *ibyimanyi* who had survived the genocide in Kiberama, all family members except her husband went into hiding, first on her own hill and then in one of the nearby sectors.³⁹ Her husband did not face any direct threat, but was beaten by those who came searching for her because he refused to tell them her whereabouts. She and her three daughters took refuge at the house of a long-time family friend, while her four sons managed to find a place to hide by themselves. Odette continued hiding for about three months until she fled to the Congo with hundreds of other Kiberama residents – Hutu, Tutsi and *ibyimanyi* alike - in mid-July 1994 as the RPF forces made a rapid advance towards the north-western part of the country.⁴⁰ Except one person who was in Kigali when the genocide started, all of the local genocide survivors interviewed for this study went through a similar experience; they perceived danger before the genocidal attacks began on their hills and went into hiding with the help of their relatives, neighbours and/or friends and stayed in hiding until mid-July when the genocidal forces in the north-western part of the country finally ran away from the RPF's advance.

Victims of the Genocide in Kiberama

At the time of the fieldwork, no official record existed concerning the number of local residents killed during the 1994 genocide in Kiberama, and some

³⁹ Interview in Kiberama, 4 June 2002.

⁴⁰ Ruhengeri and Gisenyi were put under the control of the RPF on 13 and 18 July respectively and over a million people crossed the border to Congo (then Zaire) in one-week period of mid-July (Prunier 1995, 298-9).

divergence of opinion was expected on this issue among grassroots informants, particularly between genocide survivors and the rest of the grassroots informants, as was the case in Gitera. However, all the grassroots informants were unanimous on this issue: over 35 informants interviewed in Kiberama, including genocide survivors, genocide prisoners, their families, and other local residents,⁴¹ all said that only one local resident was killed in the genocide in Kiberama. The person was a Tutsi woman who had been deserted by her Hutu husband a few years before the 1994 genocide.⁴²

To be sure, the above unanimous account does not suggest that the murder of the Tutsi woman was the only killing that took place inside Kiberama sector during the 1994 genocide; rather, it merely suggests that she could be the only Kiberama *resident* murdered inside Kiberama during the genocide. While most of the grassroots informants were reluctant to talk about killings other than this widely known case, two separate eye-witness accounts collected during the fieldwork suggest that at least several other people – not Kiberama residents – were killed inside the sector in the period between April and July 1994. One of the two accounts was provided by Olivier, the prisoner quoted above. He testified in his confession statement that he witnessed killings of three people at the main roadblock which was set up near the former sector office.⁴³ Another eye-witness account was provided by Chantal, a Hutu widow who lost her married son, a daughter-in-law who was a Tutsi, and two grandchildren in the genocide. After escaping from massacres in their residential area of Gisenyi town, they were taking refuge at Chantal's house in Kiberama, but hunted down by local militia (a discharged government soldier and his entourage) and brutally

⁴¹ Including 18 participants of two focus groups and 19 interviewees of semi-structured interviews.

⁴² She was a mother of Pascal, the representative of the local genocide survivors' association.

⁴³ Interview at Gisenyi Central Prison, 7 June 2002.

massacred in July 1994.⁴⁴ According to Chantal, she reported the massacre to local authorities after the new government was established, but no investigation had been made of it.

Perpetrators of the Genocide in Kiberama

While informants were unanimous on the number of local residents killed in the genocide, they had two sharply contradicting views regarding local people's participation in the genocide. A majority of them – more specifically, most of the 'non-genocide survivors' interviewed advanced a view that only a handful of local residents were implicated in the genocide. At the time of fieldwork, there were three former Kiberama residents who had been convicted of the crime of genocide – including Olivier - specifically related to the murder of the Tutsi woman.⁴⁵ According to the majority view, these convicts were disgraceful anomalies to the local population who refused to participate in the genocide. By contrast, a minority of the grassroots informants – three genocide survivors and another convict along with Olivier – asserted that a considerable number of Kiberama residents were implicated in the genocide. Although it is difficult to draw a definitive conclusion from available evidence, the minority view seems to be more plausible, not least because it was supported by two different categories of informants who consistently indicated the following three points. These points are, in fact, very similar to those identified in Gitera concerning the perpetrators of genocide.

⁴⁴ Interview in Kiberama, 4 June 2002. According to this informant, her son and his family had escaped from systematic massacres of Tutsis taking place in Gisenyi town and had taken refuge at his parents' home in Kiberama. But the presence of the family with a Tutsi wife came to be known to the discharged government soldier who became a local militia leader. The whole family were shot dead by the man and his entourage. The informant's husband was also severely beaten by those who came to search for the family because he refused to tell them anything about the family hiding somewhere on the local hill. He survived the violence but became crippled, and died two years later.

⁴⁵ The confessed prisoner was serving a 12-year sentence while others who had not confessed were serving life sentences. These prisoners had been tried by the formal justice system.

Perpetrators from the local hills: Genocide perpetrators from the local hills of Kiberama seem to be more than just a handful of disgraceful anomalies. At the time of fieldwork, there were five genocide prisoners from Kiberama detained in Gisenyi Central Prison, including the three convicts mentioned above. According to two of these prisoners convicted of the murder of the Tutsi woman, up to 15 of their fellow villagers constituted an attack group that was responsible for her death but only three had been convicted. The group was led by an ex-prisoner with a full criminal record prior to the genocide. Some of its members had fled to Zaire and never came back while others died in exile.⁴⁶ Another prisoner said that he looted cattle owned by an ethnically mixed family with eight fellow villagers but all of them managed to evade arrest and later settled the matter privately with the family.⁴⁷ According to Pascal, the representative of the local genocide survivors' association (who actually happened to be a son of the Tutsi woman murdered) and two other genocide survivors, many of the killers were still 'moving around freely' on their hill.⁴⁸ Synthesising all of these accounts, it seems likely that at least dozens or more of ordinary local residents actively took part in killings, assaults, and lootings in the genocide.

Mobilisation by local administrative leaders: As already noted above, the testimony of the confessed prisoner called Olivier clearly indicates that, having received the order from the *bourgmestre* of 'Mahoro' commune, the local administrative authorities of Kiberama played an active role in mobilising local people into the genocidal campaign. According to Olivier and another convict interviewed, these local leaders were responsible for setting up roadblocks, allocating about eight local residents to each roadblock, and forming the attack

⁴⁶ Interview with Olivier, Gisenyi Central Prison, 7 June 2002; interview with Damien, Gisenyi Central Prison, 6 Dec 2002.

⁴⁷ Interview with Gaspard, Gisenyi Central Prison, 3 June 2002.

⁴⁸ Interview with Pascal, Kiberama, 5 June 2002.

group that killed the Tutsi woman. All of the three genocide survivors also made a strong accusation against these former local leaders.

Perpetrators from outside: Accounts provided by different categories of grassroots informants all pointed to the involvement of external actors in the atrocities perpetrated in Kiberama between April and July 1994. Many of the accounts collected strongly suggest that several FAR soldiers and *Interahamwe* members either from Gisenyi town or Nyundo occasionally visited the main roadblock and killed an unknown number of civilians who were brought from different places around Kiberama. Apart from these well-armed perpetrators, several informants asserted, at least two separate groups of perpetrators from neighbouring sectors were engaged in pillaging in the local hills.

3.5. The RPF's Violence During and After the Genocide

The pattern of local-level violence changed dramatically as the RPF achieved a military victory over the genocidal forces. The alleged RPF killings after the genocide halted only took place in Gitera as described below. The absence of RPF violence in the aftermath of the genocide in Kiberama seems to be partly attributable to the fact that most of the local residents, not only those who were possibly implicated in the genocide at different levels, but also all the genocide survivors interviewed, joined the massive exodus of people crossing the border into Zaire after the RPF forces captured the town of Ruhengeri on 13 July. Thus, the following accounts of violence are all concerned with what grassroots informants testified actually happened in Gitera.

The RPF forces captured Kabgayi on 2 June 1994, chased genocidal military and militia out of the area, and put the surrounding areas, including Gitera, under its control. Not only Hutus but also a Tutsi genocide survivor in Gitera, reported two types of killings committed by RPF soldiers: 1) killings in the

course of military action; and 2) massacres after combat ended in local areas.

3.5.1. Killings in the Course of Military Advance

On 2 June 1994, the day the RPF forces captured Kabgayi area and liberated approximately 30,000 or more Tutsis, sounds of gun shots grew closer to the local hills in Gitera. As some areas in Gitera were caught under fire as the RPF forces advanced on one of the hills that was strategically important, many local residents fled to a mountainous area in the region and stayed there for nearly one and a half months.⁴⁹ One Hutu informant testified that when he returned home on 13 July 1994, he saw many decomposed bodies - those of the victims of the RPF shooting - on the ground on his hill. According to the information obtained from several Hutu residents, at least 34 people – 33 Hutus and one Tutsi – were killed during the RPF's military advance. Although these victims have not been officially acknowledged, different groups (Tutsi genocide survivors, Hutus who or whose families were attacked by genocide perpetrators, Hutu families of prisoners and others) confirmed that at least dozens of local residents died for this reason.

3.5.2. Massacres after Combat Came to an End

There was a striking discrepancy between Hutu and Tutsi accounts on violent incidents that took place after Kabgayi and the local hills were brought under the RPF's control. Three different versions of the truth were asserted by different parties:

⁴⁹ Some Hutu families fled to Gishwati forest in Gisenyi and stayed there for nearly two months. They returned home sometime after the RRF declared the end of the war (18 July) and the establishment of the transitional government (19 July).

No RPF Violence after Combat Ceased

Except Bosco, the representative of the local genocide survivors' association, all of the genocide survivors interviewed as well as some Hutus who were attacked by genocide perpetrators categorically denied any type of violence committed by the RPF after combat ceased, even though they did not deny that some people lost their lives in the course of its military advance. According to this version, RPF soldiers were described as 'liberators' who 'killed those who obstructed their advance to Kabgayi for liberating people at refugee camps'.⁵⁰

Summary Execution of Génocidaires

The second version of the truth claims that only killers were picked up from hiding places and executed by RPF soldiers. This version was advanced by Bosco and several Hutu informants. Having admitted that six Hutus were killed by RPF soldiers on his own hill, Bosco remarked, 'They were very well known killers hiding in their homes' and portrayed the killings as a justifiable retribution.⁵¹ They were shot dead where they were caught by the soldiers. Hutu residents of another hill reported, though they admitted they were not eyewitnesses themselves, that one day in June 1994, ten people on their hill were taken to a 'secret place' by RPF soldiers, with 'their hands tied at the back of their bodies', and 'they never came back'.⁵²

Revenge on the Local Hutu Population

According to the accounts provided by Hutu informants, Hutus who did not participate in genocidal killings were also massacred: Some Hutu residents, including the former MDR leader at the local level who led the resistance against

⁵⁰ Interview with Bosco, Gitera, 15 Nov 2002.

⁵¹ Interview with Bosco, Gitera, 13 Nov 2002.

⁵² Interview with Cyprien's family, Gitera, 24 May 2002.

the genocidal attacks in Gitera, made a strong allegation against RPF soldiers for massacring unarmed Hutus after combat ceased locally, especially during the period between June and August 1994. These informants described the massacres as 'revenge on the Hutu' for their presumed involvement in the genocide. According to their accounts, up to 30 Hutus, including five visitors from another area, were either massacred or 'disappeared' after being abducted by RPF soldiers.⁵³

3.5.3. Genocide Survivors' Complicity

Another controversial issue in relation to the RPF violence is the role of genocide survivors in it.⁵⁴ Eric, the former MDR leader quoted above, and many other local Hutu residents seemed to believe that some of the local genocide survivors 'pointed the finger' at the people subsequently killed by the RPF soldiers. Eric accused two local genocide survivors including Bosco for guiding RPF soldiers to the homes or other places where some Hutus were hiding, knowing the soldiers would execute those Hutus. On the other hand, Bosco totally denied the accusation, saying 'It's not survivors but others who informed the soldiers about them'.⁵⁵

3.6. Exodus to Zaire and Mass Return of Refugees

Many local residents in the sectors, particularly those of Kiberama but also some of Gitera, fled to Zaire (the current DRC). Several informants in Kiberama said that local hills were nearly deserted by the time Gisenyi town was captured by the RPF on 18 July 1994.⁵⁶ After the fall of Ruhengeri at the hand of the RPF on

⁵³ Information compiled by Alexis/research assistant.

⁵⁴ Des Forges (1999, 717) documented accounts of RPF soldiers using genocide survivors as well as Hutu residents 'to guide them to the homes of supposed perpetrators', 'to name killers' or 'to denounce supposed killers among the crowds grouped at camps for displaced persons'.

⁵⁵ Interview in Gitera, 13 Nov 2002.

⁵⁶ Prunier (1995, 298) notes the RPF captured Ruhengeri and Gisenyi on 13 and 18 July

13 July, most of the local residents, including genocide survivors, were on the run and joined the massive exodus of people crossing the border into the former Zaire (approximately 20 kilometers from Kiberama). While it is reported that government authorities in Ruhengeri and Gisenyi used intimidation and coercion to have the people in the region flee with them before the arrival of RPF troops, many people in Kiberama seem to have fled by their own choice based on the profound fear they had of *Inkotanyi* (RPF fighters), as a result of the decades of government propaganda which had portrayed them as brutal warriors who would kill people indiscriminately.⁵⁷ The local genocide survivors interviewed in Kiberama unanimously said that they had hardly any choice but to flee with their Hutu family members. Some of them also said that they themselves were very much afraid of *Inkotanyi*.

These 1994 refugees came back home at different times. In the case of Kiberama residents, many of the genocide survivors returned home after staying in Goma for only a few weeks because they felt threatened by the large presence of ex-FAR soldiers and *Interahamwe* militia men in refugee camps.⁵⁸ While those who returned to Kiberama at an early stage were not limited to those genocide survivors,⁵⁹ a majority of the Kiberama people returned home as part of the massive repatriation of around 550,000 refugees in the mid-November 1996 after their camps were attacked by the alliance of RPA and Laurent Kabila's AFDL.

The experience of Kiberama people in exile in Zaire/Congo is beyond the

respectively while one of the charts on the advance of the RPF between April and July 1994 which appeared in Des Forges (1998) indicates 14 and 17 July as the dates on which the towns fell to the RPF respectively.

⁵⁷ Interview with Pascal, Kiberama, 6 June 2002.

⁵⁸ Interview with Odette, 4 June 2002; interview with Pascal, Kiberama, 6 June 2002.

⁵⁹ For example, one Hutu informant said that he stayed in Goma only for a week and he found the situation in Kiberama safe when he was back in late July 1994. Interview with Anastase, 30 May 2002.

scope of this study. However, one item of note is that most of the grassroots informants said that they lost their families or relatives while they were in exile due to various reasons ranging from the combination of disease, hunger and exhaustion,⁶⁰ to violence at the hands of ex-FAR soldiers and *Interahamwe* militias in the refugee camps,⁶¹ to attacks by Zairian rebels and the RPA forces while they were either in and around the refugee camps or their flight deeper into Congo after the initial attacks in late 1996.

3.7. Hutu Insurgents' Attacks and Counter-Insurgency Violence, 1997-99

Attacks by Hutu rebels from eastern Congo and the government's counter-insurgency offensives severely affected a large part of the north-west – Kiberama and its neighbouring sectors and districts included - which caused the deaths of at least several thousand civilians in 1997 – 99 (AR 1998). According to grassroots informants who spoke about their experiences during the Insurgency,⁶² the security of the local population was undermined most seriously in 1997-1998, the period in which most of the insurgency attacks and counter-insurgency offensives by the RPA took place in and around Kiberama sector. All of these grassroots informants agreed that the magnitude of violence in this period was totally unprecedented in local history and many lives of local residents were lost as a consequence. However, there was a striking discrepancy in their claims about the nature of violence during the Insurgency. They were particularly divided over two issues: 1) which party (the Hutu rebels

⁶⁰ Eriksson (1996, 27) estimated the death toll due to the combination of the causes to be approximately 50,000 within the first month of the 1994 Goma influx alone.

⁶¹ The level of violence within the camps has been reported to be very high. For example, Eriksson (1996, 29) cited a result of a 'retrospective survey' carried out in one camp which estimated deaths of 4,000 refugees (one camp alone) due to 'violence at the hands of the militia, undisciplined Zairian soldiers and other refugees'.

⁶² This and following paragraphs are based on the information collected from 11 individuals and one focus group of eight lay judges of local *gacaca* courts. They included four genocide survivors (two Tutsis /two *ibyimanyi* Hutus), 13 local residents who are not genocide survivors (all Hutus), and two former rebel fighters (Hutus).

behind the Insurgency or the RPA) should be blamed for the civilian killings; and 2) whether or not the local population supported or collaborated with the rebels. Two polarised views emerged: one advanced by genocide survivors (Tutsi women and *ibyimanyi*) and the other by those who are not (all Hutus).

3.7.1. Patterns of Civilian Killings

Three different patterns of civilian killings were reported by the grassroots informants: 1) deliberate killings of civilian targets by the rebels; 2) killings in crossfire between Hutu rebels and RPA forces; and 3) summary executions and reprisal killings of civilians by RPA soldiers. While the first two types of killings were largely accepted in the local population, the last one was found to be highly controversial – asserted by non-genocide survivors and yet categorically denied by genocide survivors.

Rebels' Killings of Civilian Targets

The grassroots informants almost unanimously testified that the Hutu rebels targeted local administrative officials such as a sector-level *conseiller* and cell-level *responsables* whom the rebels castigated for collaborating with the RPF regime, portrayed in their intense propaganda campaign as 'the enemy of the Hutu'.⁶³ According to the *conseiller* of Kiberama, 15 civilians, including four local administrative officials, were killed at the hands of rebels in their attacks on the sector office or the houses of individual officials.⁶⁴ No local genocide survivor was killed, although one of them, Odette, narrowly escaped with her life from the hands of rebels on her hill.⁶⁵ According to some genocide survivors, the

⁶³ AR (1998, 115) writes that local officials, unless they collaborated with the insurgents, were 'the first to die at the hands of the insurgents'. See also a section on a propaganda campaign by the Hutu rebels (98-108).

⁶⁴ Interview in Kiberama, 30 May 2002.

⁶⁵ According to Odette's testimony, one afternoon rebels jumped into her house, dragged her out and said, 'We'll kill you because you are a member of *Inkotanyi*'. They also gagged and tied up

community of local survivors would have been eliminated if the government had not tightened security on the local hills by establishing military posts.

Killings in Crossfire during the RPA's Counter-Insurgency Offensive

Attacks by the Hutu rebels were usually followed by counter-insurgency offensives by the RPA. Grassroots informants' estimates of the numbers of civilian casualties in the context of such military operations vary significantly from only several to a few hundred. While all the informants seemed to agree that these victims had been killed during combat situations, there were indeed remarkable differences in their views concerning who should be blamed for the killings. The informants who were genocide survivors ascribed the blame largely to the rebels for launching attacks in the first place or hiding amongst the local population. Three of them even blamed the victims as well for harbouring the rebels and even fleeing with them. On the other hand, a great majority of the informants who were non-genocide survivors blamed the RPA soldiers, claiming that they made no attempt to distinguish unarmed civilians from the armed rebels.

Summary Executions and Reprisal Killings by the RPA

As already noted, whether the RPA soldiers deliberately killed unarmed civilians in circumstances other than combat situations was one of the most controversial issues that emerged during the fieldwork in Kiberama. The first thing to be stressed here is that there has been no official acknowledgment about any sort of civilian killings committed by the RPA forces in Kiberama. However, the great majority of non-genocide survivors who spoke about their experiences during the

her Hutu husband, though they did not threaten to kill him. When she was murmuring a few words of prayer, another group of insurgents called them and suggested they should move on for attacking somewhere else. She said, 'I knew I was going to die but it's God who saved me'. (Interview in Kiberama, 4 June 2002).

Insurgency (all but two of them including the *conseiller*) made an allegation against the RPA for their killing of dozens, if not over a hundred, civilians in Kiberama.

For example, Esther, a Hutu widow, made a strong allegation about a brutal civilian killing perpetrated by the RPA forces in 1998.⁶⁶ According to her allegation, at around 8 p.m. a group of RPA soldiers ambushed five households in her neighbourhood and killed (shot or bayoneted) 14 people, including three women and three children. Only one woman escaped the killing among the members of the five families attacked. These families were suspected by the RPA of being collaborators with the Hutu rebels, who, according to Esther's son,⁶⁷ had killed about 40 RPA soldiers in an ambush carried out on the same hill earlier in the same year. Esther also reported that four young men, including one of her sons, had been arrested by the government because they were also wrongly suspected of their collaboration with the rebels. These kinds of serious allegations against the RPA forces were usually made during individual interviews where strict confidentiality was assured for informants. However, on one occasion, a similar allegation was made even in a semi-public setting, when a focus group interview was underway with eight lay judges elected for local *gacaca* courts. None of these lay judges who turned up for the focus group session were genocide survivors. During the session, strikingly, seven of the participants claimed that they had lost one or more family members by the alleged RPA atrocities in 1997-98.⁶⁸ They did not deny the killings by the rebels, but unanimously insisted that victims of the rebels were far outnumbered by those of the RPA forces in Kiberama. On the other hand, all the genocide

⁶⁶ Interview in Kiberama, 6 June 2002.

⁶⁷ Interview with Antoine, Kiberama, 6 June 2002.

⁶⁸ Focus group with lay *gacaca* court judges, Kiberama, 1 June 2002.

survivors interviewed as well as the *conseiller* categorically denied any sort of civilian killing by the RPA outside crossfire situations in Kiberama, although Pascal, the representative of local genocide survivors' association, admitted that at one public meeting, the *bourgmestre* of 'Mahoro' commune had suggested a possible reprisal against the local Hutu population if they continued to support the rebels.⁶⁹

3.7.2. Local Support for the Hutu Rebels

The issue of local support for the Hutu rebels emerged as another controversial and sensitive issue over which the grassroots informants were sharply divided. The division was again largely between genocide survivors who accused the local Hutu population of complicity and the great majority of non-genocide survivors who categorically denied a collaborative relationship with the rebels. Three out of the four genocide survivors who commented on the issue asserted that a large section of the local population had given strong support to the rebels in the form of food, shelter, and information vital for their military operations.⁷⁰ As the basis of their assertion, they argued that many of the rebels who had operated on the local hills were former Kiberama residents, thus drawing support from their families and relatives without much difficulty. In fact, the presence of three demobilised Hutu rebels was confirmed in Kiberama during the fieldwork. These former rebels had been reintegrated into their own community in Kiberama after going through a re-education programme implemented by the National Unity and Reconciliation Commission (NURC). According to one of them, at least 20 local young men had joined the rebel movement and some of

⁶⁹ Interview in Kiberama, 7 June 2002.

⁷⁰ Interviews with genocide survivors: Alice, Kiberama, 1 June 2002; Jean, Kiberama, 4 June 2002; Pascal, Kiberama, 7 June 2002.

them were involved in military actions in Kiberama.⁷¹ He claimed that he and many of his fellow fighters had no choice but to join the rebels for their own safety because of the government's mass arrest of young Hutus in the north-western regions in 1998.

In the political context of the north-west, it was and still is even today almost unthinkable for Kiberama residents – except some genocide survivors who positioned themselves unambiguously on the side of the RPF regime - to admit any sort of local support for the rebels in public. However, such highly sensitive information emerged on one occasion. While walking on a hill to visit one informant, our local guide unwittingly revealed that the very path we were taking at the time had been used by the rebels to come down to a village to receive food from its residents.⁷² Given all the accounts presented in this section, it seems likely that a significant proportion of the local population took sides in favour of the Hutu rebels, although it is difficult to know the precise nature and level of local support for them.

3.7.3. Accusations against Local Collaborators with the RPA

As indicated above, in Kiberama local administrative officials were the main targets of rebels' attacks in 1997-99. They were accused of collaborating with the RPF-led 'Tutsi regime' whose aim was described as the restoration of oppressive rule over the Hutu population. Some of the grassroots informants did not hide their deep animosity against the present *conseiller* due to his alleged complicity in some of the atrocities committed by the RPA forces. For example, Esther, the Hutu widow quoted above, asserted that it was the *conseiller* who

⁷¹ Interview with Claude, Kiberama, 6 June 2002. This person testified that after joining the rebels in July 1998, he took part in military operations in different parts of Gisenyi and Ruhengeri as well as in the North Kivu until finally being captured in Ruhengeri in August 2001.

⁷² Conversation with Antoine, Kiberama, 6 June 2002.

guided the RPA soldiers to the houses of the victims. One of the genocide survivors interviewed was also accused of working as a driver of a government vehicle which was often used to transport soldiers stationed in military posts established in the sector.

4. Competing Narratives on Victimhood

Some of the controversial accounts presented above indicate the contested nature of the issue of victimhood in the two communities. In both Gitera and Kiberama, the dispute over the issue of victimhood was polarised along similar ethno-political lines dividing the local population into the two groups: those officially recognised as survivors of the genocide (the great majority of those residents having Tutsi ancestry) and those who identified themselves primarily as direct or indirect victims of RPF/A violence (the great majority of Hutus/non-genocide survivors).⁷³ By highlighting key elements of the competing narratives advanced by the two sides, this section discusses how people's sense of victimhood was closely interwoven with their sense of ethnicity in the two communities.

Before engaging in a comparative analysis of the competing narratives, two caveats should be noted:

First, although each of the competing narratives is presented as that of one group or the other, this does not mean that all the informants in the same category of people exactly shared a particular set of perceptions of, or attitudes towards and claims about the issue of victimhood. Rather, each narrative presented below must be understood as a commonly shared perception of the

⁷³ This thesis follows Huyse's definitions of *direct* and *indirect* victims: the former refers to 'those who have suffered the direct effects of violence' while the latter signifies 'those who are linked to direct victims in such a way that they too suffer because of that link (2003, 54).

issue of victimhood, which was articulated by many, if not most, of the grassroots informants falling in one group or the other in each sector. Second, there were small numbers of local residents who shared neither of the competing narratives identified in each community; thus the analysis in this section is by no means exhaustive. The intention is not to try to represent the whole spectrum of existing views, but to highlight the nature of contested victimhood along ethno-political lines dividing each of the two communities.

4.1. The Narrative Advanced by Genocide Survivors

The main thrust of the narrative on victimhood advanced by genocide survivors may be summarised as follows: they must be entitled to a special, if not exclusive, victim status in the local population because they are the only surviving victims of the genocide. The following are key elements of the narrative:

4.1.1. Victimhood Bound to Ethnic Identity and the Notion of Genocide

Genocide survivors in Gitera portrayed their victimhood as something inextricably bound to their Tutsi identity. As noted above, among the genocide survivors, there was a shared perception that they had been persistently targeted because they were Tutsis in what they described as the history of Tutsi genocide which, in their view, had began with the Hutu uprising in 1959, reaching its climax during the 1994 genocide. In other words, they portrayed themselves as collective victims – those victimized due to their association with an identifiable collective (Huyse 2003, 54), and the identifiable collective they had in mind may be put in words as ‘the Tutsi’ – an imagined community composed of people with rigid Tutsi identity. This sense of collective victimhood as members of ‘the Tutsi’ is grounded in their lived experiences during the 1994

genocide, which is captured in what one of the local survivors said:

I hid in the bush for seven days. While I was hiding, I heard people saying 'We'll finish all the Tutsis in our country except one for displaying in a museum so that people would know how a Tutsi looked like'. ...⁷⁴

Many of them were hunted down by local Hutu genocidal gangs just because of their Tutsi identity. Most or all of them heard their right to existence totally denied on radio broadcasts, during public meetings or conversations between their Hutu neighbours. They also knew that the perpetrators of genocide really meant what they had declared, as seemingly endless slaughters of Tutsis continued until they were finally liberated by the RPF on 2 June 1994.

Closely connected with the centrality of ethnicity in their sense of victimhood was the notion of 'genocide'. The narrative of genocide survivors in Gitera asserts that they deserve a special victim status in the local population because of the single fact that they were survivors of genocide. Many of them tended to represent their own suffering as much greater than any other parties' suffering. This was most clearly demonstrated in the way they distinguished themselves and their Tutsi relatives who had been massacred in 1994 from Hutu victims who had also fallen at the hands of the same *génocidaires*. Most of the local Tutsi genocide survivors interviewed insisted that their suffering and that of Hutu victims in the atrocity unleashed in 1994 were totally different in nature.

Underpinning their argument was the distinction between the Kinyarwanda notions of *itsembabwoko* and *itsembatsemba*, the terms coined by the RPF-led post-genocide government in order to describe genocidal violence in 1994.

Itsembabwoko is a compound Kinyarwanda word that is made of two components: *itsemba* and *ubwoko*. *Itsemba* comes from a verb *gutsemba* that means 'to wipe out' or 'to decimate' and thus *itsemba*, as a noun form of

⁷⁴ Interview with Bosco, Gitera, 17 May 2002.

gutsemba, can be interpreted as ‘massacre’ or even ‘extermination’. Then, *ubwoko* (pl. *amoko*) is a term which refers to ‘clan’ or a certain ‘group’ or ‘category’ (Prunier 1995, 370).⁷⁵ Importantly, *ubwoko* was once used as the term which refers to the racialised ethnic category of Hutu, Tutsi or Twa by which each and every Rwandan had been classified and which was indicated on the compulsory identity card introduced by the Belgian colonial administration (ibid). Putting these two words together, *itsembabwoko* generally means ‘decimating an ethnic group’ (Longman and Rutagengwa 2004, 170). Considered in relation to the specific context of Rwandan genocide, it means mass killings carried out with the intent to exterminate ‘the Tutsi’ as a racial group. *Itsembabwoko* (*Itsemba-(u)bwoko*) points to the very kernel of the crime of genocide perpetrated by the former regime. On the other hand, *itsembatsemba* (*itsemba-(i)tsemba*) is a reiterated form of *itsemba* and can be interpreted as ‘extensive massacres’. In contrast to the notion of *itsembabwoko*, *itsembatsemba* refers to the massacres of those individuals victimized in the genocide not because of their real or imagined connection to the Tutsi identity but because of their or their relatives’ views and/or acts that were not in conformity with the ideology and policies of the genocidal regime.

According to the explanation made by the genocide survivors interviewed, the Hutus killed during the genocide are victims of *itsembatsemba* (massacres), not *itsembabwoko* (genocide); they have never been hunted down simply because of who they were; nor have they faced the danger of themselves and their entire families being exterminated. This distinction seems to have stemmed from the unique and extreme form of suffering which survivors of Rwanda

⁷⁵ In modern Kinyarwanda, the term is used with a range of meanings from human categories such as ‘race’, ‘ethnic group’ or ‘clan’ to non-human classifications such as ‘species’ or ‘types’ of animals or plants.

genocide have gone through. Staub and Pearlman (2001, 99), psychologists who have been involved in trauma healing work and research in post-genocide Rwanda, observe that '[s]urvivors of genocide endure extreme harm and tremendous losses, including the murder of loved ones and others in the group in which survivors' identity is rooted and the attempt to eliminate their entire culture and community'. Thus, in the view of genocide survivors, their form of victimhood should not and cannot be compared with any other forms of victimhood.

Pottier (2002, 126) points out 'an implied moral hierarchy' between the two interrelated notions of genocidal violence in the political discourse of post-genocide Rwanda. Although he does not pay attention to how the distinctions are made in Kinyarwanda, Pottier argues that the moral hierarchy implied lies between Tutsi victims of genocide and Hutu victims of 'politicide who died in massacres' (ibid). The Rwandan government officially abolished the use of the two Kinyarwanda terms in 2003 with its adoption of new constitution in which they were replaced by a single term *jenocide*.⁷⁶

Like their counterparts in Gitera, genocide survivors in Kiberama asserted the primacy of their own victimhood as survivors of the 1994 genocide, stressing the same notion of *itsembabwoko* (genocide) as the kernel of their victimhood. This was demonstrated most evidently in their way of distinguishing themselves from other categories of people also laying claim to victimhood in their community. When he was asked whether members of the opposition party assaulted by Hutu militants could be considered as 'survivors' like him, Pascal, a genocide survivor with a mixed ethnic background - emphatically denied it:

There is no reason to consider those people as survivors. They were

⁷⁶ Chapter 8 addresses the politics behind this change in the terminology of genocide.

attacked because of political reasons. But I was targeted because of my ethnicity (*ubwoko*) since the time I was in the primary school.⁷⁷

For the genocide survivors in Kiberama, whether the person was killed or injured on the basis of his/her ethnic identity was an essential criterion for being counted as a victim/survivor of *itsembabwoko* (genocide). This is the same logic as the one employed by genocide survivors in Gitera in their assertion that their victimhood should take precedence over those of Hutus who survived the attacks perpetrated by the same genocidal forces.

Despite this fundamental similarity in their views on the centrality of ethnic identity as the criterion of authentic victimhood, genocide survivors in the two communities differ from each other on the criteria for determining the very ethnic category of Tutsi who had suffered collective victimization. In Gitera, for one to be unequivocally considered a genocide victim/survivor, he must be a Tutsi who belonged to a Tutsi lineage (*umuryango*) while people categorised as Tutsi women married to Hutu men (and integrated into their Hutu lineages) and *ibyimanyi* were excluded from the membership of the local genocide survivors' association. To be precise, being *ibyimanyi* or the offspring of ethnically-mixed parents does not necessarily make any person excluded from the membership of the local genocide survivors' association in Gitera. *Ibyimanyi* who were found totally excluded from the membership were those with Hutu fathers. As noted above, most of the *ibyimanyi* identified in Gitera were Hutus, reflecting the predominant pattern of inter-ethnic marriage in the local population, which is between a Hutu man and a Tutsi woman.

By contrast, in Kiberama, for a person to be considered as a victim/survivor of genocide, he did not have to be a 'Tutsi' in the same strict or racial sense as generally understood in Gitera. On the contrary, the membership of the genocide

⁷⁷ Interview in Kiberama, 7 Dec 2002.

survivors' association in Kiberama was entirely comprised of the very category of people who were excluded from Gitera's group of genocide survivors. Pascal, the president of the local genocide survivors' association himself appeared to have an ambiguous sense of ethnic identity. He had vaguely considered himself to be a Hutu inheriting his father's identity until people around him, including his teachers and school mates, began to harass him because of his Tutsi mother. 'I've never been sure about my ethnicity, but the people began to call me an accomplice of *Inkotanyi*', he one day recalled.⁷⁸ Accordingly, most of other survivors of genocide in Kiberama did not stress the strict definition of 'Tutsi' as an essential criterion of genuine victimhood in their narrative.

4.1.2. The Tendency to Minimise the Victimhood of Hutus

Genocide survivors' claims concerning the primacy of their own victimhood were usually interwoven with a range of assertions that disregard, negate or minimise the victimhood of Hutu neighbours caused by various acts of violence described above. This tendency was observed among genocide survivors in both Gitera and Kiberama, although it was more salient in Gitera. In Gitera, the fact that some of the local Hutu residents were also killed or attacked by genocide perpetrators is ignored. As mentioned above, Bosco, the Tutsi leader of local genocide survivors, completely disregarded five Hutu victims of *itsembatsemba*.⁷⁹ According to multiple Hutu informants, they had been killed by genocide perpetrators but in Bosco's account, they were not even mentioned. Furthermore, some of the other Tutsi survivors denied even the possibility that Hutus might have been attacked by genocide perpetrators. Asked whether he was aware of any Hutus attacked during the genocide, one of them stated that

⁷⁸ Interview in Kiberama, 6 June 2002.

⁷⁹ See *Genocide Victims in Gitera* in Section 3.4.1. of this chapter.

none of the local Hutus 'were killed because they were all united in the aim of wiping out *Batutsi*'⁸⁰.

Concerning those Hutus who had survived *itsembatsemba*, two local Tutsi survivors of genocide, including Bosco, personally acknowledged the existence of three Hutus who had been attacked because they opposed the killings of Tutsis. This did not mean, however, that they felt that the suffering of these Hutus deserved the same recognition and compensation as their own suffering. In fact, at the time of fieldwork, there was not even a single Hutu beneficiary of a governmental programme designed for assisting 'needy survivors of genocide and massacres' in education, health and housing, whereas all the Tutsi genocide survivors were on the list of beneficiaries. According to the law on a national assistance fund for needy victims of genocide and massacres, Hutu victims of this category were entitled to the same assistance, provided that they were considered as 'needy' by a local committee composed of leaders of genocide survivors.⁸¹ Even though the law does not make any reference to ethnic categories, the problem seems to be that the term 'survivor' or '*uwacitse ku icumu*' (pl. *abacitse ku icumu*) – a Kinyarwanda term which literally means 'a person who escaped a spear' – is used in post-genocide Rwanda for living victims of *itsembabwoko* or genocide in the sense of 'decimating an ethnic group', particularly (but not exclusively)⁸² those with unequivocal Tutsi identity.

The local Tutsi genocide survivors issued a blanket denial with regard to the Hutus allegedly killed by the RPF soldiers. As reported earlier, apart from Bosco, all the genocide survivors interviewed in Gitera rejected the local Hutus'

⁸⁰ Interview with Pierre, Gitera, 23 Nov 2002.

⁸¹ See Article 15, Law N° 02/98 of 22/01/1998 – Establishing a national assistance fund for needy victims of genocide and massacres committed in Rwanda between 1, 1990, and December 31, 1994. The law does not make any reference to the ethnic categories. It says the fund is meant for needy survivors of genocide (*itsembabwoko*) and massacres (*itsembatsemba*).

⁸² A case in point is a group of genocide survivors with ethnically mixed parentage in Kiberama.

accusation as to the alleged RPF atrocities. In the words of one Tutsi informant,

Nothing like that took place. If that had happened, those who are in prison now would have been all killed.⁸³

Even Bosco justified the alleged killings as a legitimate retribution for those notorious killers of Tutsis. Having admitted the killing of six Hutus by RPF soldiers on his own hill, he remarked: 'They were well known killers hiding in their homes'.⁸⁴

In contrast to their counterparts in Gitera who disregarded or emphatically denied the victimhood of local Hutu population, the genocide survivors interviewed in Kiberama drew a distinction between the Hutus whose victimhood should be recognised and the Hutus whose claim to victimhood should be rejected. The Hutus categorised as the former were those attacked/killed by the genocidal forces at different times in the recent past (both the former regime before and during the genocide and the Hutu rebels in 1997-9) while the Hutus categorised as the latter were those attacked/killed by the RPA in their counter-offensives against the rebels.

The Hutus whose victimhood were recognised, at least partially, by the genocide survivors in Kiberama consisted of two groups of victims. The first were the members of the political opposition attacked by supporters of the ruling party MRND in 1993. As noted above, the genocide survivors in Kiberama asserted that their own victimhood must take precedence over that of these Hutu victims. Nevertheless, their recognition of the victimhood of these people should be noted, especially given that it was largely neglected in the narrative of genocide survivors in Gitera. The second category of Hutu victims recognised by the Kiberama genocide survivors were those Hutus killed by the rebels during

⁸³ Interview with Pierre, Gitera, 23 Nov 2002.

⁸⁴ Interview in Gitera, 13 Nov 2002.

the Insurgency.

In apparent contrast, the genocide survivors in Kiberama categorically denied the suffering of many Hutus caused by the RPA, that of the families of 14 people allegedly massacred as they were suspected of supporting the rebels in 1998. Asked about this, one genocide survivor said:

The government soldiers came to save people. No one was killed by them in this sector. Those people (making allegation against the government soldiers) are deceiving you.⁸⁵

Concerning the deaths of local Hutus who were caught in the crossfire during the RPA's counter-offensive, as was noted above, the local genocide survivors ascribed the blame to the Hutu rebels for hiding amongst the local population as well as to the victims themselves for harbouring the rebels or fleeing with them.

4.1.3. Presuming Collective Guilt of Hutus

The tendency to minimise the victimhood of Hutu neighbours may be understood as the flip side of genocide survivors' tendency to represent their victimhood as something very unique and greater than that of others. As noted at the outset of this chapter, this is in fact quite a common phenomenon in societies ravaged by violence where there is fierce 'victim competition' over various forms of reparation. Another reason behind their negation of Hutus' victimhood can be a profound fear that they themselves might be accused of having been complicit in the genocide, or of taking an anti-government position if they show an understanding attitude towards the victimhood of Hutus. Human rights violations allegedly committed by RPF/A forces against Hutu civilians were and still are, a taboo subject that people were/are frightened to talk openly about. Thus, the fact of the matter is that not only genocide survivors but also most people living in

⁸⁵ Interview with Jean, Kiberama, 4 June 2002.

Rwanda, including expatriates, are inclined to keep silent over this controversy.

Towards the end of the fieldwork, it became increasingly apparent that there was another profound reason for minimising the victimhood of Hutus in post-genocide Rwanda: that is, the problem of presumed guilt assigned to the whole group of people with Hutu identity. This problem is particularly salient in the genocide survivors' narratives in Gitera. For example, one genocide survivor stated:

The number of people massacred during the genocide in 1994 was one and a half million, and from this figure it's estimated at least four and a half million people were implicated in the genocide. So it's impossible to punish all of them. [...] ⁸⁶

Considering the estimated population of seven and a half million before the onset of the genocide, what is assumed in this accusation is that nearly every Hutu, excluding very young children, were implicated in the genocide one way or another. Not all the genocide survivors in Gitera made the same assumption; in fact, as presented above, at least a few of them acknowledged the existence of Hutu victims who had risked their lives for saving some Tutsi neighbours. However, the portrayal of Hutu as a people collectively responsible for the genocide in 1994 emerged as a common theme in genocide survivors' narrative of the local history of violence in Gitera.

With this tendency to presume collective guilt of Hutus in genocide survivors' narratives, there was in fact a sharp contrast between the two communities. Unlike their counterparts in Gitera, the genocide survivors interviewed in Kibera did not portray the local Hutu population as a homogeneous collective responsible for the genocide. Quite significantly, all of them acknowledged the existence of Hutu individuals and families – including

⁸⁶ Interview with Emmanuel, Gitarama, 25 May 2002.

their spouses, relatives, and neighbours – who had sheltered them and/or assisted their escape from genocide perpetrators. For example, one female genocide survivor expressed her gratitude to several Hutu families in her neighbourhood for ‘taking a great risk’ in hiding herself and her children for an extended period of time in 1993-4.⁸⁷ This woman and others reported several other stories about the ‘goodness’ demonstrated by some local Hutus of integrity during the genocide.⁸⁸ In short, the genocide survivors in Kiberama seem disinclined to generalise guilt to the entire local Hutu population.

However, they appeared to presume a crude dichotomy in the present local population: those who are anti-genocidal forces/pro-RPF government vs. those who are pro-genocidal forces/anti-RPF government. According to this dichotomous framework, there is no individual who is anti-genocide and anti-RPF government at the same time. Most of the local genocide survivors interviewed put themselves unequivocally into the former category by portraying the RPA as the protector of the local population from the aggression of the genocidal forces. They not only refuted the local Hutus’ allegations against the RPA forces but also accused those making such allegations of being pro-genocide, thereby categorically denying the victimhood of local Hutus that could be attributed to the RPA violence during the Insurgency.

4.2. The Narrative Advanced by the Hutu Informants

Both in Gitera and Kiberama, the great majority of Hutu informants advanced a counter narrative sharply conflicting with the narrative of genocide survivors.

⁸⁷ However, this informant told me that she and other genocide survivors who had managed to hide themselves in the area during the genocide were forced to seek refuge outside Kiberama during the Insurgency, which might be interpreted as a sign of aggravated polarization along ethno-political lines with the local population after the genocide. (Interview with Alice, Kiberama, 1 June 2002)

⁸⁸ For example, they spoke of an elderly Tutsi widow who had been kept alive until she passed away naturally and an influential Hutu resident known as a ‘man of faith’ who had attempted to persuade the local population not to participate in the genocide.

Although these two groups of Hutu residents emphatically laid claim to victimhood, the way they did it was remarkably different from that of the genocide survivors.

4.2.1. *Attributing the Victimhood of Hutus to the Atrocities of Tutsis*

In both Gitera and Kiberama, Hutu informants' narratives of political violence in their localities put a strong emphasis on the victimhood of Hutus, although there are some notable differences in the ways in which they did it. Most of the Hutu informants in Gitera affirmed that many Tutsis, including local Tutsi residents, had been massacred by Hutu perpetrators in 1994.⁸⁹ Some of them even admitted to some extent - directly or indirectly - the implication of local Hutus in the genocidal killings.⁹⁰

No Hutu informant in Gitera denied outright the victimhood of local Tutsi genocide survivors, particularly when it is compared with the almost blanket denial of local genocide survivors' victimhood observed among Hutu informants in Kiberama. What the Hutu informants in Gitera emphasised instead was *mutual* victimization between 'the Hutu' and 'the Tutsi'. Their admission of local Tutsis' victimhood was almost always followed by the assertion that they had also been victimized by 'the Tutsi'. One of the Hutu informants said:

Bahutu killed *Batutsi* and then *Batutsi* killed *Bahutu* for revenge. The two parties have to accept that lives were lost on both sides and forgive each other.⁹¹

By portraying *Bahutu* and *Batutsi*⁹² as two enemy groups who have inflicted

⁸⁹ It is important to understand that, as Lemarchand (1998, 7) observed, what many Hutus tend to deny is not that Tutsis were massacred by Hutus but that the killings 'were systematically planned and executed' for the annihilation of Tutsis.

⁹⁰ There were several exceptional Hutu residents who admitted the local Hutus' implication in the genocide. They include five confessed prisoners from Gitera, some of their families, and Hutus attacked by genocide perpetrators.

⁹¹ Interview with Rose, Gitera, 23 May 2002.

⁹² *Bahutu* and *Batutsi* are Kinyarwanda words that can be translated as 'Hutus' or 'the people of

injuries on each other in the past, the notion of equal culpability appears to be advanced here: 'the Tutsi' are equally as culpable as 'the Hutu' thus, 'the Tutsi' are also to blame. What seems to be taking place here may be seen as the denial of full responsibility for the genocide on the part of Hutus through what Ignatieff (1996, 118) calls 'complex strategies of relativisation'. He writes: 'Here one accepts the facts but argues that the enemy was equally culpable or that the accusing party is also to blame or that such 'excesses' are regrettable necessities in time of war. To relativise is to have it both ways: to admit the facts while denying full responsibility for them'.

According to this mutual victimization framework, the victimhood of Hutus is attributed to the atrocities of Tutsis – primarily through the alleged civilian killings by RPF soldiers in the aftermath of the genocide and secondarily through prolonged imprisonment of innocent Hutus based on false accusations by Tutsi genocide survivors. Those Hutus who had been killed at the hands of Hutu perpetrators were rarely mentioned by the local Hutu informants.

With regard to the alleged RPF killings, the Hutu informants accounted for it primarily in terms of 'revenge' by 'the Tutsi' who had lost their members all over the country by the brutal murders 'the Hutu' perpetrated. As noted earlier, according to the majority of the local Hutu informants, not only those implicated in the genocide but also innocent Hutus were massacred in the alleged reprisal killings by the RPF forces. Underlying this accusation appears to be a perception shared by most of the local Hutu informants and probably many more local Hutu residents: the revenge by 'the Tutsi' was exacted on the local Hutu population because they – as members of 'the Hutu' - were collectively held responsible for the attempted annihilation of 'the Tutsi'.

Hutu' and 'Tutsis' or 'the people of Tutsi' respectively.

The Hutu informants in Kiberama presented their victimhood differently. They portrayed themselves as ‘innocent victims’ who, despite their ‘innocence’ during the genocide, had lost so many loved ones at the hands of RPA soldiers particularly at the height of its counter-insurgency operation in 1997-98. As noted above, evidence collected during the fieldwork suggests that a considerable number of local Hutus were implicated in the genocide even though they were probably not a majority. However, most of the local Hutu informants asserted otherwise: except a handful of disgraceful individuals, they stood firm against the genocidal forces who came from outside the local hills.

During a focus group session with nine *gacaca* judges who happened to be all Hutus, one of them asserted:

We tried our best to protect them. That’s why only one Tutsi was killed in Kiberama, and all the three offenders are in jail, serving the sentences given to them.⁹³

They asserted that despite their innocence, numerous Hutus had been brutally massacred or ‘disappeared’ after arbitrary arrests by the RPA soldiers in their act of revenge because ‘the Hutu’ were collectively held responsible for the ‘Tutsi genocide’. They even depicted what happened locally and in other parts of the north-western regions in 1997-99 as the ‘Hutu genocide’ by the Tutsi-dominated RPF regime. The same *gacaca* judge quoted above made the following allegation:

In 1997 and 1998, thousands of people were slaughtered like animals. In Kiberama, *Inkotanyi* selectively killed the most educated Hutus in the area. [...] That was *itsembabwoko* (genocide) because they targeted only Hutus.

⁹³ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002. To be sure, the assertion made by the lay judges and several other Hutu residents is not without foundation. Rather, it is built on factual elements widely acknowledged in the local hills – even accepted by most, if not all, of the genocide survivors: 1) Many of local Tutsis and *ibyimana* were hidden by local Hutu families during the genocide; 2) Only one local resident is widely known to have been killed during the genocide; and 3) Three former residents involved in the killing have been convicted.

The notion of *itsembabwoko* was employed in this accusation to describe the atrocity against the local Hutu population perpetrated by the RPA. In Gitera, no one made this kind of explicit charge of 'Hutu genocide' by the RPF/A forces.

While most of the local Hutu informants blamed the RPA for the brutal atrocities against the local Hutu population, they appeared to be less condemning of the Hutu rebels, although they admitted that several Hutus' lives had been claimed by those attackers. During the focus group with the lay judges of local *gacaca* courts, the rebels were even portrayed as armed insurgents fighting the RPA for protecting the local Hutu population from its aggression. After condemning the atrocities allegedly committed by the RPA, one of the lay judges expressed his sympathetic attitude towards the rebels:

It was good to have those fighters because otherwise many more people would have been killed. They protected us from the aggression of *Inkotanyi*.⁹⁴

4.2.2. Negating Genocide Survivors' Victimhood

As indicated above, there was not much outright denial of the victimhood of local genocide survivors in the narrative advanced by Hutu informants in Gitera. The fact that a significant number of Tutsis were attacked and only some of them survived seemed to be generally accepted by the local population at large. However, the situation in Kiberama was totally different. As noted above, according to the dominant Hutu narrative in Kiberama, the local residents who were identified with Tutsi (Tutsi women married to Hutu men and children of mixed parentage) were well protected by the local Hutus during the genocide; hence there is no 'real' genocide survivor in Kiberama. Among the local Hutu informants, there was a strong denial of local genocide survivors' victimhood.

⁹⁴ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002.

Esther, the Hutu widow quoted earlier asserted: 'Those who are called survivors in this area are not real survivors because they were never attacked'.⁹⁵ She went on to claim that the local survivors were just pretending to have been harmed during the genocide in order to get special assistance which only those considered to be survivors were entitled. Esther then complained: 'They are well assisted [by the government]. Their children are studying free. If they become ill, they get medication free. But we don't get anything despite the fact that we also lost our families'.

4.2.3. Condemning the Culpabilities of Genocide Survivors

In Gitera, the Hutu informants accused some of the local genocide survivors of being complicit in the atrocities committed against Hutus. As already noted, the specific party accused of the Hutu killings in question was the *Inkotanyi*, RPF soldiers. No survivor of genocide was accused of any direct violence against the local Hutu population but this does not mean that local Tutsi survivors were considered blameless. On the contrary, they were accused of indirect involvement in the atrocities against the local Hutu population. For example, after describing the role of Tutsi survivors in 'guiding soldiers to places where Hutus were hiding', one Hutu informant asserted: 'It was revenge. Those who were hated by survivors were picked up and killed by the soldiers'.⁹⁶ The assumption seems to be that the local Tutsi residents were intimately connected with the RPF. They did not kill Hutus but they were implicated in a range of atrocities against local Hutus: 'pointing a finger at those hiding' who were then massacred by the RPF soldiers; 'making false accusations against innocent Hutus' who were then unlawfully put into jail; and supporting the RPF since its

⁹⁵ Interview in Kiberama, 5 Dec 2002.

⁹⁶ Interview with Eric, Gitera, 23 Nov 2002.

formation.

In Kiberama, antipathy towards the local genocide survivors appeared to be quite widespread and intense among the Hutu residents, except those of some ethnically mixed families. Those Hutu informants who expressed such antipathy towards them during the fieldwork included even some of those who were known to have taken personal risks for hiding some genocide survivors in 1994. As their counterparts in Gitera did, they portrayed the local genocide survivors generally as *ibytso* or collaborators of their victimizers. Some of them even warned me not to trust the words of genocide survivors. Again, none of the local genocide survivors was accused of direct involvement in the alleged RPA violence, but they were condemned for their presumed association with the RPA soldiers as they were generally considered by the local Hutu population as supporters of the RPF regime.

5. Perceiving Victimhood through the Filter of Ethnicity

Some of the claims and perspectives advanced by the adversarial groups in each fieldwork community are in stark conflict. However, a comparative analysis of the competing narratives has yielded an insight about a fundamental commonality between them; that is, both of the adversarial groups in the two communities seemed to interpret violent events in the past primarily in ethnic terms or through the filter of ethnicity, thereby reducing the complex history of violent conflict to the simplistic version of 'the Hutu' vs. 'the Tutsi' conflict. The term 'filter of ethnicity' is used here to denote the widespread tendency observed among the informants in the two communities to interpret social or political events and their experiences of them in connection with the Hutu/Tutsi divide in Rwandan society.

5.1. Perceived Connection between Victimhood and Ethnicity

In each of the narratives presented above, political violence inflicted on group members is attributed to ethnic identity; it is explained that they were targeted not because of what they did but because of who they were in terms of their ethnicity.

As for the narratives advanced by the two groups of genocide survivors with distinctive senses of ethnic identity (those in Gitera with a strong sense of Tutsi identity and those in Kiberama with a rather ambiguous sense of ethnic identity because of their mixed ethnic background), central to the sense of their victimhood is the notion of *itsembabwoko* that signifies the extermination of a specific ethnic group. In both of the narratives advanced by these groups, it is stressed that genocide survivors themselves and their deceased relatives were targeted and attacked primarily because of their ethnic identity – either being Tutsi (Gitera) or being identified with Tutsi due to mixed ethnic background (Kiberama).

As for the narratives advanced by the Hutu residents in Gitera and Kiberama, the atrocities committed against them by the RPF/A is explained as ‘revenge’ by ‘the Tutsi’ for the genocide perpetrated by ‘the Hutu’. It is emphasised in their narratives that all Hutus were held collectively responsible for the ‘Tutsi genocide’. In the case of Kiberama, the local Hutu residents even portrayed themselves as collective victims of ‘Hutu genocide’.

As discussed in Chapter 4, violent conflicts in Rwanda since the late 1950s emanated from a power struggle between political elites. It was neither primordial ethnic hatred nor a hostile relationship between ‘the Hutu’ and ‘the Tutsi’ that caused violence in the first place; rather, it was political violence based on the divisive racial ideology that exacerbated cleavages between those with

Hutu identity and those with Tutsi identity. Despite the political roots of the Rwandan conflict, a great majority of ordinary residents in the two communities perceived the violent conflict in Rwanda primarily in ethnic/racial terms as something attributable to the centuries-old antagonistic relationship between the two rival groups.

5.2. The Hutu/The Tutsi Dichotomy

The analysis of the two competing narratives identified in the two fieldwork communities suggests that, apart from the narrative advanced by genocide survivors with mixed ethnic background in Kiberama, all of them presuppose a crude dichotomy of 'the Hutu' vs. 'the Tutsi' – an essentialist construction of Rwanda as a society comprised mainly of the two ethnic/racial groups in conflict.⁹⁷ As Eltringham (2004) stresses, this is in fact the very construction of Rwandan society which perpetrators of the genocide espoused and tried to impose on society. In other words this is the ideological underpinning of Rwandan genocide. *The problematic, dichotomous construction of Rwandan society has been profoundly internalised not only by genocide perpetrators but also by different sections of the local populations, including genocide survivors.*

According to this fictional construction as identified in the narratives, anybody in the local population (and in Rwandan society at large) is, without any ambiguity, either on the side of 'the Hutu' or 'the Tutsi', demonstrating unshakable loyalty to the group to which he/she belongs. No one crosses the boundaries dividing the two groups. Underlying the dichotomous construction is 'a corporate view of ethnicity' discussed in Chapter 4, which considers Hutu and Tutsi (as well as Twa) to be internally homogeneous and yet mutually exclusive

⁹⁷ Eltringham (2004, 69-99) discusses in detail a 'binary framework of Rwandan society' and a problematic notion of collective guilt based on ethnic identity.

groups with distinctive racial, cultural and historical origins. This particular view of ethnicity was developed and propagated largely as a consequence of the Belgian colonial rule characterised with discriminatory policies based on these racialised ethnic categories, and in the more recent history of Rwanda, it has been further consolidated in the society due to its manipulative use by political elites as a tool for political mobilisation.

The problematic nature of this dichotomous construction manifests itself in two closely interconnected ways: first, generalisation of guilt to those identified with the opposing ethnic category and second, disregard for the victimhood of those who do not conform to the dichotomous framework.

5.2.1. Generalisation of Guilt based on Ethnic Identity

The generalisation of guilt based on ethnic identity has been a pervasive problem in Rwanda at least since the late 1950s (Newbury 1998, 14). Many observers have noted that in post-genocide Rwanda, people with Hutu identity have been blamed collectively for the 1994 genocide.⁹⁸ Des Forges (1999, 736) states: '[t]he unexamined and incorrect assumptions that all Hutu killed Tutsi, or at least actively participated in the genocide in some way, has become increasingly common both among Rwandans and outsiders'. Mamdani (2001, 267) describes the assumption of such collective Hutu guilt underlying the official political discourse:

The assumption is that every Hutu who opposed the genocide was killed. The flip side of this assumption is that every living Hutu was either an active participant or a passive onlooker in the genocide. Morally, if not legally, both are culpable. The dilemma is that to be a Hutu in contemporary Rwanda is to be presumed a *perpetrator*.

⁹⁸ See for example: Eltringham 2004; Des Forges 1999, 736; Newbury 1998, 8; Mamdani 2001, 267; Eltringham and Van Hoyweghen 2001, 226; Pottier 2002, 148-50; Wagner 1998, 26-9; Lemarchand 1998; Jefremovas 1995, 28; Sibomana 1999; Prunier 1997.

As noted above, such generalisation of guilt based on ethnic identity – not only to Hutu but also Tutsi - was found to be particularly salient in Gitera. The Tutsi genocide survivors interviewed in Gitera demonstrated the tendency to describe local Hutu residents as actual or potential genocide perpetrators, whereas many of the Hutu informants labelled the local Tutsi genocide survivors as the accomplices of the RPF. In either case, the *collective other* is depicted as the victimizer of the *collective self*. Similar ethnicity-based generalisation of blame also featuring the dominant Hutu narrative in Kiberama where, despite their ambiguous ethnic status and close connections with local Hutu families, all the local survivors were labelled as ‘Tutsi’ and condemned for their presumed association with the RPF/A. In all of these cases, those individuals identified with the opposing category were held responsible and blamed for the atrocities committed against one’s group despite the fact that each act of violence was committed by specific individuals.

5.2.2. Disregarded Victims/Survivors

If one assumes that the local population is comprised only of ‘the Hutu’ and ‘the Tutsi’ - two internally homogeneous and yet mutually exclusive groups in conflict, then part of the logically inevitable consequence would be disregard for those who do not conform to the dichotomous construction. There are particularly two categories of victims/survivors who were neglected in the competing narratives identified in the two communities (all but the one given by the genocide survivors with mixed ethnic background in Kiberama).

The first category of victims/survivors is that of those with mixed ethnic background, many of whom had an ambiguous sense of ethnic identity.⁹⁹ By

⁹⁹ Eltringham (2004, 24) observes that according to the genocide perpetrators’ construction of Rwandan society, the existence of *ibyimanyi* or ‘hybrids’ is considered as ‘a nonsensical aberration’.

requiring a person to be classified as either Hutu or Tutsi, the dichotomous construction leaves no place for those people with ambiguous ethnic status; consequently, they are either ignored or labelled as one or the other. In the case of Gitera, it is hard to tell the exact gravity of violence inflicted on them.¹⁰⁰ However, it is known that Tutsi women married to Hutu men received death threats from local perpetrators of genocide, which led them to go into hiding with their children for several weeks. Some of their Hutu husbands were also forced to hide in order to avoid a confrontation with the perpetrators searching for their wives. Despite this kind of traumatic experience that these ethnically mixed families went through, neither of the competing narratives identified in Gitera recognises their suffering. In fact, most of these Tutsi women identified in Gitera were not officially considered as genocide survivors.¹⁰¹ Interestingly, most of the grassroots informants – Tutsis and Hutus alike – expressed a view that these Tutsi wives were rather considered as members of local Hutu lineages. For Tutsi genocide survivors, they were neither ‘genuine’ victims nor ‘innocent’ bystanders of the Tutsi genocide because they could not escape the guilt collectively assigned to all Hutus. For many Hutu residents (not those with ethnically mixed background), these individuals were a few negligible exceptions to the general patterns of violence according to the framework of mutual victimization, that is, either Hutus victimized by Tutsis or Tutsis victimized by Hutus.

In the case of Kiberama, local residents with ambiguous ethnic status were targeted both in the anti-Tutsi violence in the early 1990s and the 1994 genocide because they were the only people identified with Tutsi in the local population.

¹⁰⁰ African Rights suggests that attacks on such families of mixed-ethnic marriage were extensively carried out during the genocide. It reports (1995, 1001):

[T]he extremists were determined to destroy families that crossed the Hutu-Tutsi divide. They were determined to destroy the very idea of such marriage too.

¹⁰¹ There was only one exception to this: a Tutsi woman who was physically injured by an attack of genocide perpetrators. Her Hutu husband was also injured during the genocide because he did not tell genocide perpetrators about his wife’s hiding place.

While the unique nature of their victimhood is to some extent captured in the narrative advanced by the local genocide survivors with ambiguous ethnic status, it is totally neglected in the dominant Hutu narrative of local-level political violence. For the Hutus who described themselves primarily as victims of the RPA violence, these people with mixed ethnic background were on the enemy side, having been complicit in the RPA's atrocities committed against the local Hutu population.

The second category concerns the Hutus attacked/killed by genocide perpetrators (victims/survivors of *itsembatsemba*/massacres). In the case of Gitera, some of the accounts presented earlier clearly point to local Hutu residents who were killed, beaten up or deprived of their property by genocide perpetrators for various reasons, including opposing the genocide either overtly or covertly. However, neither of the competing narratives identified in Gitera pays attention to this category of Hutu victims/survivors. An illuminating case in point was a Hutu family who sheltered two Tutsi children and were consequently attacked by local Hutu perpetrators. This family of Hutu survivors were totally isolated from the rest of the local population due to their peculiar position in it. They were 'in the middle of nowhere' in the post-genocide community, sharply divided along ethno-political lines.¹⁰² In other words, they were invisible survivors of the 1994 violence whose victimhood is obliterated in either of the competing narratives so blinded by the assumption of 'the Hutu' vs. 'the Tutsi' conflict. On the one hand, many local Tutsi genocide survivors seemed to negate the victimhood of Hutus like this family based on the notion that all Hutus were 'united in the aim of wiping out Tutsis',¹⁰³ thus no Hutu was harmed by Hutus during the genocide. On the other hand, many local Hutus seemed to feel bitter

¹⁰² Interview with Caliste, Gitera, 15 Nov 2002.

¹⁰³ Interview with Pierre, Gitera, 23 Nov 2002

about these Hutu survivors whom they considered as those taking sides with Tutsis - their victimizers.

In the case of Kiberama, as already reported above, accounts provided by local genocide survivors indicate that at least several local Hutus affiliated with the opposition political party were attacked by local MRND militants in 1993, including a local school teacher who was beaten to death. However, the memories of these victims are totally obscured in the narrative shared by Hutu informants who portrayed the entire Hutu population as 'innocent victims' of Tutsi atrocities. Hutu members of the opposition – particularly those who openly denounced the human rights abuses by the former Hutu regime – were labelled as *ibyitso* and eliminated well before the onset of the genocide.¹⁰⁴ From the perspective of genocide perpetrators, these Hutu dissidents had to be eliminated because, as Eltringham notes, their existence would have undermined 'the construction of Rwandan society on which the genocide perpetrators depended' (2004, 99). And the very construction they depended was the one based on the crude racial dichotomy of 'the Hutu' vs. 'the Tutsi'. Eltringham observes (2004, 94):

When the commitment of Hutu politicians to the Arusha process demonstrated the absurdity of a simple, ethnic/racial dichotomy of 'the Hutu vs the Tutsi', those who were to perpetrate the genocide shifted these anomalous individuals into the *ibyitso* category in order to maintain the simple binary segmentation they required. This demonstrates, again, that when 'matters out-of-category disturb the entire structure [they] must be either corrected or effaced' (Geertz 1983: 180).

Similarly, the narrative of the Hutu teacher beaten to death by Hutu militants has to be obliterated in order to maintain the notion of the local Hutu population as

¹⁰⁴ Prunier (1995, 231) notes that these Hutus were eliminated as 'objective' *ibyitso* because they opposed 'the democratic majority', whereas Tutsis were eliminated as 'ontological' *ibyitso* due to their ethnicity identified as the one of the RPF.

'innocent victims' of Tutsi atrocities and – probably more fundamentally – the dichotomous framework of 'the Hutu' vs. 'the Tutsi' that underlies their 'ethnicized' narrative of victimhood.

5.3. The Illusion of a Dichotomous Construction

As demonstrated above, the assumption of the Hutu/the Tutsi dichotomy appears to have taken root deeply in the minds of many people in the two communities. Nonetheless, the data collected during the fieldwork clearly suggest the illusive nature of this construction, despite its strong social influence observed in the two communities. The following part of this section makes two particularly important points based on some of the findings presented above.

First, the particularities of local people's experience of political violence described in this chapter cannot be reduced to 'the Hutu' vs. 'the Tutsi' conflict – whether violence was inflicted by one side to the other or by both sides to each other. Things are clearly more complicated. Newbury and Newbury (1999, 295) make a similar point as follows:

[D]espite the official propaganda, this cannot easily be reduced to a simple conflict of "Hutu" versus "Tutsi." In fact, the first victims were political opponents of the Habyarimana regime; many were Hutu. Furthermore, significant numbers of Hutu resisted the genocide, often by hiding and protecting those at risk. In addition, Rwandan society was much more complex than such a bipolar vision would imply: there was significant interaction among individuals and families of different social categories, at all levels, including "intermarriage."

Contrary to the notion that all Hutus were united for the cause of genocide, there were certainly Hutus who resisted the killings of their Tutsi neighbours (Gitara) or those with mixed ethnic background whom perpetrators of the genocide identified as Tutsi (Kibera). They resisted the genocidal massacres for various reasons such as family ties or friendship with those targeted or religious

belief and/or political ideology against the genocidal regime. Also, contrary to what many Hutu informants asserted, the suffering of Hutus in the past decades was not necessarily caused by Tutsis; significant numbers of Hutus in both communities were injured or killed by Hutu perpetrators at different times in the recent past. These pieces of evidence clearly indicate that despite its strong influence on how the people of the two communities interpreted the history of violent conflict and their victimhood, the dichotomous construction did not match actual experiences of the people on the ground.

Second, the existence of diverse and often competing interpretations of what 'Hutu' and 'Tutsi' really are casts a serious doubt on the validity of the dichotomous construction that implies rigid, clear-cut boundaries between the two categories. While there was a general understanding among the people in the two communities that one inherits the ethnic identity of his/her father through patrilineal descent, how local people actually perceived each other's identity was not necessarily based on the same principle. In Gitera, people unequivocally considered Tutsis to be only those individuals who belonged to Tutsi patrilineage. Tutsi women married to Hutu men appeared to be identified more as members of the Hutu lineage of their husbands than as descendants of Tutsi ancestors. Persons of mixed parentage or *ibyimanyi* were considered as either Hutus or Tutsis depending on their fathers' identity, although most of the *ibyimanyi* identified in Gitera were Hutus, reflecting the predominant pattern of intermarriage in the local population, which is between a Hutu man and a Tutsi woman, not vice versa. In the case of Kiberama, however, Tutsi women married to Hutu men and their children – the categories of people considered to be more Hutu than Tutsi in Gitera - were branded as Tutsis by many local residents at the time of fieldwork. In fact, as some of the accounts presented above suggest,

these people branded as 'Tutsi' during the fieldwork had been generally accepted as part of the local Hutu community until the anti-Tutsi campaign was radicalised in the early 1990s and consequently all the residents suspected of Tutsi ancestry became the target of violent attacks.

These observations confirm the 'contextually configured' nature of ethnic identities in Rwanda (Newbury and Newbury 1999, 294). As discussed in Chapter 4, the social distinction conveyed by the terms 'Hutu' and 'Tutsi' not only varied between regions during the same period of the Rwandan history but also have evolved over time in response to changing social relations and political contexts (ibid 312-6, 319 n4).¹⁰⁵ In the light of this informed understanding of ethnicity in Rwanda, the dichotomous construction of 'the Hutu' vs. 'the Tutsi' is nothing but an erroneous representation of Rwandan society.

7. Conclusion

The conclusion of this chapter is twofold. First, the local population in both Gitara and Kiberama was deeply divided over the question of victimhood: Who can legitimately lay claim to victimhood caused by violent events in the past years? The complex local histories of political violence, genocide and civil war discussed above created a complex web of individuals and families with a profound sense of victimhood, who, during the fieldwork, laid competing claims to it. Second, despite the conflicting claims advanced by the adversarial groups in each community, many local residents in both communities appeared to have one fundamental assumption in common: that is, the roots of the violent conflict that have been affecting their lives is the antagonistic relationship between two ethnic groups, 'the Tutsi' and 'the Hutu'. In other words, they appeared to

¹⁰⁵ See also Eltringham (2004, 13)

understand their experience of ethno-political violence through the interpretive filter of ethnicity, attributing the cause of violence to the hostile relationship between the two ethnic groups.

The assumption of 'the Hutu' vs. 'the Tutsi' dichotomy appears to have taken root deeply in the minds of many people in the two communities. This is an indication of how profoundly the 'corporate view of ethnicity' still haunted ordinary people in these rural communities (and probably elsewhere in the country) at the time of fieldwork in 2002. However, despite its seemingly strong influence on local people's perceptions, the dichotomous construction did not match empirical social realities observed during the fieldwork. Diverse and complex people's experiences of political violence described in this chapter cannot be reduced to the simplistic, dichotomous construction of 'the Hutu' vs. 'the Tutsi' conflict. Moreover, the existence of diverse and often competing views on social distinction between the categories of Hutu and Tutsi underlines the 'contextually configured' nature of these identities (Newbury and Newbury 1999, 294), thereby casting serious doubts on the validity of the framework with rigid, clear-cut boundaries between the two categories.

The pervasiveness of this construction confirmed during the fieldwork indicates part of the grim reality of post-genocide Rwanda where many people still uphold the ideological underpinning of the 1994 genocide. Undoubtedly, it is an illusive and highly problematic construction. Nevertheless, we cannot underestimate its impact on people's perceptions and possibly their attitudes and behaviours towards the other at the grassroots level. This implies that we should not neglect but problematise it in our analysis of the issue of victimhood and those of justice and reconciliation in Rwanda.

CHAPTER SIX

EXPLORING THE GRASSROOTS CONCEPTIONS OF JUSTICE AND RECONCILIATION

1. Introduction

This chapter examines various views of justice and reconciliation expressed by different categories of grassroots informants in the two fieldwork communities. It addresses three primary questions. The first question is: what do they demand of 'justice' or consider as their priority needs for justice – things which must be addressed for them to be able to say 'Justice has been done'? In addressing this particular question, the chapter examines basic conceptions of justice underlying people's specific concerns for justice, particularly in the domain of rectificatory justice. The second question concerns the conception of reconciliation. What does 'reconciliation' primarily mean to the people at the grassroots? After identifying key aspects of *ubwiyunge*, the Rwandan concept of reconciliation, this particular section focuses on primary parties involved in the process of reconciliation and examines people's perceptions about interpersonal and collective dimensions of reconciliation. As the third and final question, the chapter assesses people's perceptions about the relationship between justice and reconciliation. This section focuses on contested views expressed about the ability of the justice system through *gacaca* courts to facilitate the process of reconciliation with the hope that people's understanding about the two concepts may be clearly understood.

2. Identifying Key Elements of People's Desire for Justice

What sort of things did the people of Gitera and Kiberama prioritise as their primary desire for justice with regard to the past wrongs committed in and around their hills? In what ways did they expect their justice-related desire to be addressed through the *gacaca* system? These are the central questions addressed in this section. A primary concern here is not to discuss people's definitions of justice. Rather, it is to identify types of specific responses to past wrongs, particularly in the domain of rectificatory justice, which were deemed crucial in the eyes of the grassroots informants with varied experiences of the genocide and other types of political violence in the past decades.

The previous chapter highlighted a sharp divide between the people officially recognised as survivors of genocide¹ and the vast majority of Hutu residents who identified themselves primarily as the collective victims of the alleged RPF/A atrocities.² The two sides of the divide in each sector asserted sharply conflicting narratives of victimhood. The divide along the same lines was also evident over the questions of justice indicated above. The division at issue here cannot be reduced to the familiar formula of the Hutu/Tutsi duality, although many of the grassroots informants portrayed it that way. Rather, it is primarily between the people whose present identity is largely defined by their experience of having been victimized in the genocide and the people whose identity is defined by their perception of having been victimized, individually or collectively, at the hands of the RPF/A. The former group is not exclusively Tutsi. Neither is the identity of the latter shared by all Hutus. It should also be noted that this was

¹ Tutsis who were inside Rwanda during the genocide in the case of Gitera and persons with ethnically mixed background (Tutsi wives of Hutu husbands or persons of mixed parentage, particularly Hutu husband – Tutsi wife union) in the case of Kiberama.

² Excluding some, not all, of the survivors of massacres/*itsembatsemba* in the case of Gitera and the Hutu survivors of genocide/*itsembabwoko* (persons of mixed parentage with Hutu father and Tutsi mother union) and their immediate families in the case of Kiberama.

not the only division among the people of the fieldwork communities; there were other divisions, for example, between the Hutu survivors of massacres (*itsematsemba*) by genocide perpetrators and the rest of the local Hutu population (Gitera and Kiberama) as well as between the relatively small minority of Hutus who were considered by others as co-opted into the RPF regime and the vast majority of the local Hutu population.³ However, the ethno-political divide between the two sides (genocide survivors/non-genocide survivors) underlined above was the most remarkable rift among the people of the two communities, which deserves the closest attention in our analysis of justice and reconciliation in post-genocide Rwanda.

The following part of this section examines closely the local people's views about what responses are required to rectify the past wrongs, focusing on retribution and reparation - two basic forms of justice which emerged as being critical for understanding grassroots views about responses in the domain of rectificatory justice. As Lambourne (2002) found in her study, issues in the domain of rectificatory justice are associated with issues of longer-term socio-economic or distributive justice in Rwanda. However, analysis in this

³ Gourevitch (1998, 235) points out various internal divisions within 'Hutus' and 'Tutsis' respectively as follows:

There were Hutus with good records, and suspect Hutus, Hutus in exile and displaced Hutus, Hutus who wanted to work with the RPF, and anti-Power Hutus who were also anti-RPF, and of course all the old frictions between Hutus of the north and those of the south remained. As for Tutsis, there were all the exiled backgrounds and languages, and survivors and returnees regarding each other with mutual suspicion; there were RPF Tutsis, non-RPF Tutsis, and anti-RPF Tutsis; there were urbanities and cattle keepers, whose concerns as survivors or returnees had almost nothing in common.

Most of his observations appeared to be still relevant at the time of fieldwork in various parts of Rwanda, particularly urban or semi-urban areas as well as rural-based resettlement areas called *imidugudu* which Rwandans with various backgrounds inhabited together. However, with regard to Gitera and Kiberama, most of the divisions he underlines appeared to be either absent or less prominent. Also see Lambourne (2004, 16) who observes various divisions, 'not only between Hutu and Tutsi, but also within each population: between the Hutus who killed and those who didn't; between Hutu extremists and moderates; between Tutsi who lived in Rwanda their whole lives and those who returned after the genocide; between Francophones and Anglophones; and so on' and Prunier (1995, 324-5) who describes significant differences in experience and views not only between Tutsi genocide survivors and Tutsi returnees but between Tutsi returnees from different countries of exile.

chapter focuses on various responses with the aim of rectifying the past wrongs. In order to highlight the existing contestation over issues of justice in the two communities, views advanced by the opposing sides will be juxtaposed in each of the subsections to follow.

2.1. Retribution

Views of Genocide Survivors

Several genocide survivors interviewed in the two communities expressed a strong desire to see the perpetrators of genocide punished as severely as possible. Responding to a question about genocide survivors' expectations of the *gacaca* system, Emmanuel, a genocide survivor who was then in the leadership of IBUKA – the nationwide umbrella organisation of genocide survivors' associations – at the provincial level (Gitarama) said:

Imagine that a gang broke into your house and killed your parents, brothers and sisters. You are the only one who survived in your family, although both of your arms were chopped off by the gang. Then, what do you expect from justice?⁴

He then criticised the government's decision to only impose, in his view, 'extremely lenient penalties' on genocide perpetrators. Underlying his resentful reaction to the question seems to be a strong feeling shared by a significant section of the local genocide survivors: the perpetrators of genocide must get their just desserts – suffer as great as the amount of suffering they inflicted on their victims.

Like Emmanuel, those genocide survivors who expressed a strong retributive desire often complained that the government was too soft on genocide perpetrators and the level of punishment laid down for them in its laws

⁴ Interview in Gitarama town, 22 May 2002.

concerning genocide justice is far below the level they believe to be fair, given the gravity of the crimes committed. 'We feel it's a joke', said Diane, a genocide survivor working for a district office of Gitarama town.⁵ She also indicated her serious concern that the *gacaca* courts to be established across the country might end up granting *de facto* amnesty to numerous perpetrators who would continue to disguise themselves as powerless bystanders in/during the genocide. Although some genocide survivors appeared to be more keen on getting compensation than on imposing coercive punishment on perpetrators, there appeared to be a broad consensus among the local genocide survivors that much harsher punishment of genocide perpetrators is necessary to counterbalance the horrendous crimes they committed during the genocide.

Views of Hutu Residents

Many of the local Hutu informants in both sectors expressed a need for punishing those responsible for three particular types of violations which, according to their claims, inflicted tremendous suffering on the local Hutu population: namely, as indicated above, the RPF/A killings in the aftermath of the genocide and during the Insurgency in the late 1990s, the arbitrary arrest and unlawful detention of Hutu civilians by the RPF regime; and the false accusations levelled by genocide survivors as well as Tutsi returnees against innocent Hutus who became subject to the unlawful detentions.

Whether people would be allowed to bring these issues of injustice before *gacaca* courts was a major question raised by Hutu trainees during the training for *gacaca* judges in Gitera.⁶ In response to the question, the trainer explicitly conveyed rather a disappointing message for those who raised the question:

⁵ Interview in Gitarama town, 14 Nov 2002.

⁶ Observation of training for lay judges of *gacaca* courts, Gitera, 1-2 May 2002.

gacaca courts do not deal with any other issues than those directly related to the genocide, no matter how important they seem to be; and such allegations must be brought to ordinary courts. As a consequence, most of the Hutu trainees interviewed after the training session expressed their disillusionment with the government's *gacaca* proposal by the end of the first day of the training.

The Hutu informants in both communities appeared to be pessimistic about the possibility of bringing concerned perpetrators to justice through the formal justice system, as suggested by the government. As one participant of the focus group interview with lay judges of *gacaca* courts in Kiberama said, 'first, it's very difficult to identify those soldiers responsible for the killings [...] and second, it's equally difficult to accuse the government before its regular court'.⁷ Under these circumstances, the thirst for retributive justice appears to remain strong within the Hutu population.

2.2. Reparation

As discussed in Chapter 3, this thesis uses the term 'reparation' as a comprehensive notion that encompasses a range of concepts and measures which are primarily concerned with repairing the damage – not only physical and economic but also emotional or psychological - incurred by the victims of past violations. Some of the informants commented that many of the injuries and losses they suffered can be neither repaired nor compensated. Nevertheless, the great majority of the grassroots informants showed keen interest in various reparative measures – material, social and symbolic forms of reparation for redressing the injuries resulting from past violations.

⁷ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002.

2.2.1. Material Forms of Reparation

The most frequently mentioned by the informants was a material or economic form of reparation. Survivors of violent atrocities more often than not live in dire poverty, not least because of the deprivation and destruction they suffered in the past. Based on their experience of conducting trauma healing workshops in Rwanda, Staub and Pearlman (2001, 219-20) observe that it is difficult, if not impossible, for such survivors of atrocities to have a sense of justice unless they experience an improvement in their economic well-being. The same appeared to be true for most of the grassroots informants on both sides of the divide.

Views of Genocide Survivors

As noted earlier, a national programme for assisting needy genocide survivors was launched in June 1998 – mainly in the areas of education, health, housing, and support for income generation activities – after the establishment of an assistance fund for the most needy genocide survivors called the FARG (*Fonds pour l'Assistance aux Rescapés du Génocide*) in January 1998.⁸ Even though many of the families of genocide survivors in Gitera and Kiberama were benefiting from the FARG in one way or another – mainly school fees, educational and other materials for children and medical expenses for family members⁹ - most of the local genocide survivors interviewed expressed discontent due to its inadequacy. A few genocide survivors even expressed resentment as they ascribed the low level of assistance at the grassroots to rampant corruption among those responsible for allocating the funds at higher

⁸ Law N° 02/98 of 22/01/1998. For a brief description of the assistance programme through the FARG, see Vandeginste (2003b, 264-5).

⁹ In both Gitera and Kiberama, the assistance from the FARG was limited to these two areas, although leaders of the local survivors said that there was a plan for constructing or repairing houses for the most needy families.

levels.¹⁰

Deeply unsatisfied with the assistance through the FARG, Pascal, the president of the genocide survivors' association in Kiberama, expressed a high expectation for monetary compensation as a primary outcome of the *gacaca* trials:

Nothing can bring my mother back [...] Keeping them in jail doesn't help. But our house was destroyed and burnt with all the properties. We must get those things back. But we can't rebuild our house and recover the properties unless we get compensation. So I'll go to *gacaca* for getting them back.¹¹

While many genocide survivors said they would lay claim to compensation as the *gacaca* process proceeds, some of them expressed a concern that it would fall far short of people's expectations, not least due to financial difficulties faced by the government.

Anastasié, a genocide survivor in Gitera, on the other hand, asserted that genocide perpetrators must be subjected to physical work as a form of redress, rather than the payment of compensation, which in her view was unrealistic, given the economically deprived status of most Hutu families of those accused of genocide. She observed:

Keeping them in prison doesn't help me at all. They should come out and work. [...] They should rebuild the houses of those they wronged and cultivate their land too.¹²

As these statements suggest, most, if not all, of the local genocide survivors were still trying desperately to recover from the destruction of 1994 genocide and emphasised the importance of material reparation (through monetary

¹⁰ Vandeginste (2003b, 264-5) also reports that the frustration of genocide survivors because of the misappropriation of funds, which he ascribes to grossly inadequate management capacity of the FARG characterised with, for example, 'the failure to implement an independent audit of its expenses'.

¹¹ Interview in Kiberama, 6 June 2002.

¹² Interview in Gitera, 19 May 2002.

compensation or physical work as a form of redress). Some of them, like the two individuals above, expressed clearly that material reparations must take precedence over the imprisonment of perpetrators except for the organisers of the genocide or those known as the most notorious killers. However, these informants did not describe reparation and retribution as alternative forms of justice; rather, they and many other informants described reparation and retribution as an integral part of rectificatory justice.

Views of Hutu Residents

Many of the local Hutu informants commented on the need for material reparations, particularly those concerned with two groups of Hutu victims: those who lost their families by violence other than the genocide (especially victims of the alleged RPF/A violence) and innocent prisoners who have been unlawfully detained for several years or subsequently acquitted or released as their cases were dismissed.¹³ With regard to the first group, the Hutu informants in both communities repeatedly complained that there was far less assistance available for Hutus in vulnerable situations, especially orphans and widows who lost their families in various events of violence in the past, compared with that available for genocide survivors through FARG.¹⁴ The fieldwork confirmed that in both Gitera and Kiberama, dozens of local Hutu families were benefiting from so-called

¹³ The government has announced that there will be no compensation for these Rwandan citizens who have suffered illegal detention for years. On this issue, Vandeginste (2003b, 266) notes:

[T]here is a great risk of the unfair treatment of several different groups of victims, all of whom are – at least in theory – entitled to reparations. For example, no provision has been made for persons who have been illegally detained for several years in generally unacceptable conditions and who have subsequently been acquitted or released because their trials were dismissed.

¹⁴ Studies conducted by the NURC also indicate that a large section of the population has negative feelings about the distinction the government makes in social assistance between genocide survivors and other victims of violence (2000, 8-9; 2002a, 16-7).

'MINALOC fund'¹⁵— a fund for social assistance administered by the Ministry of Local Government and Social Affairs.¹⁶ However, according to Eric, a Hutu survivor of massacres (*itsembatsemba*) in Gitera, the assistance package provided by FARG for genocide survivors of school age was far more comprehensive than the MINALOC's assistance for other children in vulnerable situations (e.g. orphans, children in households headed by minors, children in households headed by widows).¹⁷ Eric maintained that the discriminatory treatment of children affected by violent conflicts was detrimental to the process of reconciliation, not only becoming a source of frustration and resentment within the Hutu population in general but also 'creating a serious division in future generations'.¹⁸

The issue of reparation for innocent Hutu victims of unlawful detention was also raised repeatedly by the Hutu informants as they pointed out some of the shortcomings of the *gacaca* system. As noted above, many of them expressed a deep disappointment about the government's lack of intention to allow *gacaca* courts to deal with these great injustices committed against their relatives and/or friends. These informants suggested two main reparative responses to rectify the injustices suffered by innocent Hutu prisoners. First, they demanded compensation from the government, whom they considered ultimately responsible for unlawful detention. Second, they stressed the importance of public shaming of, and compensation by, those individuals who levelled false

¹⁵ MINALOC is the abbreviation of Ministère de l'Administration Locale et des Affaires Sociales.

¹⁶ Types of the social assistance for these groups included food distribution and payment of school fees. According to the information from the *conseiller* of Gitera sector and a district official in charge of FARG, for the year 2002/2003, 23 genocide survivors of school age (all Tutsis) were receiving assistance in education from the FARG while 42 children from other vulnerable families (all Hutus) were under the education assistance provided by the MINALOC.

¹⁷ The former provides not only school fees but also other materials such as uniforms, notebooks, blankets and mattresses, whereas the latter only provides school fees. Moreover, the former allows eligible children to go to a private school with much higher tuition while the latter only provides fees of a government school.

¹⁸ Interview in Gitera, 23 Nov 2002.

accusations against Hutu residents. Marie, a Hutu woman whose parents had been detained as genocide suspects, said that those responsible for false accusations must be 'punished not by putting them into prison but by obliging them to pay compensation' after public confession about their wrongdoing.¹⁹

2.2.2. Establishing the Truth

Many of the grassroots informants on both sides of the divide repeatedly raised issues related to truth while discussing their views of *gacaca* trials as well as their perceptions of various wrongs committed in the past. They almost unanimously expressed the need for establishing the truth as an essential part of responses to the past wrongs but were deeply divided in what truth they wanted to be revealed and established.

Views of Genocide Survivors

The genocide survivors interviewed voiced considerable concern for the establishment of the truth about the genocide (*itsembabwoko*) through which their sense of victimhood (and their identify itself) appeared to be largely defined. Many of them showed indifference to the revelation of truth about the violations other than the genocide (*itsembabwoko*), which included massacres (*itsembatsemba*) – violent attacks and killings of Hutu dissidents by genocide perpetrators. In fact, as already indicated above, none of the local genocide survivors complained about the exclusive focus of *gacaca* trials on the genocide-related crimes committed under the auspices of the former regime. As discussed in the previous chapter, this tendency appeared to be closely connected with the pervasive problem of collective guilt assigned to all Hutus for their presumed implication in the genocide.

¹⁹ Interview in Gitera, 17 May 2002.

The local genocide survivors repeatedly stressed the need to know exactly who played what role in the genocide so that all the perpetrators and accomplices of genocide could be held accountable for their deeds.²⁰ Their interest in knowing who played what roles in the genocide appeared to be closely connected with their retributive urge discussed earlier. Nadine, a genocide survivor in Gitera, pointed out the importance of understanding who *did not* participate in the genocide.²¹ With virtually no truth established about the genocide, many of the local genocide survivors (especially those in Gitera) appeared to remain deeply suspicious about the complicity of the vast majority of the local Hutu population in the genocide. Even the integrity of those Hutus who had harboured Tutsis was questioned by some of the local genocide survivors. Several times during the fieldwork, genocide survivors talked about ‘Hutus who had two faces’ – Hutus who had harboured Tutsis in their houses and yet been implicated in the killings of other Tutsis somewhere else during the genocide. ‘*Gacaca* will set us free from all the suspicions we have’, said Jean, a genocide survivor with a mixed ethnic background in Kiberama, indicating his hope that the truth to be established through *gacaca* trials would help dispel a lingering suspicion in his community.²²

Another issue the local genocide survivors repeatedly raised was the need to establish facts about the injuries and losses they had suffered because of the genocide. This specific concern for truth appeared to be based, at least partly, on their desires to get compensation as discussed above. Many of them were found

²⁰ As indicated in the previous chapter, the genocide survivors in the two sectors had general knowledge about who was killed in the genocide, even though they did not know exactly when, where, by whom and how some of their loved ones were killed. Except the specific cases of three convicts from Kiberama, virtually no truth had been established about the perpetrators directly involved in the killings and attacking, let alone greater numbers of accomplices who had played less violent roles such as manning roadblocks and informing the killers of the whereabouts of those in hiding.

²¹ Interview in Gitera, 24 May 2002.

²² Interview in Kiberama, 4 June 2002.

to have been informed that *gacaca* courts would be instrumental in establishing this particular aspect of the truth, which would be the basis for their compensation claims in the future.

Views of Hutu Residents

The vast majority of the local Hutu informants expressed their truth-related needs from a totally different perspective to the one of the genocide survivors. The most fundamental difference was that many of them called for the disclosure of the truth about the alleged RPF/A violations and individuals directly victimized through them – the issues to which the local genocide survivors were generally indifferent. They were particularly concerned with what happened to several Hutu residents who had ‘disappeared’ after being taken away by RPF/A soldiers in the aftermath of the genocide (Gitara) or during the period of Hutu Insurgency (Kiberama). Many of the local Hutu informants appeared to have maintained a hope, however slight it might be, that some truth could be revealed through *gacaca* trials. But they soon came to apprehend the government’s firm intention to restrict the scope of *gacaca* trials to genocide-related crimes.

This does not mean, however, that they lost all their interest in ‘the truth’ which might be revealed through *gacaca* trials. An elderly woman, a mother of Fabien, a prisoner who had confessed and pleaded guilty to participating in the genocide said:

Until now we haven’t been on good terms with our neighbours. We look at each other with mistrust, but when the truth is known, we’ll visit one another without fear and suspicion.²³

Several other Hutu informants also suggested that with regard to the truth about the genocide, their primary concern rested with the vindication of innocent Hutus

²³ Interview in Gitara, 24 May 2002.

who had been wrongly suspected and accused of genocide-related crimes. In other words, many of them appeared to be keen to know the truth about those who *did not* participate in the genocide established, while being less enthusiastic about establishing the truth about who did. These Hutu informants, including the *conseiller* of Kiberama, claimed that many Hutu prisoners who were presumed to be guilty of genocide would surely be vindicated as long as the truth is revealed through the *gacaca* process.²⁴

As indicated above, most of the grassroots informants on both sides of the divide appeared to consider establishing the truth not as an end in itself but as the basis for the various forms of justice they are seeking, including the prosecution and punishment of perpetrators, compensation and other material reparations, vindication of the wrongly accused and recovery of social trust.

2.2.3. Acknowledgment of Wrongs and Injuries

The grassroots informants on both sides of the divide also expressed the need for establishing the truth as to both the wrongs and injuries. Underlying both of these expressed needs seems to be their unfulfilled desire for obtaining acknowledgment of the wrongs committed against them and the injuries inflicted on their own side. As Minow (1998, 93-4) observed, while making a demand for specific redress such as monetary compensation, restitution of property or public apologies, victims of violence are also 'engaged in obtaining acknowledgement of the violations and acceptance of responsibility for wrongdoing as much as they press for a specific remedy'. While the need for acknowledgment was more often than not implicit in such expressed demands for various reparative measures, some of the informants voiced it explicitly on several occasions.

²⁴ Interview with Saveri in Kiberama, 30 May 2002.

Views of Genocide Survivors

Local genocide survivors often raised the issue of acknowledgement in connection with the issues of forgiveness and reconciliation. As will be discussed in detail below, despite the existence of some disagreement about various issues of forgiveness,²⁵ the local genocide survivors appeared to be in agreement on the necessity of genocide perpetrators acknowledging their wrongdoing and accepting responsibility for it, if they can ever consider the possibility of forgiving them.²⁶ Talking about three former Kiberama residents who had been convicted of the murder of his mother during the genocide, Pascal said:

First, they must admit what they did, then I would consider forgiving them. [...] It is difficult to forgive those who haven't admitted their crimes.²⁷

The genocide survivors were certainly concerned with acknowledgment of the wrongdoing by perpetrators of the genocide directly involved in killings and other horrendous acts of violence, as well as by those who masterminded and orchestrated the genocide. However, for them, the issue of acknowledgement was not restricted to the most conspicuous crimes and their perpetrators. Rather, they pointed to the necessity of revealing and acknowledging a much wider scope of wrongdoing committed by greater numbers of Hutus who were complicit in the genocide in one way or another.

As discussed in the previous chapter, evidence collected during the fieldwork points to varying degrees of complicity of the local population in the two communities – from manning roadblocks set up for apprehending 'Tutsis' fleeing

²⁵ For example, whether forgiving the perpetrators of genocide is possible and desirable, who should and should not be forgiven, pre-conditions for forgiveness, the role of the *gacaca* justice for forgiveness and reconciliation.

²⁶ Staub and Pearlman (2001, 217-8) also observed in Rwanda that the acknowledgement of wrongs by perpetrators had a significant role in the process of forgiving by victims.

²⁷ Interview in Kiberama, 7 June 2002.

from their homes to aiding killers in notifying them where 'Tutsis' were hiding to simply remaining silent in the face of mass killings during the genocide. In the view of local genocide survivors, except for a tiny minority of Hutus who risked their lives in opposing the genocide, the entire Hutu community cannot escape either criminal or moral responsibility for the genocide. Thus, from their perspective, acknowledgement of the wrongs committed in the past must be understood in broad terms so that not only criminal but also moral responsibility of those involved in the wrongdoing, as well as its individual and collective dimensions are addressed.

Bosco condemned pervasive denial of complicity in the genocide among the local Hutu population. He also expressed resentment at a large number of the local Hutus who had been boycotting ceremonial activities for commemorating the genocide, including the dignified reburial of genocide victims. He pointed out, however, that a growing number of the accused Hutus are coming to confess their guilt in prison and expressed his hope that a public confession by such a repentant perpetrator before the *gacaca* courts might break the silence maintained by the local Hutus on their complicity.

With regard to the alleged violations by the RPF/A, as discussed in detail in the previous chapter, the genocide survivors in the two communities dismissed all the related allegations made by the local Hutu informants, and thus the acknowledgement of the alleged violations appeared not be an issue from their perspective.

Views of Hutu Residents

Many of the local Hutu informants (except Hutu genocide survivors with mixed ethnic background and some of the Hutu survivors of massacres (*itsembatsemba*) and local government representatives) expressed their

resentment at the total lack of public acknowledgement of the wrongs and injuries so many Hutus suffered. Claude, a former Hutu rebel who had been reintegrated into his home community after having been 're-educated' in a solidarity camp organised by the NURC in 2001 claimed:

All Rwandans lost families. *Interahamwe* killed many but *Inkotanyi* also did the same. Why do they ask us to remember only those killed during the genocide? They say *gacaca* will only deal with the cases of genocide. But what about other numerous cases? [...] The problem is one side is considered innocent while the other side is considered guilty.²⁸

The local Hutus' criticism was directed not only at the RPF-led government but also at the local genocide survivors whom they accused of being complicit in the alleged RPF/A violations by wrongly accusing innocent Hutus and maintaining silence about atrocities committed by its soldiers. In Gitera, portraying the history of political violence in Rwanda as one of mutual victimization between 'the Tutsi' and 'the Hutu', several Hutu informants claimed that suffering on 'both sides' must be equally acknowledged in public. A Hutu woman in Gitera, a mother of a genocide prisoner, said that nobody could speak freely about Hutu victims of the RPF atrocities for fear of being arrested by government authorities. She also condemned the local genocide survivors for 'only talking about their suffering and forgetting about ours'.²⁹

Even greater resentment at this matter was expressed in Kiberama where, as described in the previous chapter, the vast majority of Hutu informants portrayed themselves as the innocent victims of the RPF/A atrocities and totally negated the injuries suffered by the local genocide survivors. For example, after attesting the brutal civilian killings by RPA soldiers which, according to her allegations, were perpetrated in her neighbourhood, Esther criticised the

²⁸ Interview in Kiberama, 6 June 2002.

²⁹ Interview with Goretti, Gitera, 14 Nov 02.

government for 'remembering only victims of genocide'.³⁰ She went on to suggest even abandoning the national mourning week for commemorating genocide victims because, in her view, it completely ignores other categories of Hutu victims.³¹

3. Exploring the Grassroots Conception of Reconciliation

The fieldwork revealed that the grassroots informants in the two communities shared a basic conception of reconciliation based on the Kinyarwanda concept of *ubwiyunge*. Let us start exploring their conception of reconciliation by discussing what *ubwiyunge* means.

3.1. Meaning of Reconciliation

The concept of *ubwiyunge* may be best described through the metaphor of the healing process of a fractured bone.³² When a bone is broken, its fractured parts have to be put together. What is required for healing is *kunga*, 'to reunite' separated parts into one complete bone just as it was before. For this to be done properly, there needs to be a doctor for putting them together or 'reuniting' (*kunga*) them. *Ubwiyunge* or 'reconciliation' presupposes a broken relationship which needs to be restored by 'reuniting' (*kunga*) two (or more) parties who, due to a certain problem such as a quarrel, dispute, or violation(s) by one party to the other or each other, have been separated from each other through emotions like

³⁰ Interview in Kiberama, 31 May 2002.

³¹ The government has been condemning some sections of the population who demonstrate this kind of deep-seated discontent over the one-sided acknowledgement in post-genocide Rwanda. One evaluation document of the NURC (2002a, 14) reports on the presence of people 'who have not understood that the 1994 atrocities are a common tragedy for all Rwandans' and therefore are 'not keen to participate in the re-burial ceremonies of genocide victims and in different activities organised during the national mourning week'.

³² I owe much of the idea discussed in this paragraph to three Rwandans interviewed: Antoine Rutayisire, the vice president of NURC (Kigali, 30 Sep 2002); Anastase Sabamungu, AEE associate (Gitarama, 28 Sep 2001); and Alexis, one of my research assistants (Gitarama, 2 June 2004).

enmity, mistrust and fear. The process of *ubwiyunge* often requires *umwunzi* – a ‘mediator’ who helps the parties ‘to reconcile’ (*kwiyinga*) with each other. The concept of *ubwiyunge*, therefore, may be defined as ‘the healing of broken relationships’ between the parties in conflict.³³ Grassroots informants who were asked about their ideas of reconciliation generally described the concept along these lines.

3.1.1. A Communitarian Conception of Reconciliation

Several grassroots informants suggested that the Rwandan concept of reconciliation is embodied in the practice of traditional *gacaca* – the community-based system of dispute resolution. Participants of focus group discussions both in Gitara and Kibera agreed that such a traditional *gacaca* gathering allows conflicting parties to ‘come together through the assistance of mediators and sit down for discussing problems between them’.³⁴ The participants outlined the process of reconciliation through the traditional *gacaca* as a community-based process which involves the whole community, not only individual disputants (e.g. victim and perpetrator or disputants over land issues) but also immediate and extended families as well as elders of the community playing the role of mediators.³⁵ One worker of Christina NGO running a healing and reconciliation ministry in Rwanda also underlined the collective dimension of this process:

A dispute between individuals is understood as a threat to neighbourly

³³ Interview with Sabamungu, Gitarama, 28 Sep 2001.

³⁴ Focus group with lay judges of *gacaca* courts, Kibera, 1 June 2002.

³⁵ According to Gatwa, the mediator must be a person of integrity with the following characteristics:

[H]is/her life must be marked with abnegation and truth searching. She/he must be known by all as a living example of virtues, patient and discrete when dealing with sensitive issues or people. She/he must be capable of incarnating and interpreting the suffering of the victims, but at the same time be able to listen to and interpret the motives of the guilty so as to accompany both parties in the re-establishment of new and harmonious relationships. (1998, 243)

relationships between the concerned families and, in turn, to the harmony of the entire community. So, elders from the concerned community intervene in the situation for resolving problems so that people in the whole community may continue to live in peace.³⁶

The Rwandan conception of reconciliation, then, can be understood as a *communitarian* conception of reconciliation as opposed to the one based on individualism. Braithwaite (1989, 84-6) considers a communitarian tendency to be part of the fundamental social conditions conducive to his model of restorative justice through 'reintegrative shaming'.³⁷ Describing a communitarian society as one which 'combines a dense network of individual interdependencies with strong cultural commitments to mutuality of obligation' (85), Braithwaite summarises three elements of communitarianism as follows:

(1) densely enmeshed interdependency, where the interdependencies are characterised by (2) mutual obligation and trust, and (3) are interpreted as a matter of group loyalty rather than individual convenience. (86)

To assess whether the Rwandan society still retains these communitarian characters even after the genocide is beyond the scope of this study. However, fieldwork findings suggest that people's views about reconciliation was/is shaped by the traditional, cultural values discussed here.

3.1.2. A Forgiveness-Centred Conception of Reconciliation

While different informants showed different attitudes towards the practicalities of reconciliation, when they used the word *ubwiyunge*, what they appeared to have in mind was very close to the forgiveness-centred conception of reconciliation discussed in Chapter 2. Bosco explained:

Reconciliation is coming slowly and gradually, not all at once. People have to confess what they did and ask for forgiveness, and those who are asked

³⁶ Interview at Gitarama town, 28 Sep 2001.

³⁷ The theory of reintegrative shaming will be further discussed in Chapter 7.

to forgive need to contemplate it carefully before offering it.³⁸

As indicated in this statement, for Bosco, the transaction of remorse/apology and forgiveness is at the centre of the process of reconciliation. Bosco was just one of many grassroots informants who stressed the importance of the interactive process of seeking and offering forgiveness in the process of reconciliation. In Kiberama, the participants of the focus group emphasised the importance of 'sharing food and drink together' in the process of reconciliation as a sign of mutual acceptance and friendship based on the interactive process of *gusaba imbabazi* - begging for mercy/forgiveness and *gutanga imbabazi* – giving mercy/forgiveness.³⁹

This general tendency to put forgiveness at the heart of their conception of reconciliation may be ascribed, at least to some extent, to the profound influence of Christianity in Rwanda, particularly in rural areas where almost every resident belongs to the Christian Church, Catholic or one of the Protestant denominations.⁴⁰ The vast majority of the grassroots informants identified themselves as Christians. The primacy of forgiveness in reconciliation was often expressed as a primary religious principle which must be respected by all believers. Anastase, a Hutu church leader in Kiberama, declared:

For reconciliation, every Rwandan must confess their sins before God. Then, he must go to his neighbours he harmed to ask for their forgiveness so that they can start living in peace again. [...] As a Christian, I say this: we are obliged to forgive our neighbours and forget what happened.⁴¹

Lambourne (2002, 437) reported that her predominantly Tutsi informants

³⁸ Interview in Gitera, 13 Nov 2002.

³⁹ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002.

⁴⁰ Lambourne (2002, 439) notes that in Rwanda 'ideas about reconciliation are likely to be more similar to the traditional Western concept of reconciliation' because of strong influence of Christianity on the Rwandan society. On the other hand, Staub and Pearlman (2001, 212) point out the possible influence of the government which has been promoting confessions and apologies by perpetrators in prison in exchange for reduced sentences.

⁴¹ Interview with Anastase, Kiberama, 30 May 2002.

were divided between those who emphasised the need for forgiveness-centred reconciliation and those who rejected it. She observed: '[M]any Rwandans, especially the Tutsi who have become disillusioned with the church, have also abandoned the importance of forgiveness as a Christian concept'. As further discussed below, in the case of Gitera and Kibera, people's attitudes toward the issue of forgiveness varied significantly. Nevertheless, irrespective of their personal position about the issue of forgiveness, most of the informants appeared to share the assumption that the process of reconciliation cannot be completed without mutual acceptance based on forgiveness.

3.2. Reconciliation with Whom?

As discussed above, the concept of reconciliation as understood by the grassroots informants presumes broken or strained relationship(s) between people. Whose relationships then need to be healed or restored? According to views expressed by the grassroots informants, reconciliation as the healing of relationships has both interpersonal and collective dimensions. The following will focus on several aspects of reconciliation in each dimension which were actually mentioned by the informants during the interviews, focus groups or observations.

3.2.1. Interpersonal Reconciliation

Many of the grassroots informants expressed their views on reconciliation at the interpersonal level one way or another, even though their perspectives and attitudes towards it varied significantly. Particularly, they mentioned the following three aspects of interpersonal reconciliation: 1) perpetrators and survivors of the genocide; 2) innocent prisoners and people who wrongly accused them; and 3) genocide perpetrators and members of their families.

Perpetrators and Survivors of the Genocide

The most frequently mentioned aspect of reconciliation at this level was one between perpetrators and survivors of the genocide. The *conseiller* of Kiberama sector, a Hutu, stated that reconciliation must be achieved ‘between those who lost their families and those who killed them during the genocide’.⁴² Fabien, a genocide prisoner, said that he and his fellow confessed prisoners had strong desire to meet the surviving members of the families they harmed in order to ask for their forgiveness face to face.⁴³ His mother living in Gitera also touched on the same aspect of interpersonal reconciliation as she expressed her expectations of the *gacaca* trials: ‘Those who have confessed their crimes will meet their victims through *gacaca* and reconciliation will follow’.⁴⁴

In contrast to many of the confessed prisoners who expressed their desire to reconcile with their surviving victims, most of the local genocide survivors did not talk much about interpersonal reconciliation with genocide perpetrators who were directly involved in attacking them and killing their families. Nadine, a Tutsi genocide survivor in Gitera, expressed her feelings about the issue as follows:

Reconciliation is difficult. [long pause] Although people may live in the same neighbourhood, we can’t call those killers ‘friends’. [...] It’s just seven years of imprisonment. It’s impossible to call them ‘friends’.⁴⁵

As suggested in this statement, reconciliation with perpetrators of horrible violence appeared to remain inconceivable for many of the local genocide survivors. However, as already indicated above, at least a few of them, including Bosco, showed a more positive attitude toward the possibilities of reconciliation with genocide perpetrators with the condition that they would confess their

⁴² Interview with Saveri, Kiberama, 30 May 2002.

⁴³ Interview at Gitarama Central Prison, 21 May 2002.

⁴⁴ Interview in Gitera, 24 May 2002.

⁴⁵ Interview in Gitera, 24 May 2002.

crimes and ask for forgiveness. Bosco had taken remarkable steps towards reconciliation with Fabien. He had personally communicated his appreciation of Fabien's confession and encouraged him to tell the whole truth before the *gacaca* court to be set up in Gitera.

Innocent Prisoners and Their Accusers

Another aspect of interpersonal reconciliation mentioned by the grassroots informants was one between Hutu prisoners wrongly accused of genocide and those who made accusations against them. A participant of one focus group in Gitera poignantly made the following remark:

I know my parents will be released once the *gacaca* courts start their work. But how can reconciliation be possible between them and the woman who falsely accused them?⁴⁶

The speaker was Marie, a Hutu woman quoted earlier as saying that both of her parents had been detained as genocide suspects solely because of false accusations made by a female Tutsi survivor. She went on to insist that the woman must first confess her wrongdoing in public, apologise to the parents of Marie, and be obliged to pay compensation before any possibility of reconciliation is considered.

On the other hand, Rose, a genocide prisoner from Gitera who claimed that she was a victim of false accusation, suggested that there would be no special actions required for her to get along with those Tutsi genocide survivors who had falsely accused her of taking part in the genocide. She said 'I'll be all right with those people as long as I'm released from here'.⁴⁷ Asked whether she would charge those individuals with giving false testimonies, she said she would rather forget what happened to her during and after the genocide so that she would not

⁴⁶ Focus group of lay judges of *gacaca* courts, Gitera, 17 May 2002

⁴⁷ Interview at Gitarama Central Prison, 23 May 2002.

get into trouble any more.

Other Categories of Wrongdoers and Victims

There are also other aspects of interpersonal reconciliation relevant to the people in Gitera and Kiberama, given that there were other types of broken interpersonal relationships which resulted from the past violations, particularly those other than the genocide. While, as described earlier in this chapter, many Hutu informants insisted that soldiers involved in the alleged RPF/A violations against the local Hutu population be brought to justice, only a few of them raised these issues in relation to reconciliation at the interpersonal level (i.e. reconciliation between RPF/A soldiers and families of their victims). In fact, since no substantial effort had been made – on the part of the Rwandan judiciary as well as the ICTR - to hold responsible individuals accountable, the vast majority of the Hutu victims had absolutely no idea about whom they were supposed to be reconciled with at the interpersonal level.

Genocide Perpetrators and Their Families

Some of the grassroots informants pointed out the need for mending broken relationships between genocide perpetrators and their own families. Asked about the first thing he would want to say before the *gacaca* court to be set up on his own hill, Fabien said he would 'ask for forgiveness from the survivors, and then from my mother', implying his perception that he had wronged not only his victims and their families but also his mother through his terrible misconduct.⁴⁸ His mother also said: 'They (genocide perpetrators) must ask for forgiveness from their own parents and from those they harmed'.⁴⁹ She then described how she and other members of her family were put into serious trouble (e.g. being

⁴⁸ Interview at Gitarama Central Prison, 21 May 2002.

⁴⁹ Interview in Gitera, 24 May 2002.

censured as a family of genocide perpetrators, being suspected as accomplices) because of Fabien's involvement in the genocide. Thus, forgiveness and reconciliation are, in some cases, also relevant to the perpetrator of genocide and the members of his/her own family who did not condone his/her criminal act.

3.2.2. Reconciliation at the Collective Level

Many grassroots informants identified the following two levels as particularly important: 1) reconciliation between the family of the wrongdoer and that of the victim; and 2) reconciliation between ethnic groups, especially *Bahutu* and *Batutsi*.

Family of the Wrongdoers and That of Their Victims

For people in Rwanda, like those in many other societies in Africa and elsewhere, ties of kinship among members of immediate and extended families or lineage are very strong and of vital importance for their social and economic lives.

According to participants of one focus group of community mediators in Gitera, members of the same lineage still practice what they called *umuryango gacaca* or 'lineage *gacaca*' led by its respected members for settling disputes between its members or smaller units of kinship called *inzu* (pl. *amazuru*). While describing supreme authority exercised by the lineage-based dispute resolution system, one of the focus group participants said that he fears its resolution much more than any sentence of the regular court because the former invokes the sense of profound obligation among those involved in the process.⁵⁰ It was in this social and cultural context that several grassroots informants suggested that various violations committed in the past not only seriously damaged the relationships between individual wrongdoers and their victims, but also created enmity

⁵⁰ Focus group with community mediators in Gitera, 18 May 2002.

between/within the families/lineages of both sides.⁵¹ Some of them also suggested that families of wrongdoers shared moral responsibilities for the wrongs its members had committed against others. According to Fabien's perception, the violent crime he committed not only destroyed the relationship between him and his victims but also seriously damaged the one between the families/lineages of both sides. Therefore, he expressed his hope that the *gacaca* process would entail the situation where '[t]here will be no enmity in the minds of both sides, the families of victims and the families of prisoners'.⁵² Similarly, many grassroots informants appeared to perceive the challenge of reconciliation between innocent prisoners and their accusers to have not only individual but also family aspects.

Ethnic Groups

The previous chapter demonstrated that many informants in the two fieldwork communities subscribed to the 'corporate view of ethnicity' which wrongly projected Hutu, Tutsi and Twa as internally homogeneous and yet mutually exclusive groups – 'the Hutu', 'the Tutsi' and 'the Twa'. Accordingly, many of them ascribed the series of violent events in the past to the hostile relationship between the two rival 'ethnic groups'. It became apparent during the fieldwork that many of the grassroots informants with different backgrounds also perceived the issues of reconciliation largely in these terms.

The ways the Tutsi informants (who were all genocide survivors except one 'returnee' from the Congo) and the great majority of Hutu informants described reconciliation between the two groups were remarkably different, reflecting the

⁵¹ Enmity also within each family/lineage because genocidal killings took place also within the same family, by one or more members against other members of the same family. See AR (1995, 1001-2).

⁵² Interview at Gitarama Central Prison, 21 May 2002.

distinctive ways they perceived the history of ethno-political violence in Rwanda and the nature of their suffering in it. The perspective of Tutsi informants was captured in the following statement made by Bosco:

Years have passed since the genocide was perpetrated. And now there are people who say there was no genocide in Rwanda. [...] Because of such people, there has always been a tension between *Bahutu* and *Batutsi*. I hope the *gacaca* courts can reduce the tension by revealing the truth, inducing the perpetrators to confess their crimes and ask survivors for their forgiveness.⁵³

When Bosco acknowledged the need for improving the relationship between *Bahutu* and *Batutsi*, he did so specifically from the Tutsi perspective where the history of ethno-political violence in Rwanda as the background to Hutu – Tutsi reconciliation is reduced to one-way victimization by Hutus against Tutsis. According to the narrative shared by many Tutsi informants, it is Hutus who have to ask Tutsis for their forgiveness, and then Tutsis would decide whether they would offer it or not.

In contrast, many of the local Hutu informants advanced a totally different narrative of Hutu – Tutsi reconciliation, which was vividly expressed by Rose:

We prisoners understand that *Bahutu* killed *Batutsi* and *Batutsi* killed *Bahutu* for revenge. So we believe reconciliation is possible if the two parties accept that people were killed in both sides and therefore forgive one another.⁵⁴

As indicated in this statement, underlying the Hutu narrative was the notion of mutual victimization between *Bahutu* and *Batutsi* discussed in the previous chapter. Because both *Bahutu* and *Batutsi* committed wrongs in harming each other in the past, according to the common Hutu narrative, the process of reconciliation must be based on acknowledgement of suffering on both sides

⁵³ Interview in Gitera, 17 May 2002.

⁵⁴ Interview at Gitarama Central Prison, 23 May 2002.

and mutual forgiveness.

4. Reconciliation through *Gacaca* Trials?

One of the catchphrases of *gacaca* justice adopted by the government was (and still is) *ubutabera bwunga* or 'reconciliatory justice'. This notion that justice through *gacaca* courts will bring about reconciliation in Rwanda has been increasingly stressed in the government's official discourse of justice and reconciliation in the past several years. How was the potential of the *gacaca* system for reconciling the Rwandan people perceived at the grassroots? To what extent were they convinced that *gacaca* trials would contribute to the process of reconciliation? The remaining part of this section discusses three major positions/attitudes the grassroots informants demonstrated with regard to the prospects for reconciliation through *gacaca* trials.

4.1. Endorsing the Notion of Reconciliatory Justice

Many grassroots informants across various categories endorsed the notion that the *gacaca* system is reconciliatory justice.⁵⁵ The strongest endorsement came from the group of genocide prisoners. The overwhelming majority of the interviewed prisoners from the two communities, including both those who had confessed their involvement in the genocide and those who had been maintaining their innocence – expressed a strikingly optimistic view of the *gacaca* system in terms of its prospect for reconciling the people of Rwanda.

Cyprien, a genocide prisoner from Gitera, claimed:

Gacaca will bring a change to many things. People in all the hills will testify what happened. As a result, innocent prisoners will be released,

⁵⁵ The categories of these informants included: survivors of genocide (Tutsi and Hutu with mixed ethnic background), survivors of massacres (Hutu), genocide prisoners (Hutu), families of these prisoners (Hutu), and an old caseload returnee (Tutsi).

perpetrators will ask for forgiveness, and they will be forgiven, because they merely followed the instruction of the government. Then, the people will help them reconcile with families of their victims [...] ⁵⁶

Some of the genocide prisoners, particularly those who claimed that they had made confessions based on religious conviction, tended to describe *gacaca* courts as a venue where the interactive process of seeking and offering forgiveness would take place between themselves and genocide survivors harmed by their wrongdoings. Olivier, a confessed prisoner from Kiberama said:

Before the *gacaca* court, I'll address my confession and apology to survivors. If they accept it, we'll live together peacefully.

Fabien, a confessed genocide prisoner from Gitera, indicated his expectations of the *gacaca* process with regard to forgiveness to be offered by genocide survivors:

We've asked for forgiveness in our confessions. We know that God has forgiven us as church leaders taught us. But we cannot be sure if we've been forgiven by those people unless we meet them at *gacaca* courts. We've taken the initiative to confess and requested forgiveness. What remains is their forgiveness [...] ⁵⁷

Many of the Hutu families of genocide prisoners expressed their support for the *gacaca* process, not least because it was perceived as the only hope for their relatives in jail to be tried and released in the foreseeable future. Some of them also stated their belief in the *gacaca* system's ability to bring about reconciliation at different levels. The elderly mother of Fabien said:

Gacaca will reconcile people. Those who have confessed will meet victims and then reconciliation will be achieved. ⁵⁸

The grassroots informants who predicted such a highly positive outcome of

⁵⁶ Interview at Gitarama Central Prison, 23 May 2002.

⁵⁷ Interview at Gitarama Central Prison, 12 Nov 2002.

⁵⁸ Interview in Gitera, 24 May 2002.

gacaca trials in terms of reconciliation were not limited to genocide prisoners and their families. Among 14 genocide survivors interviewed, five of them put forward a highly positive expectation of *gacaca* trials, claiming that it would - in the words of Pierre 'correct the wrongs done in the past and reconcile people'.⁵⁹ According to a typical construction of *gacaca* trials pronounced by these genocide survivors, truth and justice (in the forms of retribution and reparation) attained through *gacaca* trials would be the foundation of future reconciliation of divided communities in Rwanda. Pierre stated that through *gacaca* trials, '[k]illers will be punished, things destroyed and looted will be compensated, and then nobody will remain angry with them'.

Despite the differences in their backgrounds and standpoints, the above informants portrayed *gacaca* trials more or less in accordance with the official line of the government: that is, through involving all the people on the local hills across the country, *gacaca* courts are capable of judging untried genocide cases much faster than the ordinary courts, revealing the truth about what happened during the genocide, punishing perpetrators and releasing innocent prisoners, setting all the Rwandans free from lingering suspicions against each other, and finally leading them to take the path of reconciliation. In short, they asserted that *gacaca* trials could/would be the best possible way to unite and reconcile the people of Rwanda.

In fact, several informants first described their views of *gacaca* trials completely in accordance with the official line but later revealed their personal perspectives which totally contradicted their earlier optimistic description. When some of these informants advanced the highly positive prospect for reconciliation through *gacaca* trials, more often than not, it sounded far from

⁵⁹ Interview in Gitera, 24 May 2002.

convincing. While such optimism may be a reflection of genuine desires for justice and reconciliation among many of the informants, the highly optimistic and almost exactly same views some of them expressed were suspiciously similar to the official description of *gacaca* justice.

4.2. Objections by Genocide Survivors

In both Gitera and Kiberama, several genocide survivors indicated either scepticism about or resentment at the optimistic portrayal of *gacaca* trials advanced by the government and endorsed by a significant section of the grassroots informants, particularly genocide prisoners. These genocide survivors did not oppose the government's *gacaca* initiative itself, but rejected some of the claims about it. Alice, a survivor and a lay judge of the sector-level *gacaca* court in Kiberama, observed:

What's said about *gacaca* on radio sounds to me too optimistic. It's easier to say than do. [...] If people speak the truth, it might achieve something, but I don't think most people would tell the truth.⁶⁰

Pascal elaborated on why he and many other genocide survivors could not expect much truth-telling from the *gacaca* process.⁶¹ First, he stressed that it would be naive to expect the great majority of the local population to tell the truth because many of them had been involved in various acts of genocide, even though only a few were in jail. Second, he observed that it would be extremely difficult for local genocide survivors to accuse those perpetrators 'walking freely' on local hills because, given their small minority status, it would put their lives at risk. Third, he also dismissed the fairness and impartiality of *gacaca* courts to be set up in the locality on the basis that the overwhelming majority of judges were 'non-survivors' whom he did not trust. 'There are only three real *inyangamugayo*

⁶⁰ Interview in Kiberama, 7 Dec 2002.

⁶¹ Interview in Kiberama, 4 June 2002.

(‘the people of integrity’ elected as *gacaca* judges) in the local *gacaca* courts’, he claimed.

Several local genocide survivors not only demonstrated scepticism about the optimistic portrayal of *gacaca* trials in general but also disputed the notion of its reconciling capacity. Serge, a genocide survivor in Gitera said: ‘The *gacaca* courts can do nothing about it [reconciliation] because it can’t plant forgiveness into people’s hearts’.⁶² He expressed his resentment at the very fact that through the confession and guilty plea provision of the Gacaca Law,⁶³ genocide perpetrators could be granted a remarkable reduction in their penalties in exchange for their confession and apology, even against the will of genocide survivors. In his view, this can never entail authentic forgiveness and reconciliation. He asserted:

Forgiveness must come from the hearts of people, but in practice the government has already decided to grant it to those wrongdoers by releasing them [in exchange for confession]. [...] Hatreds will remain in the people’s hearts.

Many of the local genocide survivors, including Serge, did not deny the need for improved community relationships, particularly between the families of genocide survivors and those of genocide prisoners who had been wrongly accused and imprisoned for several years. As indicated above, a few of them suggested that there would be a time for forgiving even genocide perpetrators in the future. However, many of them appeared to be bitterly resentful at one assumption underlying the optimistic prospect for reconciliation through *gacaca* trials: that is, they are *expected*, if not obliged, to accept apologies of confessed perpetrators of the genocide and forgive them for the sake of national unity and

⁶² Interview in Gitera, 24 May 2004.

⁶³ As described in the next chapter, this provision was originally included in the 1996 Genocide Law and later carried over to the 2001 Gacaca Law and its amendments that were made in subsequent years.

reconciliation. As indicated above, such expectations were clearly discernable in some of the statements made by the genocide prisoners.

4.3. Objections by Hutu Residents

As discussed earlier in this chapter, the most serious objection to *gacaca* justice was lodged by local Hutu residents who identified themselves as (either direct or indirect) victims of the alleged RPF/A violence. The basis of their objection was that the overall framework of post-genocide justice, *gacaca* trials included as central part of it, is one-sided victor's justice due to its exclusive focus on the crimes committed under the auspices of the former genocidal regime, while overlooking the crimes perpetrated by the RPF/RPA. It was only these Hutu critics who took issue with the framework or scope of *gacaca* trials itself. As indicated above, some of the local genocide survivors criticised some aspects of the proposed *gacaca* system; however, they never questioned its general framework as their Hutu counterparts did.

During the focus group with the *gacaca* judges in Kiberama, a Hutu man, after claiming that he had lost at least ten relatives at the hands of RPA soldiers during the Insurgency, declared that he could simply not envision any prospect for national reconciliation unless those soldiers responsible for killing his relatives would also be brought to justice. During the same focus group discussion, another participant - a Hutu woman who testified to the 'disappearances' of two of her sons after being arrested by RPA soldiers grumbled: 'Where is reconciliation in *gacaca*?'⁶⁴ From the perspective of these Hutu informants with a profound sense of victimhood, *gacaca* trials cannot be the basis of reconciliation unless they are transformed into an even-handed

⁶⁴ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002.

mechanism of dispute resolution whereby the people are provided with opportunities for acknowledging the wrongs committed as well as the injuries and losses suffered by 'both sides' and offering forgiveness to each other rather than from one side to the other.

5. Agreement and Disagreement with regard to Justice and Reconciliation

This section presents a summary of both what the grassroots informants generally agreed about and what they disagreed about with regard to their conceptions of justice and reconciliation. The framework of the three contingencies of the psychology of justice discussed in Chapter 3 will guide our analysis in this section.

5.1. What the People Agreed about

The grassroots informants on both sides of the divide more or less agreed on three things. First, with regard to 'justice as *what*' or distributive justice, both retribution and reparation were identified as crucial components of rectificatory justice for serious violations which affected their lives. This finding is consistent with a finding of the field research by Lambourne (2002) that both retribution and reparation were central to people's conceptions of justice in post-genocide Rwanda. The grassroots informants on both sides of the divide generally recognised the importance of retribution in terms of punishment of wrongdoers and reparation in terms of compensation, establishment of truth and acknowledgement of wrongs and injuries suffered by victims.

Second, the grassroots informants seemed to share widely the cultural assumption that justice and reconciliation are closely inter-related concepts. In this view, the process of seeking the above-mentioned retributive and reparative outcomes was considered to be integral to the process of restoring relationships

ruptured by the wrongs committed by one party against the other or against each other. From this viewpoint, 'justice as *what*' encompassed not only retribution and reparation but also restoration.

Third, with regard to 'justice as *how*', the community-based and participatory process of dispute resolution was widely considered to be a preferable form of procedural justice in order to seek the outcomes of retribution, reparation and restoration. People's views about how justice and reconciliation should be pursued were significantly shaped by communitarian cultural values. Accordingly, they supported the involvement of the whole community in a collective endeavour to resolve disputes between its members and restore social harmony.

5.2. What the People Disagreed about

Despite the fact that the grassroots informants on the two sides of the divide shared basic conceptions of 'justice as *what*', 'justice as *how*' and their relation to reconciliation, there was a deep rift between the two sides over the question of *whose* victimhood is counted in the quest for post-genocide justice. In other words, the two sides agreed on the *what* and *how* aspects of rectificatory justice but fiercely disagreed on *who* should be included in the scope of justice. Their demands for justice were so centred on the violations and injuries inflicted on their own side that those inflicted on the other side tended to be either trivialised or denied. While the conflicting demands for justice between the two sides may be partly ascribed to a self-centred attitude demonstrated by each side, they also seemed to be compounded by the problem of ethnicity-based generalisation of guilt – the problematic tendency to blame others for being responsible for the suffering of oneself and one's own group according to their ethnic identity.

As discussed in Chapter 3, it is not unusual to find different sides of a

conflict advancing competing demands for justice. For the conflict to be settled peacefully, the conflicting parties with their competing demands must somehow find a way to compromise so that all the concerned parties have a sense that some justice has been done. However, in the case of Gitera and Kiberama (and most likely many other parts of Rwanda), it seemed to be very difficult for both sides of the divide to take the path of compromise because of the very nature of the starkly conflicting demands for justice they advanced. On the one hand, the vast majority of Hutu informants demanded 'even-handed justice' which would address the violations and injuries inflicted on their side by primarily the RPF/A as much as those inflicted on the side of genocide survivors. From their perspective, the overall framework of post-genocide justice in Rwanda – and *gacaca* trials as a central component of it - is notoriously one-sided victor's justice, focusing exclusively on the crimes committed by Hutu perpetrators under the auspices of the former Hutu genocidal regime while turning a blind eye to the cases of RPF/A crimes as well as some wrongdoings by Tutsi civilians. To be sure, none of these Hutu critics of *gacaca* trials called for its wholesale abandonment; many of them actually appreciated the participatory aspect of *gacaca* trials in which ordinary citizens play important roles. Many Hutu informants actually supported the idea of using grassroots courts for genocide trials with the view that they would be possibly the only hope for their relatives in jail to be tried (and hopefully released) in the foreseeable future.⁶⁵ What they asserted, however, is the need for broadening the scope of its jurisdiction to consider 'the crimes committed by both sides' so that the sufferings of not only Tutsis but also Hutus is acknowledged; perpetrators of not only the Tutsi

⁶⁵ It should be noted that there could be some people who did not want to see even a single *gacaca* trial at all on their hill because, for whatever reasons, they feared of fresh allegations against and arrests of themselves or their relatives.

genocide but also war crimes and human rights abuses against Hutus are punished; and victims of all of these violent crimes are assisted equally to rebuild their lives shattered by the violence.

On the other hand, the genocide survivors strongly objected to the idea of 'even-handed justice' on the ground that nothing can (and should) be equated with the horrendous crime of genocide and the suffering it inflicted on them.⁶⁶ From their perspective, any attempt to bring before *gacaca* courts what they consider as incomparable types of violence together – genocidal violence against innocent people and retributive violence against notorious killers and their accomplices – is nothing but a grave injustice to themselves and their loved ones massacred during the genocide. Therefore, for these genocide survivors demanding special, if not exclusive, recognition of their form of victimhood, post-genocide justice with its exclusive focus on genocide-related crimes (or its limited scope of justice from the perspective of many Hutus), as it has been pursued by the government, is the right response which justice requires.

6. Reflections on the Relationship between Justice and Reconciliation

Analysis of the fieldwork results presented above has generated the following insights which may be useful for better understanding the relationship between justice and reconciliation in post-genocide peacebuilding in Rwanda.

6.1. Justice as an Integral Part of Reconciliation

The first significant point about the grassroots conception of the justice - reconciliation relationship is that justice in terms of both retribution and

⁶⁶ As reported in the previous chapter, the local genocide survivors even objected to the idea of themselves being equated with survivors of massacres (*itsembatsemba*) or surviving Hutu dissidents attacked by genocide perpetrators on the ground that the nature of their suffering is qualitatively different from that of those Hutu victims.

reparation discussed above is seen as an integral part of the process towards reconciliation, the healing of broken relationships between the parties separated by emotions like enmity, mistrust and fear. The grassroots conception of justice described above encompasses a wide range of justice-related desires of the people severely harmed by different types of violations in the past: punishment of wrongdoers; material/compensatory forms of redress; and symbolic or moral forms of redress, particularly those addressing the victims' need to know the truth and to obtain acknowledgment of the wrongs and injuries they suffered. All of these forms of justice were considered by many at the grassroots level as vital requirements --- for making perpetrators accountable, for repairing physical and economic damage inflicted on victims, for healing their emotional wounds, and ultimately, for restoring the relationships ruptured by the wrongs committed.

This grassroots conception of justice-reconciliation relationship is indeed similar to the integrated conception of three 'R's – Retribution, Reparation and Restoration proposed in Chapter 3: that is, the conception of rectificatory justice in which both retribution and reparation are considered as vital components of the process of restoring social relationships ruptured by wrongdoing. As discussed in Chapter 3, in portraying restorative justice as an alternative to retributive justice, many proponents of restorative justice tend to reject retributive punishment as counterproductive to the goals of establishing accountability, repairing the material and emotional damage inflicted on victims, and restoring social relationships ruptured by violation. Accordingly, they argue, for responses to the wrongdoing to be conducive to restoration, they should be centred on reparative measures as opposed to retributive ones. The identified grassroots conception of justice-reconciliation relationship does not agree with this retributive/restorative dichotomy and the idea that retributive punishment must

be rejected in the process of restoration. As indicated above, although some of the grassroots informants prioritised their reparative needs for justice over retributive ones, no one suggested that retributive punishment would undermine the process of restoring damaged relationships. Rather, many of them seemed to consider retributive punishment – along with various forms of reparation – an integral part of rectificatory justice response which is essential for restoration. Moreover, according to the grassroots conception of justice, the boundaries between reparation and retribution appeared to be not as clear as often suggested, as demonstrated by the fact that several informants described certain types of reparative measures (e.g. payment of compensation, redress through physical work by offenders) as forms of retributive punishment to be imposed on offenders.

6.2. Interaction between Justice, Mercy and Reconciliation

The grassroots conception considers rectificatory justice as a vital requirement for reconciliation in restoring damaged relationships but it also recognises that working at justice alone does not entail reconciliation. Justice is seen as – to borrow the phrase used by Assefa (1999, 44) - ‘a necessary but not sufficient condition for reconciliation’. As another set of vital requirements for reconciliation, many grassroots informants pointed to the importance of forgiveness and mutual acceptance - key elements of the component of mercy (acceptance, forgiveness, compassion, healing, etc.) according to the Lederach’s framework discussed in Chapter 3. As noted above, the Kinyarwanda term *ubwiyunge* connotes forgiving those who committed wrongs and accepting such wrongdoers as fellow members of the community. According to this grassroots conception of reconciliation, to repeat the point already made above, the process of authentic

reconciliation cannot be completed without the elements of mercy, particularly, mutual acceptance based on forgiveness.

It can be suggested then that according to the grassroots conception of reconciliation, the process of reconciliation embraces at its core two seemingly competing components – justice and mercy - which may be seen as contradictory forces and yet are essential for its progress. For many victims of violent crimes, it is extremely difficult to contemplate forgiveness and acceptance of their victimizers, especially when there is no visible effort being made to address their justice-related needs and desires through a range of retributive and/or reparative measures. To put this the other way around, the more conceivable forgiveness and reconciliation may become for victims, the more satisfied they are with progress in justice as they see wrongdoers held accountable, material losses compensated, wrongs and injuries acknowledged, all of which are important for their healing process. Addressing their needs and desires for justice, therefore, may positively influence the healing process of victims, thereby enhancing their ability to be generous and forgiving as well as open to the possibility of future reconciliation. In short, progress in justice facilitates progress in reconciliation by reinforcing the elements of mercy, constituting a vital component of the reconciliation process.

6.3. Tensions between Restrictive Conceptions of Justice and Reconciliation

As discussed above, the dominant grassroots conception of the justice-reconciliation relationship considers justice as an integral part of reconciliation. However, this does not mean that they are immune to possible tensions and even contradictions. As discussed in Chapter 3, there are cases in which justice and reconciliation are understood as competing goals or even

incompatible alternatives in the context of post-violence peacebuilding, particularly when they are restrictively projected as retributive punishment of perpetrators and a hasty attempt to achieve *negative peace* by turning to a blind eye to the atrocities committed and their consequences.

The fieldwork findings indicate strong retributive desires held by some of the grassroots informants. As implied in the statement of one genocide survivor quoted earlier, if one conceives of justice strictly as bringing wrongdoers to suffer their just desserts or an amount of pain proportional to what they inflicted on their victims (i.e. death penalty for a murderer), it is indeed difficult to envision reconciliation, particularly when forgiving wrongdoers and accepting them back as members of the community are seen as essential elements of reconciliation, as was the case with the grassroots conception of reconciliation discussed above. Seemingly standing in tension here, however, is not justice and reconciliation per se but 'just desserts retributivism' (Duff 2002, 82, 96-7) – a position which demands the infliction of pain on wrongdoers for its own sake – on the one hand and the elements of mercy, constituting a vital component of reconciliation on the other.

The perceived tension may further be exacerbated when forgiveness is wrongly equated with forgetting the past, condoning wrongdoers without any effort to hold them accountable or 'deny[ing] legitimate emotions of anger and resentment' which victims feel towards them (K. Daly 2000, 41). These kinds of problematic conceptions of forgiveness did emerge when some of the Hutu informants stressed the need to 'forgive and forget' and even described forgiveness as something expected or as an obligation of victims for the sake of national reconciliation. As demonstrated by Little (1999, 79) and also clearly expressed in some of the statements made by grassroots informants,

forgiveness of the wrongdoer does not necessarily preclude his/her personal accountability for the wrongdoing and obligation to repair the harm caused by it. Neither does it require them to deny or suppress victims' legitimate anger or indignation towards the wrongdoers who caused their suffering. Arguably, it does not even preclude retributive punishment of the wrongdoer, as several informants suggested; such punishment may be seen as a necessary condition for receiving forgiveness from victims and being reintegrated into the community.⁶⁷ Nonetheless, as indicated in the fieldwork data presented in this chapter, there is a real danger that reconciliation may be conflated with problematic misconceptions of forgiveness outlined above, and when it happens, the pursuit of reconciliation may be hampered in the face of a serious objection by the community of victims/survivors, especially those victims/survivors who vigorously demand justice in the sense of vengeance.

7. Conclusion: Reconciling Conflicting Narratives as a Critical Challenge

This chapter has demonstrated that, while the people in the two fieldwork communities shared basic cultural assumptions about justice and reconciliation, they were deeply divided over the question of justice and reconciliation regarding *whom* it would serve. How the people perceived the issues of justice and reconciliation were closely interwoven with the conflicting ethnicized narratives of victimhood discussed in Chapter 5. When the process of post-violence justice and reconciliation reaches an impasse due to such sharply conflicting, seemingly non-negotiable demands for justice advanced by

⁶⁷ Building on Duff's (1992, 71) argument for alternative punishment for restoration, Kathleen Daly (2000, 41) contends that:

the ability of victims to be generous and forgiving and for offenders to "make amends" to victims – elements that are desirable objectives in a restorative justice process – can only come about during or after a process when punishment, broadly defined, occurs.

adversarial identity groups, what can we do? Is there any promising way to help the parties to redefine their sense of what is and is not negotiable in relation to their demands for justice?

The findings of the grassroots study presented above do not give precise answers to these questions. What they apparently show, however, is the great challenge facing the quest for justice and reconciliation in post-genocide Rwanda: the challenge of reconciling conflicting narratives of victimhood in a way that they are dissociated from the dichotomous, essentialist construction of ethnicity. As Kelman's conception of *reconciliation as identity change* reviewed in Chapter 3 suggests, this challenge is essentially about the transformation of ethno-political identities that have been deeply entrenched in the minds of many Rwandans through the decades of violent political campaign, civil war and genocide. How has this critical challenge been tackled by the government of Rwanda in its efforts at justice and reconciliation? Having this as one of the central questions, now we will turn to the case study of the government's strategy for justice and reconciliation in post-genocide Rwanda.

PART III

**THE QUEST FOR JUSTICE AND RECONCILIATION
BY THE POST-GENOCIDE GOVERNMENT
OF RWANDA**

CHAPTER SEVEN

FROM PUNITIVE TO RECONCILIATORY JUSTICE: UNRAVELING THE GOVERNMENT'S STRATEGY FOR POST-GENOCIDE JUSTICE

1. Introduction

Since the end of the 1994 genocide, the government of Rwanda and the international community have made a massive investment in the reconstruction of the domestic judicial system and the prosecution of alleged perpetrators of the genocide. Underlying these justice-related efforts is a view that the culture of impunity and the absence of rule of law constituted a major cause of the genocide and other gross human rights violations that ravaged Rwandan society in its recent past. Three levels of judicial response to the genocide have been underway: the International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania; national-level genocide trials through the domestic formal justice system; and a local-level process of justice and reconciliation through *gacaca* courts. All of these responses fall into the domain of rectificatory justice – the process of correcting the wrongs committed in the past – although they are considered as essential for preventing the recurrence of violence and advancing the long-term process of national reconciliation.

This chapter focuses on the domestic efforts at post-genocide justice by the Rwandan government, particularly the one through *gacaca* courts. Calling it 'reconciliatory justice', the government claims that the justice system it developed based on a Rwandan community-based dispute resolution

mechanism is more effective than the formal justice system, in the context of post-genocide Rwanda, in revealing the truth, rendering justice and promoting reconciliation. This chapter examines the evolution of the government's approach to post-genocide justice and its conceptual underpinning. After sketching the background of the inception and evolution of the *gacaca* system as well as its basic features, the chapter discusses key elements constituting the government's logic of 'reconciliatory justice'. While the chapter highlights potentially restorative features of the *gacaca* system, it reveals that *gacaca*'s unique restorative potential has not been tapped in its implementation mainly due to political constraints imposed by the government on the scope of post-genocide justice and the lack of strategic emphasis on the concrete steps for carrying out reintegration and reconciliation.

2. The Pursuit of Punitive Justice in the Aftermath of Genocide

After coming to power in July 1994, the transitional government of Rwanda gave the first priority in its reconstruction effort to the apprehension and punishment of all of those who took part in the genocide.¹ Tens of thousands of people – mostly Hutus – were arrested without formal charges and thrown into prisons and communal detention facilities across the country based on unverified allegations of having taking part in the genocidal massacres. By mid-1996, the total population of genocide suspects in detention swelled to over 90,000 (AI 2004). As the mass repatriation of Hutu refugees from neighbouring countries, particularly the former Zaire, continued after late 1996, tens more thousands were arrested without formal charges. Consequently, the number of detainees reached its peak of an estimated 135,000 in 1997/98 (HRW 2008a, 16). As the

¹ Official website of the government of Rwanda, accessed on 31 May 2004.

chief prosecutor himself once admitted, a significant number of the detainees were thought to be innocent (Uvin 2001a, 182).²

The new government defended its action of mass arrests and prolonged detentions, primarily based on two grounds. First, the government's first priority was to restore security in the country and for that it was imperative to apprehend, to the extent possible, all the violent perpetrators of genocide. Second, in order to prevent future genocide and achieve justice and reconciliation they felt that no perpetrator should be allowed to go unpunished, and the culture of impunity had to be eradicated once and for all (Uvin 2001a, 181).³ Firmly determined to try to punish all perpetrators and accomplices of the genocide, the new government had to confront a challenge which was arguably unprecedented in human history: prosecuting tens of thousands for the crimes committed against hundreds of thousands while building for the first time an independent, fair and efficient justice system in the country (Schabas 1996, 531-4).⁴

2.1. The 1996 Genocide Law

In August 1996, as a major part of its response to the enormous challenge described above, the Transitional National Assembly of Rwanda adopted the Organic Law on 'the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity' committed between 1 October 1990 and 31 December 1994 (hereafter, the 1996 Genocide Law).⁵ This 1996

² Vandeginste (2001, 235) estimated the number of innocent detainees to be over 25,000 (out of the total of 122,000) based on the rate of acquittals for the first semester of 1999 (21 percent).

³ Also see Organic Law N° 8/96 of 30th August 1996 in *Official Gazette of the Republic of Rwanda* 35 no. 17 (1 September 1996).

⁴ Schabas (1996, 531) noted in his 1996 article, '[t]he term "rebuilding" is often used to describe the challenge facing Rwandan justice, but it is not well chosen' because of the corrupt and politicised nature of the justice system which existed prior to the 1994 genocide. The challenge was not to 'rebuild' but to newly 'build' a system which truly deserved to be called a 'justice system'.

⁵ Organic Law N° 8/96 of 30th August. For more detailed description and analysis of the 1996 Genocide Law, see Schabas (1996); ICSPHRI (1997); Des Forges (1999, 749-53); and Vandeginste (2001).

Genocide Law set the overall framework of post-genocide justice in Rwanda, even though some of its provisions have been amended as the government introduced and implemented the *gacaca* system. The purpose of the 1996 Genocide Law is 'the organization of criminal proceedings' against suspects accused of having committed criminal offences, stipulated and sanctioned under the penal code of Rwanda, which constitute either genocide or crimes against humanity as defined in relevant United Nations conventions (Article 1). Those UN conventions are: 1) Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (so-called 'Genocide Convention'); 2) Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and its additional protocols; and 3) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 26 November 1968 (Article 1-a).

Article 2 of the Genocide Convention defines the term genocide as 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such': 1) killing members of the group; 2) causing serious bodily or mental harm to members of the group; 3) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4) imposing measures intended to prevent births within the group; and 5) forcibly transferring children of the group to another group. The Convention of 1968 refers to the Statute of the International Military Court of 8 August 1945 (Article 6-c) to define crimes against humanity: 'the assassination, the extermination, the reduction to slavery, the deportation and any other inhumane act committed against civil populations, (...) or the persecutions for political, racial or religious purposes, (...) having or not constituted a violation of the country's domestic right where these acts were

perpetrated, (...)’ (ICSPHRI 1997, 28).

The offences to be prosecuted under the 1996 Genocide Law were only those committed during the period between 1 October 1990, the date the atrocity against people identified as ‘Tutsi’ began to be intensified following the RPF invasion, and 31 December 1994, the end of the year in which the genocide was finally halted by the RPF and the transitional government was established following the defeat of the genocidal regime. In order to handle exclusively these offences, the 1996 legislation stipulated the establishment of Specialized Chambers within the existing Tribunals of First Instance and the military courts (Articles 19-20).

The 1996 Genocide Law classified offenders of genocide-related crimes into four categories according to the level of culpability (Article 2): 1) ‘the planners, organizers, instigators, supervisors and leaders’ of the genocide, persons in position of authority at administrative, political, military and religious institutions, ‘notorious murderers’ and ‘persons who committed acts of sexual torture’; 2) all others who were implicated in murder or assaults causing death; 3) those who were implicated in assaults which did not cause death; and 4) those who committed offences against property. Underlying this classification system was the government’s intention to ‘separate the main organizers of the genocide from criminals with lesser degrees of responsibility’ (Schabas 1996, 530).⁶ Coupled with the classification of offenders was the Confession and Guilty Plea Procedure (Articles 4-13) – a ‘unique scheme aimed at encouraging offenders to

⁶ During a conference entitled ‘South Africa-Rwanda Dialogue’ held at Cape Town in 2001, Gerald Gahima, then General Prosecutor at the Supreme Court of Rwanda, said:

... we also decided that we would find ways of dealing with accountability for the genocide in ways that promoted stabilisation of our society, promoted the rule of law and would help heal our society. This is how we came up with the 1996 law which identifies the most culpable, the leadership, in category one and subjects them to the strictest application of the law, while identifying others who could receive lenient treatment, particularly if they pleaded guilty and joined the confession programme that we are promoting.

(in Villa-Vicencio and Savage 2001, 99-100)

confess in exchange for substantially reduced sentences' (ibid). For offenders to benefit from considerable reductions in sentences, they had to provide, in their confessions, a full description of the offences they committed, evidence to be used for prosecuting other suspects, and an apology.

The 1996 Genocide Law also made reference to general procedures for civil actions. Articles 27-32 stipulated that convicts classified in Category 1 were 'held jointly and severally liable for all damages caused in the country by their acts of criminal participation', whereas those classified in Categories 2, 3 or 4 were only liable for damages resulting from their own criminal acts (Article 30). The law also stipulated that civil damages could be awarded even to victims not yet identified (Article 30), which were to be deposited into a Victims Compensation Fund whose establishment and management would be determined in a separate law (Article 32).

2.2. Genocide Trials through the Formal Justice System

Trials of genocide suspects began in December 1996 through the Specialized Chambers created within the formal justice system as stipulated in the Genocide Law. The international community provided the transitional government with considerable assistance for (re)constructing the justice system and building its capacity to deal with numerous caseloads of genocide-related crimes (Uvin 2001a). Some of these early trials were reported to be flawed, with problems such as the absence or inadequacy of legal assistance for defendants, intimidation or harassment of defence lawyers and witnesses, the lack of impartiality and independence of judicial personnel, and restrictions on the rights of appeal.

By June 2003, a total of 8,820 suspects of genocide-related crimes had been tried through Rwanda's formal justice system, although some 80,000

suspects were still in detention at the 19 prisons and other detention facilities across the country (AI 2004, 3, 7). The pace of trials was a remarkable achievement for a government with limited resources, particularly compared with the highly disappointing results of the ICTR:⁷ ten years after its creation, millions of dollars had been spent, but only 23 convictions and three acquittals had been handed down by the end of 2004 (ICTR's official website).⁸

Most observers agree that since 1998, with the increased availability of defence lawyers and the enhanced competence of judges, the fairness of genocide trials within Rwanda significantly improved (Vandeginste 2001, 235; Uvin and Mironko 2003, 225; AI 2004, 7). The rate of acquittals nearly tripled, from 8.9 percent in 1997 to 24.8 percent in 2002 (as of the end of June), while the rate of those sentenced to death decreased dramatically, from 30.8 percent to 3.4 percent during the same period (AI 2002, 17).

Despite this remarkable improvement, however, outside observers such as Amnesty International stated in the early 2000s that Rwanda's formal justice system was falling short of fair trial standards and that therefore a need still remained for more far-reaching reforms.⁹ What also became apparent by the late 1990s was that the formal justice system alone would not be able to reduce the large backlog of genocide-related cases within a reasonable period of time.

⁷ The ICTR was created by the UN Security Council's Resolution 955 of 8 November 1994 'to contribute to the process of national reconciliation in Rwanda and to the maintenance of peace'. Its mandate is to prosecute individuals responsible for genocide and other serious violations of international humanitarian law committed in Rwanda and neighbouring states between 1 January 1994 and 31 December 1994 (ICTR's official website, accessed on 15 August 2009). After taking two years to establish offices in Hague, Arusha and Kigali as well as another year to address management and funding problems, the Tribunal finally began its first trial in January 1997 (AI 2004, 5; Peskin 2008, 157).

⁸ Accessed on 24 February 2005.

⁹ Major problems included: 1) the unlawful detention of the large number of genocide suspects in overcrowded prisons and detention facilities; 2) government officials' interference with court decisions, in some cases leading to re-arrests of individuals after their acquittals; 3) the absence or inadequacy of legal assistance for defendants; 4) continuing intimidation of defence lawyers and witnesses; 5) the limited competence, impartiality and independence of judicial personnel; and 6) the widespread corruption throughout the entire justice system (AI 2004, 7; Vandeginste 2001, 235-6; and Uvin and Mironko 2003, 225).

In December 1999, it was estimated that over 100 years would be required to judge the more than 130,000 cases remaining if the rate of judgments per year (slightly over 1,300 in 1999) remained constant. In other words, there would be no chance for the vast majority of genocide survivors and those accused of genocide-related crimes (including thousands of supposedly innocent people) to see justice carried out in their lifetime.¹⁰ Thus, the government was compelled to search for an alternative way of dealing with the overwhelming need for justice created by the genocide.¹¹

3. Reconciliatory Justice through the Gacaca System

It was against the above background that the government adopted a new strategy of post-genocide justice centred on the *gacaca* system, a 'system of participative justice' modelled after a traditional community-based mechanism of dispute resolution called *gacaca* - literally, 'a patch of grass' on which communal discussion is usually held. The official website of National Service of Gacaca Courts (NSGC) indicates five major objectives in setting up the *gacaca* system. They are to: 1) 'reveal the truth about what happened' in connection with the genocide; 2) 'speed up the genocide trials'; 3) 'eradicate the culture of impunity'; 4) 'reconcile the Rwandans and reinforce their unity'; and 5) 'prove that the Rwandan society has the capacity to settle its own problems through a system of justice based on the Rwandan custom'.¹²

¹⁰ AI (2004, 4) reported: 'Preventable disease, malnutrition and the debilitating effects of overcrowding resulted in a reported 11,000 deaths between 1994 and 2001' in Rwanda's prisons and other detention facilities.

¹¹ See 'Context of historical background of Gacaca Courts', the official website of NSGC <<http://www.inkiko-gacaca.gov.rw/>>, accessed on 22 Dec 2004.

¹² 'The objectives of the Gacaca Courts', available at the official website of NSGC accessed on 22 Dec 2004.

3.1. The Evolution of the Gacaca System

Traditional *gacaca*, which dates back to pre-colonial Rwanda, takes the form of an informal meeting involving local elders as its conveners and members of concerned families or of the local hill as participants, although it tends to be dominated by adult males (Reyntjens and Vandeginste 2001, 129). It is convened whenever deemed necessary as a dispute arises between members of the family/community or as social norms are violated. *Gacaca* usually deals with civil disputes over land use, inheritance, marital affairs, property damage, loans, etc., although it may also be used to settle disputes resulting from criminal offences, mostly but not exclusively minor ones such as theft (ibid). Its primary goal is 'to restore harmony and social order in a given society, and to reincorporate the person who was the source of the disorder' rather than establishing his/her guilt in accordance with the state law (Vandeginste 2001, 239). Accordingly, the elders facilitate communal discussion to identify a reparative sanction (for example, an amount of compensation) acceptable to all the parties involved in the *gacaca* process. Even though the culpability of wrongdoers is recognised on an individual basis, members of the group or family to which they belong are collectively held responsible for reparations (Karekezi 2001, 32). *Gacaca* in this traditional form continued to be widely practiced at the local level after the introduction of a Western justice system by colonial authorities, although it became more formalised, particularly under the post-independence government, in its relation with administrative and judicial structures of the state (Reyntjens and Vandeginste, ibid; Karekezi, ibid; Reyntjens 1990, 39 cited in Karekezi, et al. 2004, 73-4).¹³

¹³ In post-genocide Rwanda, traditional *gacaca* has been reportedly revived at various levels of society, partly due to the malfunctioning of the formal justice system, even though, according to Reyntjens and Vandeginste (2001, 130), 'its nature has also been fundamentally altered because of new circumstances, such as those related to the new composition of the local population after

After a series of discussions held in 1998, the transitional government decided to build a new system for post-genocide justice based on the traditional *gacaca* mechanism.¹⁴ A draft law proposed by an ad hoc National Gacaca Commission was first discussed in a consultative meeting and then circulated among government bodies, various sectors of society, and international donors and agencies working in Rwanda. On 12 October 2000, after much debate and redrafting, the Transitional National Assembly adopted the Organic Law for establishing 'gacaca jurisdictions', for trying all but the first category suspects accused of genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994.¹⁵ The law went into effect on 15 March 2001.

After a campaign of mass sensitisation, a nationwide election took place in October 2001 to choose lay judges called *inyangamugayo*. Initial training was provided for these judges over a period of six weeks in April and May 2002. Each group of lay judges, most of whom had no legal background, received intensive instruction for six days in total before the official inauguration of *gacaca* courts in June 2002.¹⁶ There were concerns about the legal competence of the lay judges due to the limited training provided initially. To address these legitimate concerns, refresher courses were organised in subsequent phases and booklets for simple explanations of *gacaca* procedures, and relevant laws were supplied as reference books to *gacaca* courts.

The Rwandan government took a gradual approach to the development of

the genocide'. See also Karekezi (2001, 33-4) for various examples of reactivated practice of *gacaca* in post-genocide Rwanda.

¹⁴ The description in this paragraph is based on Karekezi (2001, 30-7); Karekezi, et al (2004, 71); AI (2002, 20-1); and Uvin (2003a, 116-7). For detailed information about issues discussed during the preparation of the Gacaca Law, see Karekezi (2001, 30-7).

¹⁵ Organic Law N° 40/2000 of 26/01/2001

¹⁶ See African Rights (2003) for a very informative report of the training process and views of the *gacaca* courts system expressed by lay judges and their instructors.

the *gacaca* system so that its original design and modalities might be modified based on lessons learnt during the small scale implementation. Accordingly, on 19 June 2002, following the official inauguration ceremony, the pilot programme began with 80 cell-level *gacaca* courts dispersed among 12 sectors, representing one sector from each of the country's 12 provinces. In November, *gacaca* was expanded to all cells within 106 sectors chosen from throughout the country.¹⁷ During the two-year pilot period, 751 *gacaca* courts became operational and conducted pre-trial investigative hearings (FH 2004).

As the pilot phase came to an end, the Rwandan parliament adopted an amended Gacaca Law¹⁸ (hereafter the 2004 Gacaca Law or the 2004 Law) on 19 June 2004, in order to clarify some ambiguous aspects of the 2001 Gacaca Law and to make the *gacaca* system less cumbersome before putting it into operation nationwide. As the first very significant amendment, Article 1 of the 2004 Law excluded war crimes, as defined in the UN Convention of 26 November 1968, from the jurisdiction of *gacaca* courts. Even when the *gacaca* courts were organised for the first time through the 2001 Law, the government made it clear that war crime cases allegedly committed by the RPF forces would not be tried by the *gacaca* courts, despite the fact that many Rwandans indicated their desire to bring related cases to the *gacaca* courts. This amendment in 2004, therefore, can be seen as a measure to make the government's position on this issue legally indisputable.

The 2004 Gacaca Law stipulated the establishment of the *gacaca* appeal court at the sector level instead of the district level as stipulated in the 2001 Gacaca Law, thereby maintaining *gacaca* court structures only at the cell and

¹⁷ Rwanda's administrative breakdown at the time was 12 provinces, 106 districts, 1,545 sectors, and 9,013 cells.

¹⁸ Organic Law N° 16/2004 of 19/06/2004

sector levels (Article 4). The number of lay judges per *gacaca* court was reduced from 19 to 9 (Article 13). An amendment was also made to the classification of offenders established in the 1996 Genocide Law (and adopted in the 2001 Gacaca Law). Category 2 and Category 3 offenders of genocide-related crimes in the preceding laws merged into one category, consequently leaving only three categories of genocide offenders (Article 51).¹⁹ Another important provision in the 2004 Gacaca Law was the provision of specific penalties for people seeking to pressure or threaten witnesses and/or lay judges (Article 30).

On 15 January 2005, the government announced the nationwide expansion of the *gacaca* system to all cells and sectors in the country. By the end of March 2005, *gacaca* courts in most cells throughout the country began pre-trial hearings for data collection to accomplish primarily two tasks: to establish lists of victims and perpetrators with regard to all genocide-related crimes that took place in the locality and to classify the identified perpetrators according to the categories stipulated by the 2004 Gacaca Law. The nationwide pre-trial hearings through over 9,000 cell-level *gacaca* courts yielded an outcome which astonished many observers: the number of people accused of genocide-related crimes swelled to over 800,000. According to the information released by the NSGC, after the completion of the nationwide pre-trial hearing process on 31 May 2006, the total number of genocide suspects reached 818,564 (NSGC 2008, 9), which was about one tenth of the country's total population.²⁰

¹⁹ Category 1 - individuals who played a critical role in the genocide as its 'planners, organisers, imitators, supervisors and ringleaders', individuals who were in positions of authority at administrative, political, military, semi-military (militia) and religious bodies, notorious murderers, and those who committed torture, rape or sexual torture or 'dehumanising acts on the dead body'; Category 2 - individuals who killed or injured others as well as those who aided such offences irrespective of their intention to kill; and Category 3 - individuals who were implicated only in offences against property.

²⁰ These suspects were composed of 77,269 (9.4%) for Category 1, 432,557 (51.8%) for Category 2 and 308,738 (38.8%) for Category 3 (NSGC 2008, 9). These people the *gacaca* courts identified as genocide suspects included 44,204 persons who were outside Rwanda and 87,063 persons who were dead (Ingelaere 2008, 42).

On 15 July 2006, the nationwide trial phase was finally launched with 9,013 cell-level *gacaca* courts, 1,545 sector-level *gacaca* courts and the same number of *gacaca* appeal courts also placed at the sector level. The *gacaca* trial became a part of Rwandans' regular weekly schedule on practically every hill in the country. This nationwide trial phase coincided with several significant reforms of the *gacaca* system through the promulgation of the new Organic Law (hereafter the 2007 Gacaca Law or the 2007 Law).²¹ The 2007 Gacaca Law narrowed down the scope of Category 1 by putting some of its subcategories²² into Category 2, thereby expanding the mandate of the sector-level *gacaca* courts to judge a number of the defendants previously classified as Category 1. In addition to the expansion of *gacaca* courts' mandate, the 2007 Gacaca Law made penalties stipulated for Category 2 offenders generally more lenient (with more weight given to Community Service than to imprisonment), compared with those stipulated in the 2004 Gacaca Law. In this regard, a major change introduced by the 2007 Gacaca Law was a provision for suspending part of the sentence given to Category 2 offenders who resorted to the confession procedure (Article 14).²³

While the 2007 Law significantly expanded the mandate of *gacaca* courts, thereby increasing their number of cases, it also added a provision for each *gacaca* court to have more than one bench, thereby opening the way to accelerate judicial proceedings (Article 1). Accordingly, by July 2007, 1,803 benches were newly formed to augment the existing 1,545 benches in the sector-level *gacaca* courts, and 412 new benches were added to the 1,545

²¹ Organic Law N° 10/2007 of 01/03/2007

²² Offenders who were 'well known murderer[s]', who 'committed acts of torture' and who 'committed dehumanising acts on the dead body'

²³ Those who confessed before being included on the list of the accused had their sentence reduced by one third; those who confessed after their inclusion in the list had their sentence suspended by one sixth.

benches that had been operational in the appeal courts (ASF 2007, 11). As a result, the total number of the *gacaca* courts at the sector level increased from 3,090 to 5,305. NSGC measure to accelerate *gacaca* trials was harshly criticised by IBUKA, the umbrella organisation of genocide survivors' associations, as a step which sacrificed the quality of justice for the sake of speed.²⁴ Legal reform NGOs observing the *gacaca* process also expressed concern that *gacaca* acceleration 'hinders the effective participation of the population in the process' by making it difficult to follow multiple hearings taking place simultaneously (ASF 2007, 52).

The speed of trials recorded during the period of 18 months after the commencement of the nationwide trial phase was remarkable. During the period between 15 July 2006 and 31 December 2007, the *gacaca* courts of cell, sector and appeal as a whole pronounced judgments for 1,059,298 genocide-related cases out of the 1,127,706 files received. Over 94% of all the cases were completed.²⁵ In other words, trials of most defendants classified under Category 2 and Category 3 – people accused of taking part in fatal or nonfatal genocidal assaults as grassroots participants and people accused of causing property damage--had been completed by the end of 2007.

Later in 2007, the government revealed another proposal for reforms: expanding the mandate of sector-level *gacaca* courts to try the great majority of Category 1 defendants, excluding those considered planners or organisers of the genocide and those implicated in the genocide while they were in leadership positions above the prefecture level (NT 2007a). This proposal for using the

²⁴ In an interview with Hirondele News Agency, Dieudonné Kayitare, head of the legal department within IBUKA, reportedly said, 'All concerns are with the official end of the *gacaca* courts scheduled for 31 December. All seem more concerned by the speed than the quality of the judgments' (FH 2007d).

²⁵ Information obtained from the NSGC on 12 March 2008. The number of files continued to grow even after the pre-trial data collection period ended due to new testimonies during the trial proceedings.

gacaca courts to try Category 1 defendants met a furious reaction from IBUKA, which criticised the government for ‘trivializ[ing] the crimes of genocide’, in its extraordinary congress of 7 December 2007 (FH 2007f). IBUKA’s criticism was also directed to other reforms which came into force through the 2007 Law, particularly those which entailed increased leniency of penalties and the acceleration of trials.²⁶

Despite IBUKA’s protest, the government’s proposal was put into effect on 19 May 2008 through the promulgation of the new Organic Law (hereafter the 2008 Gacaca Law or the 2008 Law)²⁷ for modifying and complementing the previous laws concerning *gacaca* courts. This 2008 Gacaca Law broadened the mandate of the sector-level *gacaca* courts to judge over 9,000 Category 1 defendants (NSGC 2008, 11), leaving approximately hundreds of Category 1 defendants accused of the most serious genocide-related offences to the ordinary courts or military courts in Rwanda.²⁸ The 2008 Law also made other important modifications and new provisions. First, ‘life imprisonment with special provisions’ (which practically means life imprisonment in solitary confinement)²⁹ became the maximum sentence for genocide-related crimes (Article 17). This change reflected the government’s decision to abolish capital punishment as of July 2007. Second, the 2008 Law made Community Service (known locally as TIG from the French term *Travaux d’Intérêt Général*) a primary form of penalty

²⁶ The official statement adopted in IBUKA’s extraordinary congress is full of harsh criticisms against the amendments of the Gacaca Law:

[T]he various amendments of the law on the *gacacas* consecrated the impunity of alleged authors of the genocide, altered justice and trivialized the crimes of genocide. Rather than reconciling society, the trials stimulate hatred between the witnesses and the defendants, cause shame and anxiety and remove any confidence in justice in them; the speed of the process encroaches on the quality of the judgments. (FH 2007f)

²⁷ Organic Law N° 13/2008 of 19/05/2008

²⁸ Neither the NSGC nor the Office of General Prosecutor has been able to provide a specific figure of these Category 1 defendants who will be tried by ordinary or military courts after the *gacaca* process is completed (as of 15 August 2009). Denis Bikeshu, NSGC’s Director of Training, Mobilisation and Sensitisation, estimated the number to be not more than several hundred. (Interview in Kigali, 14 August 2009)

²⁹ See HRW 2009a.

for convicts who opted to confess their offences (Article 21).³⁰ Third, in connection with the expansion of *gacaca* courts' mandate to judge those accused of committing rape or sexual torture, one of the subcategories of Category 1 offenders, the 2008 Law introduced judicial procedures with regard to these offences in order to reduce the risks of violating victims' privacy and anonymity and of undermining their mental health through trials (Article 6).

3.2. Basic Features of the Gacaca System

The following sections will describe basic features of the *gacaca* system, taking into consideration all reforms made as of 15 August 2009.³¹

3.2.1. Three Levels of the Gacaca Courts and Categories of the Accused

Since the 2004 Gacaca Law came into force, three levels of *gacaca* courts have been operational: the Gacaca Cell Court, established at the cell level, as well as the Gacaca Sector Court and the Gacaca Appeal Court, both established at the sector level. Table 2 below shows categories of defendants accused of genocide-related crimes, correlated with the courts responsible for trying defendants as stipulated by the 2008 Gacaca Law (Articles 1 and 9). Defendants accused of playing the roles of planners or organisers of the genocide or of committing or encouraging others to commit genocide-related crimes while in positions of authority at the national or prefecture level (Subcategories 1 and 2 of Category 1) are tried by ordinary or military courts. These defendants are considered to carry the heaviest culpability in the genocide.

³⁰ Section 3.3.3. discusses Community Service in details.

³¹ The Organic Law on Gacaca Courts was last modified and complemented by the 2008 Gacaca Law adopted on 19 May 2008.

Table 2 Categories of those accused of the crime of genocide and other crimes against humanity in Rwanda and the court used for their trial

Category	Sub-category	Description	Court
1	1	Planners or organisers of the genocide or crimes against humanity as well as their accomplices.	Ordinary or military courts
	2	Persons who committed or encouraged others to commit crimes of genocide or crimes against humanity, together with their accomplices, while they were in positions of authority at the national or the prefecture level in public administration, political parties, army, <i>gendarmerie</i> , religious denominations or militias.	
	3	Persons who incited, supervised or played the role of ringleaders of the genocide or crimes against humanity as well as their accomplices.	Gacaca Sector Court
	4	Persons who committed or encouraged others to commit crimes of genocide or crimes against humanity, together with their accomplices, while they were in positions of authority at the sub-prefecture and commune levels in public administration, political parties, army, <i>gendarmerie</i> , communal police, religious denominations or militias.	
	5	Persons who committed the offence of rape or sexual torture, as well as their accomplices.	
2	1	Notorious murderers who demonstrated excessive cruelty, as well as their accomplices.	Gacaca Sector Court
	2	Persons who committed torture, as well as their accomplices.	
	3	Persons who committed dehumanising acts on the dead body, as well as their accomplices.	
	4	Persons who killed or attacked others resulting in death, as well as their accomplices.	
	5	Persons who injured or attacked others with the intention to kill, as well as their accomplices.	
	6	Persons who committed assault or aided others in assault without the intention to kill, as well as their accomplices.	
3	Persons who only committed offences against property. ³²		Gacaca Cell Court

Source: produced by the author based on Articles 1 and 9 of the Organic Law N° 13/2008 of 19/05/2008

The Gacaca Cell Court is mandated to try defendants classified into

³² Offenders under this category are not prosecuted if they have reached a settlement with victims on reparations (Article 51 of the 2004 Gacaca Law).

Category 3, a category for those accused of offences against property, while the Gacaca Sector Court is in charge of trying all defendants accused as grassroots participants of genocidal killing and destruction or as those occupying positions of authority at levels lower than that of prefecture during the genocide. The Sector Court is also responsible for handling appeals of any Cell Court judgments. The Gacaca Appeal Court is mandated to examine appeals of judgments passed by the Gacaca Sector Court.

One thing to be underlined with regard to the categorisation of offenders is that ‘accomplices’ -- defined as individuals who have ‘by any means’, provided assistance to actual perpetrators of the offences stipulated in the 2004 Gacaca Law (Article 53) -- are placed in the same category as the actual perpetrators. For example, a person who told genocidal militias the whereabouts of Tutsis hiding in her/his hill before those Tutsis were hunted down and killed may be convicted as a criminal in the same category as the actual killers. Similarly, a person who was at a roadblock where killings took place may be placed in the same category as the one of the people who slaughtered many victims, even if he/she was there under duress and refrained from participating in the acts of killing (Waldorf 2006, 431).

As noted earlier in Section 3.1, since the first Gacaca Law came into force in March 2001, there have been two major amendments in 2004 and 2007 to the categories of defendants accused of genocide-related crimes, thereby broadening the mandate of *gacaca* courts.³³ Then, the 2008 Law further broadened their mandate, allowing Gacaca Sector Courts to try defendants

³³ First, with the adoption of the 2004 Law, Category 2 and Category 3 under the 2001 Law (adopted from the 1996 Genocide Law) merged into one category, consequently widening the scope of Category 2 and leaving only three categories in total. (Until then, Subcategory 6 of Category 2 under the latest 2008 Law had constituted Category 3 by itself.) Second, the scope of Category 2 was further broadened through an amendment made by the 2007 Law which brought some of those previously classified as Category 1 (Subcategories 3, 4 and 6 of Category 1 under the 2004 Law) under Category 2 (Subcategories 1, 2 and 3 of Category 2 under the 2008 Law).

falling into Subcategories 3, 4 and 5 of Category 1 in addition to those of Category 2 (See Table 2). As a result, with regard to the types of offenders to be tried under their jurisdictions, the role of *gacaca* courts in post-genocide justice has become much greater than was originally envisaged under the 2001 Gacaca Law.

3.2.2. Structure of the Gacaca Court and its Judicial Procedure

A *gacaca* court consists of the General Assembly (the entire adult population of the cell or sector) and the Bench,³⁴ which is made up of members called *inyangamugayo* (a Kinyarwanda term which literally means ‘persons of integrity’) who are elected from among the members of the General Assembly based on their high moral standards. As noted, the number of the lay judges constituting the Bench was originally 19 according to the 2001 Law but was reduced to nine (with five substitutes) by the 2004 Law (Article 8) and finally to seven (with two substitutes) by the 2007 Law (Article 1). No specific educational or professional qualifications are required for the lay judges of *gacaca* courts at any level, apart from the literacy in Kinyarwanda required for those serving as presidents, vice-presidents and secretaries of the courts.³⁵ Rather, the *gacaca* system excludes certain groups of elites -- namely magistrates, politicians, government’s officials and members of military or police forces -- from being judges (Article 15 of the 2004 Law). This restriction is a remarkable departure from the formal justice system dominated by legal professionals. The ordinary members of the

³⁴ Formally called ‘Seat’ before the amendment in March 2007

³⁵ Criteria for candidates of *inyangamugayo* stipulated in the Organic Law include: 1) having never been implicated in the genocide; 2) being free from ‘the spirit of sectarianism’; 3) having never been convicted of a criminal offence requiring six months or more in prison; 4) living with high moral standards including trustworthiness and honesty; 5) being ‘characterised by a spirit of speech sharing’; and 5) being ‘free from genocide ideology’. ‘Ideology of genocide’ is defined as ‘behaviour, a way of speaking, written documents and any other actions meant to wipe out human beings on the basis of their ethnic group, origin, nationality, region, colour of skin, physical traits, sex, language, religion or political opinions’ (Article 3 of the 2007 Law).

local population are expected to play critical roles in the *gacaca* system as judges, jurors, witnesses, and administrative officials of the court.

Gacaca proceedings begin at the Gacaca Cell Court, the lowest structure in the *gacaca* system. The main duties of the Gacaca Cell Court are: 1) collect information about the offences committed; 2) classify defendants into one of the three categories according to the nature of their offences; and 3) put on trial and judge cases for the defendants classified into Category 3 (Articles 33 and 34 of the 2004 Law). In order to accomplish these duties, the Bench of the Gacaca Cell Court first proceeded with a pre-trial investigative/data collection phase with the participation of the General Assembly. The major task during this phase was to compile a list of all victims known to the local population (i.e. residents killed inside or outside the cell, non-residents killed inside the cell, and residents/non-residents who survived), victims' damaged property, and accused perpetrators of genocide-related crimes committed against the victims identified (Articles 33 and 34 of the 2004 Law).³⁶ Then, files of accused perpetrators classified into Category 2 and Category 1 were forwarded to the Gacaca Sector Court and the Office of Public Prosecutions, respectively.³⁷

During the trial phase (which started on 15 July 2006 and is not yet completed as of 15 August 2009), the Bench of the *gacaca* court at different levels reviews case files, summons defendants and witnesses, and conducts public hearings about cases in which not only summoned defendants and witnesses but also any interested person from the General Assembly is allowed to testify (Articles 64-68 of the 2004 Law). In a public hearing of *gacaca* trials,

³⁶ Article 34 of the 2004 Law defines a 'victim' to be listed as 'anybody killed, hunted to be killed but survived, suffered acts of torture against his or her sexual parts, suffered rape, injured or victim of any other form of harassment, plundered, and whose house and property were destroyed because of his or her ethnic background or opinion against the genocide ideology'.

³⁷ Some of the Category 1 files were later forwarded to Gacaca Sector Courts due to the amendments in 2007 and 2008 Laws.

defendants are confronted by their accusers and the rest of the community constituting the General Assembly. Testimonies and counter-testimonies are provided before the Bench deliberates and hands down verdicts. Also, defendants who want to confess and express words of repentance and apology are allowed to do so before the *gacaca* court in the presence of the General Assembly and possibly before victims (if they are still alive) and their families (Articles 54-63). Appeals against verdicts are examined by *gacaca* courts at the higher level (Articles 34-37).

3.2.3. Penalties

Table 3 below indicates the summary of penalties to offenders who were over 18 years old at the time of the offence.³⁸ The severity of penalty is determined by law according to two main parameters: the category (and subcategory) to which convicts belong and whether or not and when they opted for the confession procedure (discussed in detail below). The severest penalty for offenders falling within Category 1 is life imprisonment, although it can be reduced to 20 to 24 years of imprisonment if offenders opt for the confession procedure before they are convicted. The maximum penalty for those who belong to Category 2 is 30 years or life imprisonment. A notable difference between Category 1 and Category 2 offenders is that by opting for the confession procedure, the latter may have portions of their sentences suspended and other portions commuted to Community Service.³⁹ Both Category 1 and Category 2 offenders are liable to deprivation of their civic rights permanently or for the duration of the sentence

³⁸ Persons convicted of genocide-related crimes who were 14 years or more but less than 18 years of age at the time the offence was committed get more lenient penalties than those imposed on persons over 18 years of age (Article 20 of the 2008 Law).

³⁹ In fact, as indicated in Table 3, offenders classified into Subcategory 6 of Category 2 may have portions of the sentence suspended and other portions commuted to Community Service even if they do not opt for the confession and guilty plea procedure.

(Article 15 of the 2007 Law).⁴⁰

Table 3 Penalties for persons convicted of genocide-related crimes

Category	Sub-category	Penalty		
		No Confession or Confession Rejected	Confession After the Inclusion to the List of the Accused	Confession Before the Inclusion to the List of the Accused
1	1	Life imprisonment	25 to 30 years of imprisonment. No commutation to Community Service (CS)	20 to 24 years of imprisonment. No commutation to Community Service (CS)
	2			
	3			
	4			
	5			
2	1	30 years or life imprisonment	25 to 29 years of imprisonment, but: a) 1/3 of the sentence in custody; b) 1/6 of it suspended; c) 1/2 of it commuted to CS.	20 to 24 years of imprisonment, but : a) 1/6 of the sentence in custody; b) 1/3 of it suspended; c) 1/2 of it commuted to CS.
	2			
	3			
	4	15 to 19 years of imprisonment	12 to 14 years of imprisonment, but: a) 1/3 of the sentence in custody; b) 1/6 of it suspended; c) 1/2 of it commuted to CS.	8 to 11 years of imprisonment, but: a) 1/6 of the sentence in custody; b) 1/3 of it suspended; c) 1/2 of it commuted to CS.
	5			
	6	5 to 7 years of imprisonment, but: a) 1/3 of the sentence in custody; b) 1/6 of it suspended; c) 1/2 of it commuted to CS.	3 to 4 years of imprisonment, but: a) 1/3 of the sentence in custody; b) 1/6 of it suspended; c) 1/2 of it commuted to CS.	1 to 2 years of imprisonment, but: a) 1/6 of the sentence in custody; b) 1/3 of it suspended; c) 1/2 of it commuted to CS.
3	Civil reparation in case no amicable settlement reached. Provisions for confessions, guilty pleas, repentance and apologies not applicable.			

Source: produced by the author based mainly on Article 17 of Organic Law N° 13/2008 of 19/05/2008, Article 14 of Organic Law N° 10/2007 of 01/03/2007 and Article 75 of Organic Law N° 16/2004 of 19/6/2004.

⁴⁰ Types of civil rights to be deprived from persons convicted of genocide-related crimes are the rights to be elected; to occupy leadership positions in different institutions; to serve in the army, police and other security organs; and to be a teacher, medical professional, or member of the judiciary (Article 15 of the 2007 Law).

Category 3 offenders – those committed offences only against property – are obliged to make civil reparation in the forms of restitution of the looted property and/or compensation for the damaged property through monetary payment or through work by the offenders themselves (Articles 75 and 95 of the 2004 Law).

As noted earlier, penalties for offenders convicted of genocide-related crimes have been made increasingly lenient in key changes through the amendments of 2004, 2007 and 2008. First, in response to the abolition of the death penalty legislated in July 2007,⁴¹ the maximum penalty for offenders of genocide-related crimes was reduced to life imprisonment through the amendment made in the 2008 Law.⁴² Second, prison terms stipulated for a variety of categories have been significantly reduced.⁴³ Third, through an amendment made in the 2007 Law, Category 2 offenders opting for the confession procedure can benefit from a provision suspending part of the custodial sentence: 1/6 of the sentence for those who confessed after their names had been included on the list of the accused and 1/3 of the sentence for those who confessed before their inclusion on the list of the accused (Article 14). Fourth, the 2008 Law introduced an important provision directing expanded use of Community Service as a primary form of penalty for convicts of genocide-related crimes, particularly Category 2 offenders who are sentenced to both custodial and Community Service sentences. Confessed Category 2 convicts are allowed not only to start with Community Service but also to have their custodial sentences commuted completely to Community Service if they show evidence of good conduct (Article 21).

⁴¹ Law N° 31/2007 of 25/07/2007

⁴² More precisely, after the death penalty was abolished in July 2007, the harshest penalty which can be imposed on Category 1 convicts is lifetime solitary confinement (HRW 2009a).

⁴³ For example, the prison term for offenders who killed or attacked others resulting in death (Subcategory 4 of Category 2 in the 2008 Law) and did not use the confession procedure was 25 years to life imprisonment in the 2001 Law (Article 69-a). This was first reduced to 25 to 30 years in the 2004 Law (Article 73-1) and then to 15 to 19 years in the 2007 Law (Article 14).

3.3. Potentially Restorative Features of the Gacaca System

Since its inception, the Rwandan government has been describing the *gacaca* system as a means to *ubutabera bwunga* or 'reconciliatory justice'. Accordingly, it is often presented as a restorative model of transitional justice based on an informal dispute resolution mechanism. This portrayal of the *gacaca* system simply as a form of informal restorative justice is misleading. Rather, it is, as Karekezi and her colleagues call it, a 'hybrid' model of transitional justice drawing its characteristics from two distinctive justice models: the formal retributive justice system, focused on the punishment of the offender, and the informal restorative justice system, embodied in the traditional *gacaca* mechanism, whose primary goals are to repair the damages caused by the offence and to restore harmonious social relations within the local community (Karekezi et al. 2004, 73-5).⁴⁴ Unlike the traditional *gacaca* gathering based primarily on people's own initiative, the *gacaca* court is a state institution sanctioned by state law and closely supervised by a governmental coordinating body (Vandeginste 2001, 243-5; Karekezi et al. 2004, 74). Other attributes the *gacaca* system of post-genocide justice shares with the formal justice system include punitive sanctions for the offender, competence to judge serious offences, and many rules defined by the law, including those for enhancing the impartiality of the *gacaca* court (Karekezi, et al. *ibid*). On the other hand, the current *gacaca* system also draws some important attributes from the traditional *gacaca* mechanism: namely, its grassroots nature; its focus on social restoration through reparative sanctions; the participation of the local population; the relatively simple operating procedures; the critical role of social pressure in the entire process; and the absence of legal professionals (*ibid*). It is this latter set of

⁴⁴ Kirkby (2006, 108) also describes the *gacaca* system in a similar line as 'a novel experiment straddling restorative and retributive justice'.

attributes that represents a remarkable shift in the Rwandan government's approach to post-genocide justice: from a primarily retributive, prosecutorial approach through ordinary courts toward an approach seeking to address diligently restorative/reparative dimensions of justice through community-based *gacaca* courts.

The following sections discuss *potentially* restorative features of the *gacaca* system, termed *potentially* because whether the system becomes truly restorative and reconciliatory will depend much on the political and social contexts surrounding it and on whether its reconciliatory potential is tapped effectively in its actual implementation.

3.3.1. Community-Based Participatory Justice

The *gacaca* system, in theory, sets itself apart from the formal justice system by its community-based participatory character: ordinary members of the hill seek consensus over the truth about what happened during the genocide and over the penalty imposed on the offender, through open communal deliberations about evidence presented. On the eve of the inauguration of *gacaca* courts, President Paul Kagame emphasised that the community-based nature of the *gacaca* system is critical for enhancing people's sense of ownership over judicial procedures. He said:

They feel that they own the process, they feel that they have been given a forum to speak out. Once they feel they own the process, then it helps them accept the outcomes of the trials. [...] Information and facts will be presented and debated, and that way they are bound to accept the outcomes. (Kagame 2001)

Kagame contrasted the participatory *gacaca*-based justice with the formal justice system dominated by legal professionals. Outcomes of the latter, he said, would be less acceptable to the population who 'felt excluded because only a handful

of people sit and hear the cases, with little contribution from them’.

A great majority of government officials interviewed for this study also stressed *gacaca*’s participatory character as a main reason for its ability to promote reconciliation. A senior official of the NURC observed:

Gacaca as a community-based form of justice where majority of the people have a chance to participate more than any other forms of justice that one can think of. Because this *gacaca* is not too technical, victims and offenders and their respective families can have a large part to play [...] giving every person his due.⁴⁵

From a theoretical perspective, there are two especially important reasons why active participation of the local population is so essential for the success of *gacaca*-based justice. First, the *gacaca* system is designed to attain procedural justice not through the observance of norms and procedures known as due process but through broad and active participation of members of the local population – victims, offenders, their families and other local residents - in telling the truth and deliberating together about evidence provided. Thus, broad-based active public participation is a critical condition for the *gacaca* system to ensure fair procedures and yield fair and legitimate judgments.

Second, the potential of the *gacaca* process for promoting healing and reconciliation depends much on the quality of people’s participation in truth-telling exercises such as public confessions, testimonies and deliberations. *Gacaca*’s potential to promote healing and reconciliation lies in its ‘capacity to facilitate *restorative justice* via meaningful *engagement* between parties previously in conflict, in the form of communal dialogue and cooperation’ (Clark 2008, 300).

Attributing the reconciliatory potential of the *gacaca* system primarily to its

⁴⁵ Interview in Kigali, 11 Dec 2002.

community-based participatory nature, Drumbi (2000, 2002), in his early writings, portrayed the *gacaca* system as a promising restorative approach to post-genocide justice. Central to Drumbi's argument was the theory of 'reintegrative shaming' advanced by Braithwaite. Reintegrative shaming, in the words of Braithwaite (1989, 55), 'means that expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of reacceptance into the community of law-abiding citizens'.⁴⁶ According to Braithwaite's theory, shame, when it is cultivated in a reintegrative rather than 'disintegrative' or 'stigmatizing' way (ibid), can play a crucial role in deterring people from (re)committing crimes. First, shame can enhance fear of losing 'social approval of significant others' and second, coupled with repentance, shame can 'build consciences which internally deter criminal behaviour even in the absence of any external shaming associated with an offence' (75). According to Braithwaite, there are two fundamental social conditions that are conducive to reintegrative shaming: 'Individuals are more susceptible to shaming when they are enmeshed in multiple relationships of interdependency; societies shame more effectively when they are communitarian' (14).⁴⁷

Braithwaite argues that in such a communitarian interdependent society, 'sanctions imposed by relatives, friends or a personally relevant collectivity have more effect on criminal behaviour than sanctions imposed by a remote legal authority' (69). Drumbi (2000, 1260-63) discussed Rwandan society as perfectly

⁴⁶ Braithwaite (1989, 55) makes an important distinction between reintegrative shaming and 'disintegrative' or 'stigmatizing' shaming which 'divides the community by creating a class of outcasts'.

⁴⁷ Braithwaite defines communitarianism as 'a condition of societies' in which 'individuals are densely enmeshed in interdependencies which have the special qualities of mutual help' (1989, 100) and interdependency as 'a condition of individuals' representing 'the extent to which individuals participate in networks wherein they are dependent on others to achieve value ends....'(84).

matching Braithwaite's conditions of communitarianism and interdependence and suggested that 'localized reintegrative shaming' would likely be promoted through community-based participatory *gacaca* trials.

3.3.2. Confession and Guilty Plea Procedure

As noted above, a provision for reducing sentences in exchange for confession and a guilty plea was first adopted in the 1996 Genocide Law. The Procedure of Confession, Guilty Plea, Repentance and Asking for Forgiveness under the 2008 Gacaca Law (hereafter the Confession Procedure)⁴⁸ retains the same objectives: encouraging the accused to accept responsibility for wrongdoing and uncovering all information relevant to the establishment of the truth about the genocide. For the accused to benefit from reductions in their sentences, they must provide a full description of their offences, all evidence useful for prosecuting their co-offenders and accomplices, and apologies for their offences (Article 54 of the 2004 Law). The law requires them to apologise publicly in the presence of the General Assembly, their victims (if they are still alive) and their victims' families (Article 54-63).

Reductions in sentences which offenders may receive through opting for the Confession Procedure are remarkable, as indicated in Table 3 above. Defendants falling within Category 1 or Category 2 may have recourse to the procedure either before or after their names are included in the list of the accused. Reductions in sentences are much greater for those who confess and plead guilty before the inclusion of their names to the list than for those who do so after inclusion. Furthermore, as noted earlier, with regard to Category 2 offenders who opt for the procedure, half of the custodial sentence is commuted

⁴⁸ Formerly called the 'Procedure of Confessions, Guilty Plea, Repentance and Apologies' under the 2004 Gacaca Law.

to Community Service (discussed below) and a part of the custodial sentence is suspended. This great benefit from choosing to confess and plead guilty must have been an attractive course of action for many defendants, such as those who had been under pre-trial detention for a number of years.

To illustrate the possible benefit of opting for the Confession Procedure, let us consider a specific case of one offender convicted of committing or attempting murders (Subcategory 4 of Category 2). By opting for the procedure, the individual's sentence would be reduced from 15 to 19 years to 12 to 14 years if he confesses after his name is listed as an accused and to 8 to 11 years if he confesses before his name is listed. Let us suppose that the offender confessed after the inclusion of his name to the list of the accused (for example, confessing after the *gacaca* trial begins but before the verdict is delivered). In this case, the maximum sentence he may get is a 14-year prison term. Considering the suspension of 1/6 of the sentence and commutation to 1/2 of the sentence, his penalty would be the combination of Community Service for 7 years and imprisonment for 4 years and 8 months. Let us also suppose that he has already been detained for 10 years or more, as with many suspects who were arrested either in the immediate aftermath of the genocide or after return from exile in the late 1990s. Then, because the period of pre-trial detention is counted as a prison term to be served by the convict, the sentence he still has to serve would be a maximum of 1 year and 8 months of Community Service.

A senior public prosecutor explained that underlying the procedure for encouraging the offender's confession is 'the spirit of forgiveness and reconciliation' embraced by the government. He said:

We should initiate the spirit of forgiveness and reconciliation. If, for example, we adopted an eye for an eye, and a tooth for a tooth, it means we, who live in the whole Rwanda, would be blind and toothless. [...] So the government

is sending preachers and teachers of *gacaca* [to tell the people] how it will operate, telling them the benefits and advantages those prisoners have in the confession procedure because punishments have been reduced definitely.⁴⁹

A legal counsellor working for the coordination of *gacaca* courts at the national level told me that lenient punishments imposed on confessed genocide perpetrators would facilitate their reintegration because the government would have them understand that 'they are treated generously for the sake of national reconciliation'.⁵⁰ A provincial-level coordinator of *gacaca* courts said that confessions and apologies by offenders would help their surviving victims start contemplating forgiveness.⁵¹

3.3.3. Community Service as an Alternative Penalty to Imprisonment

As explained above, closely linked to the Confession Procedure is the implementation of 'Community Service as Alternative Penalty to Imprisonment'. Locally known as TIG (*Travaux d'Intérêt Général*), Community Service is a form of penalty for offenders who opted for the Confession Procedure under Subcategories 1 to 6 of Category 2 as well as for offenders who made no confession or whose confession was rejected under Subcategory 6 of Category 2. As noted earlier, the use of Community Service was expanded by Article 21 in the 2008 Gacaca Law, which allows these offenders to start their sentences from Community Service rather than as custodial sentences.

Community Service as an alternative penalty to imprisonment is not a new idea in criminal justice. It has been incorporated into the penal codes of several Western and Asian countries during the last three decades, and recently several

⁴⁹ Interview in Kigali, 18 Nov 2002.

⁵⁰ Interview in Kigali, 14 June 2002.

⁵¹ Interview in Gisenyi town, 7 May 2002.

African countries have adopted it as well (PRI 2007, 5).⁵² What is remarkable about Rwanda's introduction of Community Service is that, unlike other countries applying it only to minor offences, it is applied to such serious offences as the crime of genocide and other crimes against humanity (6). The Presidential Order of 7 March 2005 defines Community Service as 'the obligation on the individual convicted of genocide or other crimes against humanity to perform, while under house arrest, unpaid work of public interest as an alternative penalty to imprisonment'.⁵³ According to the Presidential Order, the work of Community Service is basically 'carried out at the rate of three days a week', although the working days dedicated to community service may be 'consolidated into a shorter period depending on the nature of the workload to be carried out', as in the case of *tigistes*, convicts participating in Community Service/TIG, who are organised into 'solidarity camps'.⁵⁴

The idea to give offenders who have confessed and pleaded guilty an option to commute half of their custodial sentence first came into force through the 2001 Gacaca Law (Article 75) to help achieve *gacaca*'s objectives of fighting impunity, repairing the social fabric and promoting reconciliation among Rwandans (PRI 2002a, 13-4). The NSGC (2008), in a booklet published in October 2008, states:

The penalties provided by Gacaca Courts are intended to rehabilitate and integrate the guilty persons into the society and enable them to collaborate with others in the reconstruction of the country through community service.

As discussed later in this chapter, whether Community Service can serve its

⁵² In Africa, the promotion of Community Service as an alternative penalty to imprisonment first began in Zimbabwe in 1994 (PRI 2007, 4). In Rwanda, Community Service has not been incorporated into its penal code to date (as of 15 August 2009). However, the country is moving that direction by merging the National Prisons Service and the TIG Secretariat to form the Rwandan Correctional Services (NT 2009a, 2009f).

⁵³ Article 2 of Presidential Order N° 10/01 of 07/03/2005

⁵⁴ Article 7 of Presidential Order N° 50/01 of 16/10/2005

intended objectives of reintegrating genocide perpetrators and promoting reconciliation in the society will depend much on how it is actually implemented. A senior official of the Ministry of Justice stated that these objectives would be achieved by linking the work of Community Service to the idea of reparation by its participants. He said,

[...] if you destroy somebody's house, surely we can say, 'You are going to construct it' and then he will go ahead and construct it. [...] This community work scheme, serving the sentence in, for example, constructing roads or repairing the houses he destroyed will bring the unity within the society and surely at the end of the day we shall have a healed society. He has constructed my house, why can't we share drink? [...] The whole thing is in the line of reconstructing and healing the society.⁵⁵

Clark (2008, 315) also speaks of the potential of Community Service to create valuable opportunities for 'perpetrators and survivors working side by side' to sustain engagement for 'rebuild[ing] broken bonds' after the end of *gacaca* proceedings.

3.3.4. Procedure for Claiming Material Reparation

As noted earlier, the government expressed its commitment to the provision of financial compensation for victims of genocide and other crimes against humanity when it adopted the 1996 Genocide Law. The *gacaca* system is designed to address the same concern through its procedure for material reparation. *Gacaca* proceedings stipulated in the 2004 *Gacaca* Law involve the identification of all damages suffered by each victim. With regard to damage of property, each of the *Gacaca* Cell Courts makes an inventory of damaged property and determines the means and period for reparation by each of the concerned convicts (Article 68). With regard to bodily harm, loss of relatives and

⁵⁵ Interview in Kigali, 03 Dec 2002.

non-property damage, the Gacaca Cell Court compiles a list of all victims (deceased and survivors) and the inventory of violations suffered by each of them (Article 66). The Gacaca Sector Court or Appeal Court then passes judgments, including statements about the identity of the victims and all the damages they suffered (Articles 67 and 69). These statements form the basis of genocide survivors' compensation claims to be forwarded to a Compensation Fund, which is said to be established by a separate indemnification law, although the law has neither been legislated nor enacted to date (as of 15 August 2009).

In 2001, the former Minister of Justice Jean de Dieu Mucyo stressed the importance of compensating genocide victims as part of a larger effort to promote reconciliation:

To establish social harmony, it is not enough to try alleged authors of genocide. It is also necessary to compensate victims for the harm they suffered. [...] The guilty individuals do not have sufficient assets to match the damage suffered. For this reason, a reparations fund is being created to collect funds for compensating genocide victims. These funds will be distributed proportionally among the victims on the basis of the harm they suffered, as established by the *gacaca* courts or common law courts. In this way, each victim can receive at least some compensation, which is one pillar of reconciliation. (Villa-Vicencio and Savage 2001, 52)

Understanding its obligation under international law to make adequate reparation for victims of human rights violations (Vandeginste 2003b, 250), the Rwandan government expressed a commitment to the creation of a Compensation Fund for genocide victims as an important requirement for justice and reconciliation. Underlying the government policy for the Compensation Fund as well as other measures of reparation was, as clearly indicated in Mucyo's statement above, the understanding that repairing the damage suffered by the

victims is critical for advancing the process of reconciliation.⁵⁶

According to the reparation procedure of the *gacaca* system, victims' concerns for material reparation are addressed in two different ways. First, once convicted, offenders of genocide-related crimes are liable to provide civil reparation for the damage caused to victims' property. As Clark (2008, 315) points out, '[c]oncrete acts of reparation, supporting reconciliatory statements made during *gacaca* hearings, are important for convincing survivors of the sincerity of perpetrators' remorse and desire to rebuild relationships damaged by violence'. Second, *gacaca*-based justice is designed to establish the grounds for victims' entitlement to state compensation for material and moral damages suffered. Vandeginste (2003b, 259-60) points out that the reparation procedure embedded in the *gacaca* system has an advantageous aspect for many victims who survived the genocide: it opens the way for them to a legal entitlement to financial compensation from the Compensation Fund, irrespective of the criminal conviction of the offender. For the victim to obtain compensation from the Fund, 'the perpetrator of the crime would not necessarily be charged or even identified in the process' (260). As noted in Chapter 6, the reparative measures embedded in the *gacaca* system have not only material but also symbolic significance to the lives of survivors.

4. Human Rights and Political Concerns about Gacaca-Based Justice

Much of the early debate about *gacaca* justice was dominated by so called due process concerns from legal and human rights perspectives. Major procedural problems that some international jurists and human rights organisations have

⁵⁶ See Vandeginste (2003b) and Rombouts and Vandeginste (2005) for the legal and institutional framework of reparation programmes in Rwanda concerning the victims of genocide, crimes against humanity, and war crimes.

identified include the absence or inadequacy of defence council, limited appeal rights, high risk of encouraging false confessions by defendants, and no protection for witnesses, judges and other participants in judicial proceedings, the lack of competence, independence and impartiality of judges, and likelihood of significant inconsistencies in sentences handed down by different *gacaca* courts across the country (Sarkin 2001, 161-6; AI 2002; 34-40; E. Daly 2002, 382; Longman 2006, 212-9).

4.1. Responding to Due Process Concerns

The Rwandan government argues that various safeguards are embedded in the *gacaca* system against some of the potential procedural problems (See Harrell 2003, 89-90), although it admits the need 'to keep working on the elements within the system that may be undesirable' (Kagame 2001). While admitting some flaws in the system, the Rwandan government and some observers maintained that requiring the *gacaca* system to strictly adhere to international legal standards cannot be a solution to the challenge of dealing with massive numbers of genocide-related caseloads in a reasonable timeframe. Such an attempt, notes Uvin (2003a, 119), would 'end up reinventing the same formal justice system' which has not only failed to meet the challenge but also resulted in serious human rights violations of those accused of genocide, denying 'the basic right to a speedy trial, reasonable detention times and decent conditions of detention' as well as the right to proper defence council. He then goes on to suggest the need to accept the reality that 'in the aftermath of mass violence, full, formal justice and complete adherence to human rights standards may be unattainable' (ibid).

Central to this debate is the question of whether it is possible or even desirable to require a transitional justice mechanism like the *gacaca* system to

strictly adhere to international norms of fair trials, particularly when it must deal with massive numbers of offenders involved in mass atrocities. This is essentially a question of procedural justice – the fairness and legitimacy of procedures through which justice is attained.⁵⁷ Many of those observers questioning the legality of *gacaca* system seem to presume that procedural justice can be attained primarily through strict observance of those norms stipulated in international criminal and human rights laws. This specific conception of procedural justice is probably the most dominant conception under criminal justice systems based on the Western legal tradition. However, according to the perspective of restorative justice approach, procedural justice may be best attained through active participation of stake holders including victims, offenders, and their communities.⁵⁸ From the perspective of restorative justice, trials through *gacaca* courts may be considered as fairer than those through the formal justice system because of its emphasis on broad-based community participation. Uvin maintains that ‘the practice of *gacaca* may well produce fair trials, but in an original, locally appropriate form’ through ‘the play of argument and counter-argument and of witness and counter-witness by the community’ (ibid). Drumbi (2002, 13), questioning the importance of strictly adhering to Western notions of ‘rule of law’ in the context of post-genocide Rwanda, argues that priority should be given rather to ‘developing institutions most likely to promote peace and justice in a manner compatible with local histories and values’.

While the lack of due process has been a primary concern about *gacaca*-based justice among international jurists and human rights activists, many international donors and human rights organisations opted to ‘cautiously

⁵⁷ See Section 4.2 of Chapter 3.

⁵⁸ See Section 4.4 of Chapter 3.

support the process' not least because it is the only foreseeable alternative for addressing the question of justice and reconciliation in Rwanda (Uvin 2003a, 120).⁵⁹

4.2. One-Sided Victor's Justice Revisited

The previous chapter reported the problem of one-sided victor's justice as perceived by the vast majority of Hutu informants interviewed for this study. These interviewees rejected the government's notion of reconciliatory justice through the *gacaca* system as mere rhetoric, arguing that it focuses exclusively on crimes committed by Hutus while ignoring crimes committed by the RPF and the RPA (the new national army created after the RPF took power in July 1994) as well as crimes of Tutsi civilians. This criticism is considered by many observers as the most controversial aspect of the whole venture of Rwandan post-genocide justice, the *gacaca* process included (AI 2002, 2004; HRW 2002a, 2002b, 2008a, 2008b; Corey and Joireman 2004, 87-8; Zorbas 2004, 41; Tiemessen 2004, 65; Kirkby 2006, 116; Longman and Rutagengwa 2004, 167; Reyntjens and Vandeginste 2005, 111-2; Longman 2006, 221; Waldorf 2006, 431; Drumbl 2007, 96-7). As discussed earlier in this chapter, the government's effort at post-genocide justice has been largely restricted to the genocide-related crimes promoted by the extremists of the former Hutu regime.

As the *gacaca* system unfolded, the government made its position very clear: if there is any unresolved case that falls outside the jurisdiction of the *gacaca* court, people must take it to an ordinary court. The former Minister of Justice Mucyo was quoted as saying:

⁵⁹ For example, Human Rights Watch states in its 2002 World Report: 'Despite the absence of some basic guarantees of due process, the innovative system offered the only hope of trial within the foreseeable future for the tens of thousands now suffering inhumane conditions in prisons and communal lockups'.

Gacaca courts were established to try genocide. [...] Gacaca law is very clear. It deals with genocide between 1990 and 1994. Anything outside that is for ordinary and military courts. [...] We are not saying that people should dump their complaints. We're simply calling for people to direct their complaints to the right jurisdictions. (FH 2002)

In fact, under the 2001 Gacaca Law, war crimes were included in the jurisdiction of *gacaca* courts, which led some observers to believe that gross human rights violations committed during the same period by members of the RPF could also be tried under *gacaca* jurisdiction (Corey and Joireman 2004, 86; Tiemessen 2004, 70). However, as noted earlier, the government later rigidified its position through the amendment made in the 2004 Gacaca Law that eliminated the provision of trying war crimes through *gacaca* courts.

Underlying many people's preference for *gacaca* courts rather than ordinary courts to bring their judicial complaints was a lack of trust in the formal judicial system. During a focus group interview with lay judges of a *gacaca* court in Kiberama, the participants said they could not even think of taking their complaints to ordinary courts even though they insisted many Hutu civilians were killed by the RPA during the Hutu Insurgency of 1997-99. One of them said, 'How can we take those serious accusations to the very people who committed them?'⁶⁰ In the early 2000s, Drumbl (2002, 16) wrote that justice was perceived as politicised and that this perception was 'aggravated by the actual politicisation of the Rwandan courts and judiciary'.⁶¹ Even today, a lack of judicial independence is still perceived by many as a serious problem in the Rwandan judicial system (HRW 2008a).

In the early stage of the pilot phase as well as during the period devoted to

⁶⁰ Focus group with lay judges of *gacaca* courts, Kiberama, 1 June 2002.

⁶¹ As evidence of this politicisation, Drumbl (2002, 16) gave these specific examples: 'in 1999, the RPF government suspended the president of the appeals court, leading to his resignation, and also suspended or removed five other leading magistrates'; and in July 1999, 'the entire Supreme Court was replaced, after the judges were removed or pressured to resign'.

training lay judges of *gacaca* courts, many *gacaca* judges raised issues of atrocities committed by RPF soldiers or Tutsi civilians and expressed great disappointment as they came to understand the government's position (AR 2003, 23-6). Authorities suppressed such public expressions by stating that the government would not tolerate allegations 'irrelevant' to the objectives of *gacaca* courts. Since the law repressing the crime of genocide, crimes against humanity and war crimes was promulgated in September 2003,⁶² it became virtually impossible for the people to openly discuss such issues, because the law can be used to prosecute and subjugate any person to imprisonment for 10 to 20 years if his act or speech is interpreted by authorities as an expression intended to minimise, justify or condone the genocide.⁶³ Furthermore, the 2004 Gacaca Law added a provision to authorise the president of the *gacaca* court to keep 'trouble makers' in detention for maximum 48 hours (Article 71).

President Kagame and other high ranking officials have repeatedly stated that any crime committed by members of the RPF or the national army of the RPF-led post-genocide government has been diligently dealt with by military tribunals. In fact, Rwandan military courts have records of convicting several RPF soldiers accused of human rights abuses; in January 1998, two soldiers were even executed for killing civilians (Eltringham 2004, 108). However, when it comes to prosecution of war crimes and crimes against humanity committed by the RPF forces, the record is dismal.⁶⁴ On 24 October 2008, the military court of Kigali acquitted two senior army officials and handed down an eight-year prison

⁶² Law N° 33 bis/2003 of 06/09/2003

⁶³ To quote exact wording of the Article 4 of the law, 'any person who will have publicly shown, by his or her words, writings, images, or by another means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence' is liable to 10 to 20 years of imprisonment.

⁶⁴ For the record before the October 2008 judgment described, see the summary of available evidence provided by Eltringham (2004, 109).

sentence to two of their subordinates for their roles in the murder of 15 civilians, including a child and 13 clergy of the Catholic Church, in June 1994 (FH 2008e). Apart from this case, Human Rights Watch (2008b) has recently asserted, the government of Rwanda has 'prosecuted no soldiers for violations of international humanitarian laws'.⁶⁵ Human rights violations committed by the RPF forces and the national army of the RPF-led government before, during and after the genocide remain a taboo subject in post-genocide Rwanda.

The government emphasises the need for clear distinctions between the genocide orchestrated by the former regime and war crimes committed by individual members of the RPF forces. It argues that the genocide -- the most horrendous crime imaginable in which over one million defenceless civilians, including women, children, and the elderly, were systematically slaughtered -- cannot be equated with the killings resulting from either military offensives against the genocidal forces or revenge attacks carried out on an individual basis by some RPF soldiers.⁶⁶ The RPF killings tend to be portrayed as violence that was either 'necessary' intervention for stopping the genocide or 'understandable' acts of vengeance by soldiers who lost their loved ones in the genocidal massacres of 1994. This government's position was reiterated in an interview with Fatuma Ndingiza, Executive Secretary of the NURC:

Of course, in the process of stopping the genocide, people, especially the killers, were also killed because there was no way you could stop someone who has a machete without fighting him, and in that process they died. There could even have been other cases whereby people were killed in revenge. Maybe it's a soldier who reached his home and found that the whole family had been killed. So just the personal instinct would be to say,

⁶⁵ Also see AI (2004, 8) and Reyntjens (2004, 197-205).

⁶⁶ On 13 June 2002, in his speech at the inauguration of Gacaca Courts, President Kagame reiterated the government's position on this issue by describing the people killed by the RPF forces as either militia members fighting along with the FAR or as civilians used as a human shield by the FAR (Kagame 2002).

‘Okay, let me also revenge’. [...] It wasn’t the RPF who told them to go and kill.⁶⁷

Nonetheless, the current government cannot escape criticism for grossly minimising the magnitude of the atrocities for which it bears responsibility. The government’s narrative of RPF violence discussed above is in stark conflict with the counter-narrative advanced by human rights groups such as Amnesty International (1994) and Human Rights Watch (Des Forges 1999, 734) and by other informed observers (Lemarchand 2008, 70-1; Prunier 2009, 11-22). These groups and individuals assert that civilian killings by the RPF were perpetrated far more extensively and systematically in 1994 than the government has admitted.⁶⁸ The government’s narrative is also contested by the narrative of Hutu residents that emerged from the grassroots study for this thesis. Thus the conclusion here is that the framework of post-genocide justice in Rwanda over the last 15 years is not far from what Govier (2006, 126) calls a ‘one just victorious model’ in which a single victorious party who won a war for the cause it believes is perfectly just ‘investigate(s) wrongdoing by the losers, penalize(s) individual perpetrators belonging to that group, and compensate(s) innocent victims on its own side’.

5. Gacaca’s Contribution to Justice and Reconciliation

Fifteen years after the 1994 genocide and eight years after the first Gacaca Law came into force, the government of Rwanda has declared that the entire *gacaca* process will be completed by the end of 2009. At this moment it is difficult to evaluate the results of *gacaca* trials or their political, social and economic ramifications. What follows is a preliminary assessment of the *gacaca* process

⁶⁷ Interview by this author in Kigali, 12 Dec 2002.

⁶⁸ See Section 4 of Chapter 4.

with particular focus on its reconciliatory aspects.

5.1. Establishing Individual Criminal Accountability

Has the *gacaca* process rendered retributive justice to Rwandan people as far as genocide-related crimes are concerned? Given the complex dynamics involved in the *gacaca* process and competing perceptions of issues of justice within the Rwandan population, there is probably no straightforward answer to this question. The pursuit of retributive justice through *gacaca* courts has faced a number of problems. Numerous attempts to manipulate the course of justice have been reported, including charges of bribery against lay judges and witnesses,⁶⁹ murders and other violent attacks against witnesses and lay judges⁷⁰ and false testimonies by defendants.⁷¹ In addition, a range of legal, human rights, logistical and political concerns have been expressed by various observers.⁷²

A significant proportion of genocide survivors are reported to have misgivings about amendments to the Gacaca Law in recent years. Particular concerns include the increasing leniency of sentences for genocide offenders, the large number of offenders previously classified under Category 1 who have been reclassified into Category 2, the exemption of many offenders (who opted to confess and apologise) from custodial sentence if they perform well in Community Service, and the large majority of Category 1 defendants who are being tried by *gacaca* courts (AR/REDRESS 2008; FH 2007d, 2007f).

Furthermore, the measures taken by the government to accelerate *gacaca* trials, particularly since July 2007, have reportedly caused a great deal of indignation

⁶⁹ See NT 2006a, 2006b, 2006d; AR/REDRESS 2008, 47-9; FH 2007c, 2007e.

⁷⁰ See NT 2006c, 2006e; FH 2007c, 2007e.

⁷¹ See AI 2002, 39; PRI 2002a, 26, 2003a, 8-10.

⁷² See AI 2002, 2004; AR 2003; AR/REDRESS 2008; ASF 2005, 2006, 2007; HRW 2008a; PRI 2002a, 2002b, 2003a, 2003b, 2004a, 2004b, 2005, 2006, 2007; Longman 2006.

and a sense of powerlessness among genocide survivors, who complain that they can no longer properly follow trials as multiple hearings which concern them are taking place simultaneously (AR/REDRESS 2008, 52; FH 2007d).⁷³ These genocide survivors who have misgivings about the *gacaca* process put into question the quality of retributive justice it has rendered. Even worse, some of them have come to paint the *gacaca* process as being driven by the complicity of the dominant Hutu population whose goal is to acquit as many defendants as possible (AR/REDRESS, 39-49). On the other hand, there are others who claim that 'Even many innocent people have been punished just because they are Hutus'.⁷⁴

Despite all this, however, the significance of the following fact cannot be overstated: through the *gacaca* system, the government has managed to hold the vast majority of genocide perpetrators accountable in a relatively short period of time. The Rwandan government considers the greatest achievement of the *gacaca* process to be the 'establishment of criminal responsibility on an individual basis'.⁷⁵ For the period of two years and five months between July 2006 (the time *gacaca* trials were launched nationwide) and November 2008, *gacaca* courts pronounced 1,129,906 judgments: 6,879 for Category 1 cases; 513,883 for Category 2 cases; and 609,144 for Category 3 cases.⁷⁶ According

⁷³ One genocide survivor interviewed in the African Rights/REDRESS study described what he sees as 'rushed justice' by the government's attempt to speed up the *gacaca* trials as follows:
The government spent a long time thinking about speeding up the trials, but not about their quality. In July of 2007 additional courts were created to further speed up the trials. Where there had been only one court, two or more were added. The courts sat on the same day and at the same time even though the same witnesses were required for every one of these trials. In some trials where survivors were not able to participate, the judges used the opportunity to acquit the defendants. (AR/REDRESS 2008, 52).

⁷⁴ Conversation with Alexis (research assistant/resident of Gitera), Kigali, 3 February 2009.

⁷⁵ Interview with Domitilla Mukantaganzwa, Executive Secretary of the NSGC, Kigali, 20 Jan 2009.

⁷⁶ The figures with regard to Category 2 and Category 3 defendants are based on the information as of 30 September 2008 (NSGC 2008, 10) while the figure with regard to Category 1 is based on the information as of 30 November 2008 which was obtained from the NSGC on 8 January 2009.

to the recent NSGC official announcement (24 July 2009), having completed over 1.5 million genocide cases, the *gacaca* courts are now focusing on a 'small number' of trials, particularly those on appeal and revision, toward the goal of complete closure by the end of the year.⁷⁷

It is not clear at this moment exactly how many defendants have been judged through the trials of over 1.5 million cases because, according to one official of the NSGC in charge of data management, a significant percentage of defendants were involved in more than one case judged by different *gacaca* courts in different areas.⁷⁸ Another NSGC official told me that many cases of offences against property which were amicably settled and then reported to the *gacaca* courts are also included in these 1.5 million cases.⁷⁹ However, considering that 818,564 persons had been accused of having committed genocide by the end of the pre-trial investigation phase in May 2006 (NSGC 2008, 9) and that there have been many more persons newly accused since that time, it is reasonable to estimate that the total number of persons prosecuted and judged has swelled to over one million. This means around one tenth of the current population of approximately 10 million have been tried for genocide-related crimes by the *gacaca* courts. This is about one fifth of Rwanda's adult population today.⁸⁰ More astonishingly, this number is about half of the population group currently living in Rwanda who were old enough to engage criminal responsibility at the time of the genocide – over 14 years

⁷⁷ Reported in Focus on Africa Programme of BBC World Service, broadcast 17:00-17:45 GMT (19:00-19:45 Rwandan local time), 24 July 2009.

⁷⁸ Conversation in Kigali, 8 January 2009.

⁷⁹ Interview at NSGC office, Kigali, 14 August 2009.

⁸⁰ The result of the 2002 national census on population distribution by different age groups suggests that the group of people over 18 years of age accounted for 52% of the total population of over 8 million. If we apply the same population distribution to the current total population of over 10 million, the current adult population can be roughly estimated to be over 5 million. Then, one million people who have been tried by the *gacaca* courts account for about one fifth of Rwanda's adult population today.

according to the 2004 Gacaca Law (Article 79).⁸¹

The NSGC says it will not make information public regarding the content of recent judgments pronounced by *gacaca* courts until it completes compilation of all *gacaca* trial results.⁸² Thus, as of today (15 August 2009), there is no available up-to-date information about conviction/acquittal ratios for the three categories of offenders. However, according to the data obtained from the NSGC concerning the trials from 15 July 2006 to 31 December 2007, the defendants acquitted by different levels of *gacaca* courts are approximately 10 percent (53,899 acquittals out of 557,607 judgments) by Gacaca Cell Courts, 27 percent (117,744 acquittals out of 434,827 judgments) by Gacaca Sector Courts and 30 percent (19,943 acquittals out of 66,864 judgments) by Gacaca Appeal Courts. This means that, roughly speaking, about 30 percent of Category 2 defendants and 10 percent of Category 3 defendants were acquitted through *gacaca* trials during the specific period.⁸³ This conviction/acquittal ratio of 70/30 for Category 2 defendants (with relatively but not extremely high rate of acquittal)⁸⁴ does not support either of the extreme claims attacking the impartiality of *gacaca* courts: that they pronounced judgments totally in favour of accusers to maximise the rate of conviction or that they pronounced totally in favour of the accused to

⁸¹ This is the group of people whose age is currently over 29 years. Based on the same 2002 census data, the proportion of these people can be estimated as approximately 44% of the current total population. However, it should be noted that these people include several hundreds of thousands of 'old caseload refugees' (Tutsi returnees from abroad) who were not in the country in 1994. [In the years following the genocide, around 700,000 former Tutsi refugees came back, or came for the first time, to Rwanda (Prunier 2008, 5).] Thus, the statistics suggest that well over half of the current residents of Rwanda who were over 14 years old and in Rwanda at the time of the genocide have been tried through the *gacaca* system.

⁸² Interview with Denis Bikisha, NSGC's Director of Training, Sensitisation and Mobilisation, NSGC, Kigali, 14 Aug 2009.

⁸³ Since Category 1 defendants were tried by *gacaca* courts only after the 2008 Gacaca Law was adopted, the NSGC's data concerning the period of 15 July 2006 to 31 December 2007 does not include cases of Category 1 defendants. Thus, until NSGC provides more data, there is no available information about the conviction/acquittal ratio with regard to Category 1 cases.

⁸⁴ This relatively high percentage of acquittals has been corroborated by the findings of Takeuchi, a researcher from JICA Research Institute who analysed the results of *gacaca* trials in two rural sectors in November 2007 and January 2009. Takeuchi checked handwritten records of the *gacaca* courts in the respective sectors (Conversation in Kigali, 13 Jan 2009).

maximise the rate of acquittals. Rather, the ratio seems to support a moderate assessment of *gacaca* trials -- that is, *gacaca* courts deliberated judgments based on testimonies of not only those who accused defendants but also of those who defended them.

Thirteen years ago, Schabas (1996) wrote that Rwanda must search for 'solutions to impossible problems' in the face of enormous challenges to rebuild its justice system and prosecute the then 87,000 detainees accused of genocide-related crimes. Who could imagine then that over one million defendants would be judged 13 years later, more than eleven times the original number, which was considered by many observers impossible to prosecute even in a highly developed country with plenty of resources? Rwanda's experience with *gacaca* courts has proven that it is not unthinkable to try hundreds of thousands of people accused of their involvement in mass violence, even in a post-violent conflict environment. To meet that challenge, Rwanda needed to develop the *gacaca* system, a system which relies on massive popular participation in judicial proceedings, without which, as Domitilla Mukantaganzwa, the NSGC's Executive Secretary, put it, 'there would have been no hope for survivors and perpetrators to see justice in their life time'.⁸⁵

5.2. Establishing the Truth about the Genocide

The whole truth about the genocide will never be known, given the scale and complexity of violence that involved hundreds of thousands of offenders and hundreds of thousands of victims. The government is determined to document the truth that has emerged from the *gacaca* process by establishing a special archive, although no one knows for sure how long it will take to analyse and compile millions of testimonies that have been collected by over 12,000 *gacaca*

⁸⁵ Interview in Kigali, 20 Jan 2009

courts across the country. As discussed in the previous chapter, many survivors of the genocide have been seeking the truth about the genocide for answers to many lingering questions. What happened to my loved ones? Where were they buried? Who killed them? Who was and was not involved in genocidal killings in my community? Are there people truly repentant about what they did to us, or would they still harm us if the political environment changed? The list of questions is probably endless and many questions will never be answered.

While it is difficult to know precisely to what extent genocide survivors have found answers to their questions through *gacaca* proceedings, the African Rights/REDRESS report highlights 'learning a painful but necessary truth' as a major success of the *gacaca* process, according to genocide survivors' comments (2008, 30-2).⁸⁶ One genocide survivor quoted in the report says: 'Survivors discovered a lot, horrible things needless to say, but things that were useful to know and relevant to the deaths of their friends and relatives' (31). The truth that emerged out of the *gacaca* process has helped many survivors achieve a sort of closure, particularly those who learned where bodies of their loved ones had been dumped, which in turn allowed them to rebury those loved ones in dignity. According to the NSGC, the information about approximately 90 percent of the corpses that have been reburied in dignity emerged from testimonies made during *gacaca* proceedings.⁸⁷

Many genocide survivors have held dignified reburials for their loved ones; other survivors have been desperately searching for any piece of information which could help them find the bodies of their loved ones. Thus, in this thesis, there is no intention to minimise the importance of the truth that has been

⁸⁶ For this research, African Rights/REDRESS interviewed 97 survivors representing all the provinces of Rwanda.

⁸⁷ Interview with Mukantaganzwa, Kigali, 20 Jan 2009.

revealed through the *gacaca* process. Yet, there are also elements of the truth about the 1994 genocide which seem to remain largely hidden or unrecognised. They are about Hutu victims of massacres (*itsembatsemba*), much of whose suffering has remained unacknowledged, despite some limited yet commendable efforts by organisations such as African Rights and by individual researchers to pay tribute to those ‘heroes’ who sacrificed or risked their lives for protecting Tutsis during the genocide.⁸⁸

5.3. Untapped Reconciliatory Potential of the Gacaca System

To what extent has the *gacaca* process contributed to reconciliation of Rwandan people who were divided by the genocide and by other forms of political violence? In the interview conducted in January 2009, Mukantaganzwa, Executive Secretary of the NSGC, stressed the great contribution the *gacaca* process has made to reconciliation among Rwandans:

It has made a great contribution to stability and reconciliation in the country. It provided a space for dialogue, for victims and perpetrators to meet, apologise and forgive. [...] It also provided a space for distinguishing the guilty from the innocent [and] a space for survivors to get the truth to know what happened to their loved ones, which made it possible for survivors to bury them in dignity. [...] And it delivered justice in time. If *gacaca* had not been implemented, there would have been no hope for survivors and perpetrators to see justice in their life time.⁸⁹

As clearly indicated in this statement, the government maintains that its *gacaca* endeavour has achieved the goals of truth, justice and reconciliation according to its logic of ‘reconciliatory justice’ discussed above. Despite the government’s claim, no independent study has yet been done to answer the question that

⁸⁸ See AR 2002; Rutazibwa and Rutayisire 2008. Hutu victims of the 1994 genocide recorded in these books seem to be limited to those who are known undoubtedly as ‘heroes’ or ‘righteous people’ for their courageous acts of hiding or protecting Tutsis.

⁸⁹ Interview in Kigali, 20 Jan 2009.

opens this section. In assessing *gacaca*'s reconciliatory impact, one is confronted by two major obstacles. First is the extensive and diverse nature of political and social dynamics surrounding the *gacaca* process, which took place in literally all the hills across the country, comprised of varied historical backgrounds and demographic characteristics. Political and social dynamics surrounding the *gacaca* process can be very different; for example, in some areas much of the violence was instigated by the former Hutu regime while in other regions atrocities were also committed by the RPF forces and the RPF-dominated national army of the transitional government. Second, the social and economic impact of the *gacaca* process cannot be captured in a brief amount of time; it will probably be experienced for years or even decades to come.

It is naive to assume that the *gacaca* process should have only positive impact on reconciliation by restoring relationships between individuals, families and identity groups who were divided by a series of violent events in the past. *Gacaca* could have also had negative impact by possibly creating renewed animosity. For example, genocide survivors who lodged new accusations and those who were accused yet finally acquitted, or perpetrators and their family members or former friends who were obliged to testify against them by *gacaca* courts, might all now have worsened relationships with their neighbours after participating in the *gacaca* process. In short, *gacaca* has possibly restored relationships among some and damaged those of others who have to live together in the same community. The total sum of all these effects on social relationships is difficult to capture, particularly after only a short amount of time.

Taking these caveats into consideration, the remainder of this section will take note of some evidence which suggests that the *gacaca* system has not fully

realised its reconciliatory potential to date, with particular focus on the features discussed above as *potentially* restorative.

5.3.1. People's Detachment from the Gacaca Process

As discussed above, the government's logic of 'reconciliatory justice' considers active public participation as a critical condition for the *gacaca* system to achieve its intended results of truth, justice and reconciliation. As noted above, various observers also agree on the importance of this public participation. However, reports produced by independent observers cast serious doubt on the quality of public participation during *gacaca* proceedings. In the early stage of the *gacaca* process, the government's measure to stifle people's free expression of their narratives was met with a widespread act of sabotage by a significant proportion of the population. During the pilot phase of 2002 – 2004, *gacaca* courts in different districts faced a serious problem of being unable to reach the quorum required for convening the General Assembly, due to insufficient participation.⁹⁰

The reasons for the low attendance in *gacaca*'s public hearings varied. They included conflict with essential farming activities or other duties, fear of being arrested upon revealing any knowledge about past events, fear of reprisals for accusing others, a general sense of insecurity, loss of interest in the *gacaca* process after learning that cases of their dead relatives were not taken into consideration, and so forth. Although one reason cannot be singled out as its greatest contributor, many reports attribute the low attendance to the fear of being accused as a participant in the genocide and to the profound disillusionment felt by those who found that *gacaca* courts would not address their acute concerns, particularly cases of victims killed by the RPF forces.⁹¹

⁹⁰ See AI 2002, 2004; AR 2003; ASF 2002, 2005; PRI 2002b, 2003b, 2004a.

⁹¹ A 2002 report of Amnesty International (2002, 28) gives an account of a decline observed in the level of participation once Hutu members of the community realised the limited mandate

Waldorf (2006, 429) writes, 'Hutu have little incentive to participate in *gacaca* because they fear being accused as either perpetrators or bystanders and because they have no opportunity to discuss crimes committed by the RPF forces'.

In response, the government introduced counter-measures -- such as shop closings, verbal warnings, fines, and house visits by local administrative officials and members of the Local Defence Force -- for boosting attendance at *gacaca*'s public hearings.⁹² Thanks to these measures and to a sensitization campaign to enhance community mobilisation in the *gacaca* effort, the problem of insufficient popular participation subsided in later phases. As Mukantaganzwa said in a recent interview, the population came to 'know it's their day in which they have to talk, they have to discuss [...]'.⁹³ However, even after the number of attendants increased in subsequent phases, many observers reported the lack of active engagement in *gacaca* hearings by the great majority of attendants. A *gacaca* monitoring report of Avocats Sans Frontières (ASF) for the period of October 2005 – September 2006 states:

Although more and more people attend the Gacaca hearings they are still apprehensive about providing or contributing any information that would help establish the facts of the offence. It would appear that many people come to watch the hearings as "spectators" and prefer to observe the trial in silence. (2006, 31)

The accounts presented above show a serious dilemma faced by the government in its pursuit of politically controversial justice (due to the one-sided character of the pursuit) through the 'participatory' *gacaca* system. Coercive

given to the *gacaca* courts:

Many *gacaca* participants expressed dissatisfaction that RPF abuses during the genocide do not fall within the competence of the *Gacaca Jurisdictions*. This reason alone led to a significant drop in the attendance and participation of community members in the pilot project cells' *gacaca* sessions.

⁹² See AR 2003, 46; PRI 2003b, 8; ASF 2005, 9-10.

⁹³ Interview in Kigali, 20 Jan 2009.

measures seem to have been effective enough to secure the quorum of 100 attendants required for convening the *gacaca* hearing, and an even more impressive turnout has been observed in subsequent phases. With increased government control over the local *gacaca* courts as well as restrictions on free speech and open debate, the proceedings of most *gacaca* courts have seemingly taken place largely undisturbed. However, monitoring reports of independent observers, as well as personal observations of several *gacaca* proceedings, overwhelmingly suggest that despite the increased attendance in later phases, many Rwandan citizens who do not identify themselves as victims⁹⁴ of the former genocidal regime have opted for minimum involvement in *gacaca* proceedings (e.g. checking whether their relatives are accused and watching the hearings as ‘spectators’), thereby detaching themselves from the process of establishing truth and rendering justice in the broader Rwandan society. Recently, even a significant proportion of genocide survivors are reported to ‘have given up on Gacaca’ due to disappointment or anger over the number of amendments made to the *gacaca* system against their wishes as well as frustration over the acceleration of trials, criticised by many as ‘justice sacrificed in favour of speed’ (AR/REDRESS 2008, 49-53).

5.3.2. Truthfulness of Offenders’ Confessions and Apologies Questioned

The Confession and Guilty Plea Procedure is another *potentially* restorative feature of the *gacaca* system highlighted above. In theory, the procedure serves double objectives of not only generating information useful for criminal investigation but also inducing offenders to acknowledge and ask for forgiveness

⁹⁴ The term ‘victims’ here is used in a broad sense to encompass the following three categories of victims of violence: ‘primary victims’ who have been directly harmed physically or psychologically; ‘secondary victims’, family and friends of primary victims who have been harmed indirectly as a result of the injuries or loss of a loved one; and ‘tertiary victims’, a community or society that has collectively suffered injuries primarily in psychological terms because of violence inflicted on its members. See related discussion in Section 4.3.2 of Chapter 2.

for the wrongs they committed.

Initially, detainees accused of involvement in the genocide were slow to respond to the call for confessions, not least because they were deeply suspicious about the real intention of the government authorities (PRI 2002a, 28).⁹⁵ However, as the campaign for encouraging confessions was intensified and the *gacaca* courts in the pilot sectors became operational,⁹⁶ the rate of confessed detainees nearly tripled from 13 percent to 32 percent between December 2001 and December 2002 (PRI 2002a, 26; 2003a, 5). The release of approximately 21,000 detainees following the Presidential Decree on 1 January 2003 further prompted thousands of others to seek recourse through the procedure in the following months. Consequently, by the end of 2004 the number of confessed detainees grew to 60,000, or 75 percent of the approximately 80,000 suspects held in prisons and other detention facilities at that time (IRIN 2005).

The government succeeded in inducing more confessions; however, many detainees seem to have made erroneous confessions. Many of those who opted to confess and plead guilty, according to Penal Reform International (PRI), showed a tendency to ascribe much of the blame to other offenders – especially those who had died or fled to other countries or those who remained free in the local hills evading arrest – while portraying themselves as one of many accomplices who played a minimal role in the killings or attacks (2002a, 26;

⁹⁵ According to PRI (2002a), other possible reasons for the low confession rate recorded before the end of 2001 include: 1) lack of awareness about the procedure, especially among female detainees; 2) hope that their guilt would not be established; 3) innocence; 4) observation that detainees who had already confessed did not enjoy benefits as promised; 5) fear of harassment that might result from accusing their co-offenders and accomplices; and 6) intimidation by other detainees toward confessed detainees and their families outside prison.

⁹⁶ A senior Ministry of Justice official identified the following four components of the campaign for promoting confessions: 1) informing detainees of the advantages of confessing and pleading guilty; 2) organising *gacaca* hearings by detainees inside prison; 3) using a mobile team of confessed detainees who encourage those detained in other prisons to follow their example; and 4) promoting religious activities for detainees in which repentance and confession are promoted (Kigali, 3 Dec 2002).

2003a, 8). Confessed detainees who were interviewed for this study in three different prisons in Rwanda (Kigali, Gitarama and Gisenyi) in 2002 spoke eloquently about criminal acts of their accomplices while claiming that they were coerced to take part in *igitero* (attack group) but did not commit any violent act themselves. Another serious concern is that the vigorous confession campaign coupled with the powerful incentive of sentence reduction may have led even innocent individuals to incriminate themselves for crimes they never committed (AI 2002, 39; E. Daly 2002, 382).⁹⁷ Self-incrimination seems to have been a tempting course of action for many detainees who awaited trial for many years because confession would bring about an immediate release with no additional punishment or at worst, merely a few years of Community Service.

Genocide survivors interviewed for the African Rights/REDRESS report assert that they often see well-known offenders in their communities taking the guilt of others on themselves in exchange for financial or social reward. One of them says:

I deplore the obvious collusion between killers from the same village who agree, among themselves, that the one who was known to be a murderer will admit to the murders he committed, and also to those committed by others, if they ask him to and if they reward him financially or socially. If you look into this, you will see that it is a well-known phenomenon. (2008, 40)

Gacaca courts seem to have rejected a significant number of false confessions, and those who made such confessions have been sent back to jail. However, such incidents seem to have led many genocide survivors to become more suspicious about the truthfulness of confessions and apologies made during and outside *gacaca* proceedings.

⁹⁷ AI (2002, 39) has reported detainees claiming 'to have confessed to the crime of genocide simply because of their prolonged detention and limited prospects of having their cases tried in a court of law'.

Another problem observed concerns the attitude and behaviour of confessed offenders. Chapter 6 reported an arrogant attitude about forgiveness among confessed offenders interviewed at three different prisons in Rwanda. Some of these offenders gave the impression that they were entitled to forgiveness, expressing their expectation that survivors of genocide would accept their confessions and apologies and grant them forgiveness in return. Some of them claimed that they had confessed for the sake of national unity and reconciliation and that now it was survivors' turn to respond for the same noble objective. However, many of the survivors interviewed in the two fieldwork communities expressed resentment regarding this assumption about confession and forgiveness. Klaas de Jonge, an anthropologist who led PRI's *gacaca* research team for several years, also observed: 'The accused think because they ask for forgiveness, they are entitled to forgiveness. You hear these people confessing as if they are describing a movie. There's absolutely no compassion' (quoted in Waldorf 2006, 428). Certainly, all of the public confessions made by genocide offenders have not indicated this problematic tendency.

Personal observations made from 2005-2009 through the healing and reconciliation programme of one NGO in Rwanda have included sincere, remorseful confessions of genocide offenders that were well-received by genocide survivors, including those who were directly harmed by the offenders. However, such confessions seem to have been rare rather than common in the settings of *gacaca* trials. Although there is no data available to assess the overall quality of public confession and apology made by genocide offenders during numerous *gacaca* hearings, the reports cited above and personal observations of several *gacaca* hearings suggest that offenders' confessions were frequently, rather than rarely, perceived by survivors as insincere or even untruthful. This

perception seems to have augmented 'the bitterness of survivors, particularly when coupled with the public expectation that survivors should offer forgiveness' (Waldorf 2009, 429).

Moreover, the confession procedure used by judicial authorities seems to have entailed challenging consequences regarding relationships within the local hills and families of confessed offenders. As mentioned above, for confessions to be accepted, genocide offenders had to not only provide a full description of the offence they had committed but also incriminate their co-offenders and all the people they recognised as accomplices of the genocide. While it seems many offenders attempted to save family members, friends or fellow inmates by distorting their confessions (PRI 2002, 26; AR/REDRESS 2008, 39-43), there seem to be some who incriminated others in their confessions, which has inevitably created tension. Ironically, the very procedure which may be considered crucial for reconciliation between victims and offenders of the genocide may have caused serious damage to social relationships between offenders and their family members, friends or neighbours, many of whom have no place to live other than the same hill.⁹⁸

5.3.3. Community Service Detached from Reintegration and Reconciliation

According to the National Executive Secretariat of Community Service (*Secrétariat Exécutif du Comité National de TIG* or SETIG in short),⁹⁹ a total of 94,318 genocide offenders received Community Service or TIG sentences by the end of 2008. In January 2009, out of these 94,318 convicts, only 2,394 (2.5%) of them had completed their TIG sentences; 36,781 (39%) of them were

⁹⁸ The same concern is pertinent to the legal obligation to testify before the *gacaca* courts. According to the Gacaca Law, anybody who fails to testify on what the person has seen or knows concerning the genocide is subject to prosecution and a custodial sentence for a maximum of six months (Article 29 of the 2004 Gacaca Law). African Rights (2003, 39) notes that the provision 'might undermine the perception that the process is based on trust and mutual respect'.

⁹⁹ Statistics presented in this section were all obtained from the SETIG on 6 Jan 2009.

engaged in Community Service across the country, and 43,367 (46%) were waiting for work to be assigned. The SETIG had not yet received the files of the remaining 11,776 convicts from the NSGC. The length of Community Service sentence given to the *tigistes* varied from less than a month to 25 – 30 years. For over 80 percent of them, it was between one and ten years: 27.7 percent falling in the group serving 1 – 3 years; 45.1 percent in the group serving 3 – 6 years; and 7.5 percent in the group serving 6-10 years. These statistics suggest that the scale of the present operation of Community Service needs to be dramatically expanded, in order to allocate specific work to those convicts who are standing by, and that it will have to continue with tens of thousands of convicts for years to come.

Having tens of thousands of convicts engage in different kinds of work all over the country for a number of years is a huge task for a small country like Rwanda. Whether the Community Service programme will be developed into one which taps its restorative potential remains to be seen. However, the way it has been implemented so far is not geared to facilitate the reintegration of offenders into their communities or their reconciliation with those whom they harmed during the genocide. For nearly four years since it was launched as a pilot programme in September 2005, the implementation of Community Service has been following two different models: a camp model and a neighbourhood model. The camp model refers to Community Service in the form of camps called *ingando*, or solidarity camps, each of which accommodates between a few and several hundred *tigistes*. From these camps, *tigistes* commute to relatively close sites six days a week to engage mainly in public work such as construction of roads, terraces and other soil conservation structures, as well as, to a limited extent, construction of houses for the needy, especially genocide

survivors.¹⁰⁰ Apart from districts in the Province of Kigali City, most of the districts in other provinces only have a few camps, which means that the great majority of the *tigistes* accommodated in each camp are from different communities and thus work in communities that are not their own (even those very far from their province). As of 30 December 2008, among the 94,318 people sentenced to Community Service, 26,165 of them were accommodated in 63 camps across the country. On the other hand, the neighbourhood model is the form of Community Service conducted by *tigistes* who are allowed to live with their family and engage in work such as house construction and cultivation of crops in their locality, for three days a week. As of 30 December 2008, a total of 10,616 were reported to engage in Community Service following this model.

Although the Presidential Order governing the present Community Service programme allows both of these models to be implemented,¹⁰¹ the SETIG has been increasingly inclined to make the camp model a predominant, if not an exclusive, mode of implementing Community Service in years to come. In an interview conducted in January 2009, Anastase Nabahire, Associate Executive Secretary of the SETIG, explained this preference by pointing out five major advantages of the camp model over the neighbourhood one: 1) it is more conducive to close supervision of convicts; 2) it has proven to be more productive in terms of output by convicts; 3) because convicts stay in a camp after working hours and during weekends, it is more conducive to providing civic education useful for convicts' reintegration into society; 4) it is more conducive to training convicts in various skills while they are in a camp; and 5) by having convicts work six days a week, it allows them to complete sentences twice as fast as the neighbourhood model, which requires work only three days a

¹⁰⁰ Information obtained from the SETIG, 6 Jan 2009.

¹⁰¹ Article 7 of the Presidential Order N° 50/01 of 16/10/2005

week.¹⁰² Asked about a challenge or difficulty faced by the camp-based Community Service programme, he spoke only about high costs, which include setting up and maintaining camp facilities, payments for camp supervisors and security personnel, uniforms, tools, drugs and meals. In fact, the Community Service programme as a whole has been seriously under-funded and it would seem very difficult to dramatically expand and maintain the camp-based Community Service programme unless its financial situation is significantly improved.¹⁰³

Thus, despite its stated objectives of reintegrating genocide offenders, repairing social fabric and advancing reconciliation, the government's Community Service programme as implemented mainly through the camp-based model continues to keep *tigistes* away from their families and from other members of their community, including genocide survivors. It also lacks a strategic emphasis on using Community Service for reparative acts by *tigistes* that are directly beneficial to genocide survivors and their families. Kirkby (2006, 114) argues that 'separating community service from the reconciliation it is meant to promote' is a major flaw in the way the government's Community Service programme is planned. By using the convicted in works for the benefit of the general public, says Kirkby, 'community service ceases to symbolize a repairing of civic trust through relations between perpetrators and victims, and instead becomes little more than a state-controlled labour pool'. PRI, an international NGO which has been campaigning for the promotion of Community Service in Rwanda, communicated essentially the same concern to the SETIG on various occasions. In its *gacaca* research report focusing on Community

¹⁰² Interview in Kigali, 27 Jan 2009.

¹⁰³ According to Nabahire, while the SETIG's budget for 2009 is approximately two billion Rwandese francs (equivalent of USD 3.3 million), the government has approved only 368 million Rwandese francs (equivalent of USD 670,000) for the first six months of the year. The SETIG's total expenditure for 2008 was approximately 2 billion Rwandese Francs.

Service, the NGO put forth a recommendation to expand the use of 'Neighbourhood Community Service' as a means to facilitate both social reintegration of genocide offenders and community reconciliation (PRI, 2007, 11):

It seems to us fundamental that this system be favoured, that the TIG be carried out, as often as possible, by the convicts close to their own hill, which would enable them to be in contact with their family and, above all, to interact with the survivors. This concept is of value as it could allow a gradual *rapprochement* with the community and perhaps the return to some form of trust. [...] [T]he camp option should only be imposed for short periods of time. It would, in any case, seem advisable to continue the search for creative solutions and to further reflect on the various ways in which to implement Neighbourhood Community Service so that Community Service can best contribute to the overall aim of reconciliation.

This recommendation seems to have had no significant effect on the thinking of policy makers in the SETIG and other concerned government bodies. Asked about his view about using Community Service as an opportunity for offenders to make reparations by doing something directly beneficial to their victims, Nabahire insisted that the two things should not be mixed up because 'the work of Community Service is meant to serve the interest of general public, not private individuals'.¹⁰⁴ He also said that linking Community Service with the process of reparation may create a problematic impression that convicts who are predominantly Hutu are obliged to work for the interests of genocide survivors who are predominantly Tutsi, which connotes the practice of obligatory labour that noble Tutsi patrons in the past imposed on their Hutu clients. While such an impression must certainly be avoided, there must be creative ways of implementing the Community Service programme, ways in which convicts themselves can see the restorative value of their work that is appreciated by

¹⁰⁴ Interview in Kigali, 28 Jan 2009.

survivors as truly beneficial for rebuilding their lives. As it stands now (15 August 2009), however, there is no indication that the government is seriously searching for ways of implementing Community Service that fully tap its restorative and reconciliatory potential.

5.3.4. *Disillusion with Compensation Programme*

Despite well intended provisions in the *gacaca* system for promoting genocide survivors' entitlement to material reparations, the community of genocide survivors in Rwanda is reported to be severely frustrated by the fact that 'the promises of reparation' have not materialised to date (AR/REDRESS 2008, 100-5). The lack of financial or material means for the payment of compensation on the part of convicts and the non-enforcement of civil orders for reparation on the part of government authorities are major problems faced by genocide survivors (101-2). One genocide survivor speaks of her frustrating experience as follows:

Every time I turn to the administrative authorities to have these judgments enforced, the executive secretary often promises me that the property of those convicted will be coming to auction soon. We wait, but in vain. (101)

Although there is no data available regarding to what extent *gacaca's* reparation orders have been carried out, there seem to be significant regional variations in its implementation. According to Takeuchi, who conducted research on the results of *Gacaca* trials in two rural sectors, one in Umutara of Eastern Province and the other in Butare of Southern Province, he confirmed that many more Category 3 offenders had paid compensation for the damage they caused to properties of local genocide survivors in Umutara than in Butare. A primary reason why more people in Umutara managed to pay compensation than those in Butare is that the average land holding is much bigger in Umutara, so the

people there could afford to sell a portion of their land to make the money for compensation payment, whereas the people in Butare could not.¹⁰⁵ Thus, particularly in regions where the average land holding of local farmers is too small, genocide survivors face great difficulties in their pursuit of seeking compensation from impoverished Category 3 convicts.

Also, genocide survivors have been disillusioned by the lack of any progress in setting up the state-funded Compensation Fund. The Rwandan cabinet debated a draft law on the creation, organisation and functioning of the compensation fund in August 2002 (AI 2004, 10). The law has never been finalised, not least because it involves some sensitive and difficult issues such as the criteria for beneficiaries of the fund as well as the sources of the fund itself.¹⁰⁶ Questioned whether the government has abandoned the idea of the state-funded Compensation Fund, the same high-level official of the NSGC replied 'Almost'.¹⁰⁷ The official demonstrated a diminished commitment to state-funded compensation for genocide survivors:

The genocide was perpetrated by the state of *génocidaires*. The state now is the one who stopped the genocide and in fact it is us who are left with its consequences. [That] the state has to pay compensation for moral damages means that it must come from tax payers, including survivors. Resources for that from the state are from you and me. So it is very difficult to conceive the payment of compensation to all the survivors, given limited resources the state has. We may continue discussion but it will depend on external resources from those who bear responsibility for the genocide.

During the period commemorating the fifteenth anniversary of the genocide (April – July 2009), there was neither public debate nor official announcement

¹⁰⁵ Conversation with Shinichi Takeuchi (JICA Research Institute), Kigali, 13 Jan 2009.

¹⁰⁶ See Rombouts and Vandeginste (2005) for details about the draft law. The issue of who deserves compensation is closely linked with a highly contested issue of who can legitimately claim victimhood, which was discussed in Chapters 5 and 6.

¹⁰⁷ Interview in Kigali, 20 Jan 2009.

concerning the long-promised Compensation Fund.¹⁰⁸ Fifteen years after the genocide, the genocide survivors' hope for this compensation has been shattered.

5.4. Discrepancy between Reconciliatory Justice in Theory and in Practice

According to the theory of 'reconciliatory justice' espoused by the government, the *gacaca* system is designed to facilitate the restoration of the social relationships damaged by the genocide by addressing not only retributive but also reparative and restorative dimensions of justice for the people and the community involved. It establishes the truth as the basis for rebuilding trust; it generates the judgment acceptable to all through participatory deliberations; it helps the offenders make amends and reintegrate themselves into the community; and it heals both material and psychological damages suffered by the victims through various means of material and symbolic reparation.

In the early phase of its development, the *gacaca* system attracted a great deal of attention from scholars and observers due to these *potentially* restorative characteristics (Drumbl 2000, 2002; Cobban 2002; Harrell 2003; Tiemessen 2004; Wierzyńska 2004; Kirkby 2006). In his articles advocating a contextualized approach to transitional justice in the aftermath of mass violence, Drumbl (2000, 2002) argued that post-genocide Rwanda requires a rectificatory justice approach that is characterised by restorative justice initiatives seeking atonement and reparation by as well as reintegration of offenders, rather than an

¹⁰⁸ Instead, on 15 April 2009, the new law on 'the establishment of the fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity' came into force (Law N° 69/2008 of 30/12/2008). The fund created by this law is not a 'compensation fund' but, as its title indicates, an 'assistance fund' for the most needy survivors -- such as orphans, widows, elderly people, people whose houses were destroyed, people with disabilities and those infected with HIV/AIDS (Article 26). In essence, through the creation of this fund, the government scrapped the FARG, an assistance fund for the needy genocide survivors, which had existed since 1998 but whose mismanagement had caused a nationwide corruption scandal in recent months (NT 2009b, 2009c, 2009e).

approach emphasising retributive criminal trials to determine guilt and impose punishment on offenders. In his early writings, the *gacaca* system was described as an appropriate restorative justice response with a high potential for contributing to reintegration and reconciliation (2000, 1264-5; 2002, 13).

As discussed earlier, central to Drumbl's conception of restorative justice is the theory of reintegrative shaming advanced by Braithwaite. Applying Braithwaite's theory to the context of post-genocide Rwanda, Drumbl (2000, 1260-3) stressed the crucial role of reintegrative shaming for encouraging atonement of offenders, prompting their acknowledgment of their responsibility for their acts during the genocide, and facilitating their reintegration. The community-based shaming process discussed by Drumbl may involve 'shared conversations, public discussion, and debate over what actually happened' as well as the telling of many victims' personal stories, which 'may trigger the internalization in the offender of an understanding, as well as an acknowledgement, of the evil that was inflicted' (1262). He vividly described the potentially transforming power of community-based reintegrative shaming as follows (2002, 11):

When aggressors can see the hurt for themselves instead of denying it in the splendid insularity of prison, can hear the words of survivors, can look at mass graves instead of jail walls, and can be surrounded by reburial ceremonies, perhaps then their consciences will become troubled. [...] Humanizing this pain can help break even broad levels of social complicity.

Drumbl (2000, 1262) suggested that 'the humanization of the pain' through a series of community-based shaming efforts may eventually produce positive conditions that are conducive to the prevention of future violence and the advancement of reconciliation as it promotes 'internalized accountability', strengthens the cohesion of community and plays a vital role of moral education

for younger generations. Drumbi considered the *gacaca* system *potentially* highly effective in establishing accountability for the genocide and promoting reconciliation within ‘the fragmented communities’ of post-genocide Rwanda: by facilitating ‘localized reintegrative shaming’ through its communal hearings and deliberations; by applying restorative sanctions such as ‘community service, apologies, rituals and public shaming’; by addressing victims’ needs for compensation; and by generating a historical narrative based on specific experiences at the grassroots level (1264-5). Drumbi’s discussion indicates that the *gacaca* design has great appeal for those who seek a restorative alternative to the dominant model of post-violence rectificatory justice through retributive criminal prosecution and trial (1266).¹⁰⁹

The enthusiastic views of those who had high expectations for the *gacaca* system as a restorative alternative to the dominant retributive model of transitional justice have been gradually replaced by increasingly cautious opinions as the actual *gacaca* process unfolded (Tiemessen 2004; Corey and Joireman 2004; Kirkby 2006; Waldorf 2006; Cobban 2007; Drumbi 2007). While acknowledging the remarkable restorative characteristics in the *gacaca* system, Tiemessen (2004, 64) underlined the politicisation of the *gacaca* process as rendering ‘a state-imposed model of justice that threatens the community based principles of restorative justice’. Tiemessen went on to argue that *gacaca*’s restorative potential was made even more elusive by the exclusion of RPF atrocities from its jurisdiction, which, she maintained, would not only undermine the legitimacy of *gacaca* courts but also exacerbate already existing social divisions along ethnic lines.

Based on the analysis of empirical data collected during *gacaca*’s pilot

¹⁰⁹ Following more or less the same line as Drumbi, Harrell (2003) championed the *gacaca* system as a form of ‘the communitarian restorative model of transitional justice’.

phase, Waldorf (2006) has identified four weaknesses in the practice of *gacaca* justice: 1) the lack of participation based on people's free will; 2) no provision of compensation to victims; 3) no provision of accountability for RPF abuses; and 4) the imposition of collective guilt on Hutus. The first three points have been previously discussed in this thesis. Regarding the fourth point, Waldorf (2006, 431) underscores particularly two problems with regard to the broad scope of genocide perpetrators under the Gacaca Law. The first problem concerns the inclusion of property offences in the crime of genocide. He criticises this inclusion as a decision that is 'legally dubious', 'trivializes genocide', and 'risks criminalizing many Hutu who engaged in opportunistic looting' (ibid). The second problem he points out is 'a broad interpretation of accomplice liability.' As noted earlier, 'accomplices' -- defined as individuals who, 'by any means', provided assistance to commit genocidal killings or attacks -- are placed in the same category as the actual perpetrators of the offences. 'Given large-scale participation in roadblocks and patrols during the genocide', Waldorf maintains, 'a broad interpretation of accomplice liability could lead to mass inculpation' (ibid). These two problems inherent to the *gacaca* system, Waldorf argues, 'would overwhelm an already taxed judicial and prison system and undermine ongoing efforts at peaceful coexistence' (431-2). The danger of which Waldorf warns seems to have now become a reality, as the data presented earlier clearly indicate that the *gacaca* process will end up convicting a large proportion of the Hutu population for genocide-related crimes.

Returning to Drumbl, he has recently toned down his early enthusiasm for the restorative potential of the *gacaca* system:

I believe *gacaca* had the potential to constitute a truly revolutionary approach to accountability for mass violence, but as time passes it is not fully actualizing this potential. It could have been a locus for the

revitalization of indigenous, local, and restorative mechanisms to stimulate a deeper accountability dynamic. However, attempts to diversify the accountability paradigm in Rwanda through popular measures such as *gacaca*, although partly successful, underachieve their restorative, cathartic, and reconciliatory potential. (2007, 93)

Drumbl (2007, 94-7) attributes the underachievement of *gacaca*'s restorative potential to three primary reasons. First, he identifies international pressures on the Rwandan government to address due process concerns as one reason that the *gacaca* system lost its restorative characteristics. Because of the persistent pressure by international human rights groups and donors, he claims, the government was obliged to make the proposed *gacaca* system increasingly akin to criminal trials of the formal justice system. Second, he highlights internal pressure by the Rwandan government to 'centralize and bureaucratize' the *gacaca* system to serve its own political objectives, which deprived local communities of autonomy in and control over *gacaca* proceedings, thereby diminishing popular ownership of the process of supposedly community-owned justice.¹¹⁰ With regard to this second factor, Drumbl points out the government's motives to use '*gacaca* as a tool of social control' and to silence any criticism of it (95). Third, apart from these external and internal pressures, argues Drumbl, it is a 'reality that the *gacaca* system was not initially designed to prosecute perpetrators of extreme evil, and the prospect of provisionally releasing, shaming, and rehabilitating murderers is daunting' (94).

As discussed above, *gacaca*-based 'reconciliatory justice' in theory provides Rwandan people with time and space for telling their own narratives truthfully, listening to those of others attentively and having shared conversations and debates over what happened in the past, thereby reconciling their conflicting

¹¹⁰ Drumbl suggests that the state's control over the *gacaca* process for genocide trials became apparent after the adoption of the 2004 Gacaca Law. Others might find it apparent in the way the *gacaca* system was defined by the 2001 Gacaca Law.

narratives. In theory, millions of *gacaca* hearings create an environment on hills across the country that is conducive to localized integrative shaming, which Drumbl thought necessary for prompting atonement and acknowledgment by those carrying different degrees of responsibility for past atrocities. In theory, reparative measures embedded in the *gacaca* system respond to profound reparative needs of victims and in turn help their recovery. But to what extent have these theoretical effects taken place in practice? The accounts presented in this chapter point to a major discrepancy between *gacaca*-based 'reconciliatory justice' in theory and in practice.

6. Conclusion

The government's approach to rectificatory justice was once described as 'justice without reconciliation' because of its policy of maximum accountability for the genocide committed under the auspices of the former regime. Although it is inaccurate to say that the government did not pay attention to the need for reconciliation and to the reparative and restorative dimensions of justice when it set out its post-genocide justice effort,¹¹¹ its initial priority was clearly given to retributive justice with highly punitive characteristics.

Even after the RPF-led government adopted 'reconciliation' as a part of its policy objective in the late 1990s, in the official discourse an emphasis was put on justice largely in the sense of retribution rather than reconciliation. A typical usage of the term in those years was, for example, 'there can be no reconciliation with victims unless there has been justice' (Sarkin 2001, 154).

Justice had to be carried out first, before there could be a possibility of

¹¹¹ Government's concern for reparative and restorative dimensions of justice seems to be reflected in certain aspects of the 1996 Genocide Law - the provision for confessions and guilty pleas by offenders, the provision of material compensation for victims, and the categorisation of offenders by the degree of responsibility, based on the intention to treat 'foot soldiers' of the genocide much more leniently than their leaders.

reconciliation. In subsequent years, the government's discourse on justice and reconciliation changed remarkably as the *gacaca* process was brought to the forefront of Rwanda's post-genocide justice effort. According to this discourse, the government pursues 'reconciliatory justice', which actively seeks healing and reconciliation.

Thus the Rwandan government has significantly shifted its conception of justice and of justice's relation to reconciliation over the years. There are three particular aspects of the conceptual shift, using the analytical framework of the psychology of justice discussed in Chapter 3. The first two aspects of the shift are concerned with 'justice as what', or distributive outcomes of justice, while the third aspect emphasises 'justice as how', or the procedures followed to determine outcomes. First, the government has significantly broadened its conception of justice over the years, from a relatively restrictive concept that is focused on retribution to a much broader idea that encompasses retributive, reparative and restorative dimensions of justice. With the introduction of the *gacaca* system, the government adopted the language of restorative justice, as examined above. The government's description of the *gacaca* process puts a strong emphasis on its reparative and restorative functions. Although the government has not abandoned its retributive urge to punish genocide offenders, particularly those who were in leadership positions at the time of the genocide, it is nonetheless a very significant change in the way the government addresses the challenge of rectificatory justice in post-genocide Rwanda.

Second, the government's conception of justice has shifted from a *static* to a *dynamic* one in its relation to reconciliation. As noted above, for some years immediately after the genocide, a typical phrase with which the government described the relationship between justice and reconciliation was, 'No

reconciliation before justice!’ Justice was seen as a precondition for reconciliation – something which must be achieved considerably, if not completely, before an effort at reconciliation could be initiated. This notion of justice as a precondition of reconciliation may sound plausible to many, particularly the victims who have difficulty conceiving of the possibility of reconciliation before their desire for justice has been fulfilled. As argued in Chapter 3, however, insisting on this ‘first justice, then reconciliation’ approach in a static sense would be the same as claiming that there is no possibility of reconciliation, given that no complete justice can materialise under most circumstances, not only in retributive but also in reparative terms. Thus, underlying the government’s move to adopt the policy of ‘reconciliatory justice’ was a significant shift from the static conception of justice to the dynamic one – justice as an evolving process toward the interconnected goals of retribution, reparation and restoration.

Third, there was a significant shift in the government’s conception of justice in terms of ‘justice as how’, or procedural justice. Since the *gacaca* system became considered the centrepiece of Rwanda’s post-genocide justice effort, the government’s approach to procedural justice has shifted from one totally dependent on the formal justice system, with highly adversarial procedures dominated by legal professionals, to one centred on the *gacaca* system, built on the informal dispute resolution mechanism in which ordinary community members play critical roles in deliberative procedures. As noted earlier, in the face of the fierce criticism relating to due process concerns, the government defended its endeavour with the *gacaca* system by arguing that in the unique social, political and cultural context of post-genocide Rwanda, procedural justice can be best attained through community-based, participatory proceedings based

on Rwandan tradition.

These three aspects of the conceptual shift constitute a positive and highly remarkable departure, from the earlier conventional retributive approach in the direction of an innovative restorative approach to justice. In contrast to these positive changes in the dimensions of *what* and *how*, however, the government has been persistent in its policy with regard to another crucial dimension of the psychology of justice: 'justice as *who*', or the scope of justice. As discussed above, the RPF-led government has persistently maintained its policy to exclude (minimally estimated) tens of thousands of victims of the atrocities committed by the RPF/RPA from the scope of post-genocide justice. According to this one-sided framework of post-genocide justice consistently maintained for the last 15 years, crimes that must be fully accounted for in a transparent manner are only those genocide-related crimes committed under the auspices of the former Hutu regime, not those 'insignificant' acts of 'excess' by individual RPF soldiers. Those who deserve material and moral reparations are only those who fell at the hands of *génocidaires*, not those who died from other kinds of violence, such as the RPF atrocities before, during and after the genocide.

Despite the positive changes noted in terms of the *what* and *how* dimensions of rectificatory justice, the question of *who* has been completely left out of the government's search for an innovative transitional justice approach. This persistent failure to address the crucial question of *who* has overshadowed the government's effort at justice and reconciliation. The disparity between the work by domestic justice systems as well as the ICTR¹¹² to prosecute genocide suspects and the failure to pursue accountability for the RPF atrocities has

¹¹² See Peskin (2008) and Del Ponte and Sidetic (2009) for detailed accounts of how ICTR's attempted indictment of the alleged RPF atrocities has been obstructed by relentless political manoeuvres of the Rwandan government.

created a sense of grave injustice among the vast majority of Hutus, as documented in preceding chapters. This sense of injustice has been a primary factor in thwarting *gacaca*'s unique potential to serve as a community-based forum for reconciling starkly conflicting narratives of victimhood in post-genocide Rwandan society. Against the wishes of many Hutus, there has been extremely limited space for them to tell their narratives if those narratives do not concern the genocide. As noted above, this seems to have prompted many of them (apart from confessed offenders) to detach themselves from *gacaca*'s truth-telling exercises, which, in turn, has frustrated genocide survivors who desperately sought the truth and the acknowledgement of the irreparable wrongs committed against them and their loved ones. Many of these genocide survivors chose to tell their stories despite numerous acts of intimidation, harassment and even assassination intended to silence them. Surrounded by many silent 'spectators' and those in denial about local Hutus' complicity in the genocide, a significant proportion of genocide survivors seem to have been left with bitterness, anger and disillusionment.

These observations cannot be generalised to *gacaca* proceedings all over the country. However, the range of evidence presented above strongly suggests that, at least in areas where past atrocities are not limited to those concerning the genocide, a social environment which has characterised many of the *gacaca* courts has not been conducive to 'reconciliatory justice' through localized integrative shaming. Rather, the environment has been characterised by a great deal of denial, frustration, bitterness and fear. Consequently, the government's endeavour to provide 'reconciliatory justice' falls short of meeting *the important challenge of reconciling sharply conflicting narratives of victimhood* in Rwanda today.

CHAPTER EIGHT

UNDER THE BANNER OF UNITY AND RECONCILIATION: RECONCILIATION AND THE POLITICS OF NATIONAL IDENTITY BUILDING

1. Introduction

As it is commemorating the fifteenth anniversary of the genocide, Rwanda aspires to project itself as a united and reconciled nation before the world. 'Fifteen years after the genocide', proclaims the Rwandan government, '[A] new Rwanda has grown, putting forward unity and reconciliation, not division [...] Like a new dawn it provides hope' (Official website of the National Commission for Fight Against Genocide)¹ In today's Rwanda, 'unity and reconciliation' is presented not only as an aspiration of Rwandan people who experienced unspeakable horrors of violence in the recent past but also as their obligation. Antoine Rutayisire, Vice-President of the National Unity and Reconciliation Commission (NURC) and himself a genocide survivor, declares:

Reconciliation is not just one of the many other options for us Rwandese, it is rather a non-negotiable obligation. An obligation to give ourselves hope for our old age; an obligation to leave to our children a better Rwanda to grow and live in. (Official website of the NURC)²

This chapter examines a range of efforts that the RPF-led post-genocide government has undertaken under the banner of 'National Unity and Reconciliation'. First, the chapter examines conceptions of reconciliation

¹ Accessed on 14 March 2009.

² Accessed on 14 March 2009.

underlying the government's efforts. The chapter then reviews government's efforts to forge a unified national identity that is considered the basis of national unity and reconciliation in post-genocide Rwanda.

The government's focus on national identity building can be seen as its primary response to the great challenge of dissolving the divisive, racialised ethnic identities that it considers the root cause of the Rwandan genocide. The chapter highlights, however, that this identity building seems to be seriously compromised by the government's one-sided framework in which issues of reconciliation that arose out of crimes other than those committed by the former genocidal regime are ignored and the voices of many victims concerned with those violations are silenced. This inconsistent pursuit of justice and reconciliation often correlates with the ethnic identities the government seeks to obliterate, contradicting its proclamation of national unity based on a new Rwandan identity.

2. Unravelling the Government's Strategy for National Unity and Reconciliation

The government's official effort at national unity and reconciliation began much later than its effort at post-genocide justice that was discussed in the previous chapter. The NURC was established by a parliamentary law in March 1999 as a special commission with the mandate to promote national unity and reconciliation.³

According to Article 178 of the 2003 Constitution, the NURC's mandate encompasses: 1) organise the national programme for the promotion of national unity and reconciliation; 2) develop measures to overcome divisions and to restore and reinforce unity and reconciliation among Rwandans; 3) educate and

³ Law N°03/99 of 12/03/1999. This was first modified by the Law N°34/2002 of 14/11/2002 and then more recently by the Law N°35/2008 of 08/08/2008.

mobilise the population on related themes; 4) conduct research and promote public debates; and 5) play the role of watchdog against 'any kind of discrimination, intolerance or xenophobia'.

The NURC has organised a series of 'nation-wide grassroots consultations' since its formation in 1999 for eliciting ideas about unity and reconciliation from different sections of the population and for jointly evaluating progress made toward the goal of a unified and reconciled Rwanda. These numerous meetings have culminated in several National Summits held in Kigali in October 2000, October 2002, April 2004 and December 2006 (NURC's official website).⁴ Chaired by the President of Rwanda and attended by a cross section of Rwandans as well as representatives of the international community, the summit 'has become a prominent and more or less permanent national event' which 'reviews progress and achievements in regard to unity and reconciliation and adopts recommendations in relation to people's wishes'.

Apart from these high profile official gatherings, the commission has been devoting itself to three programme areas: namely, civic education, conflict management⁵ and support to community initiatives (See Appendix 4 for the description of NURC's key programme areas).

2.1. Multiple Conceptions of Reconciliation

What is the meaning of 'reconciliation' as it is used in reports, planning documents and the website of the NURC, and as it is described by officials in interviews? None of the official documents obtained from the NURC defines the term 'reconciliation' clearly with regard to the specific context of Rwandan

⁴ Accessed on 14 March 2009.

⁵ This was earlier called 'conflict mediation'.

society.⁶ There are multiple conceptions of reconciliation featured in the government's official discourse. They include conceptions applicable to different levels of society: national, community and interpersonal.

2.1.1. Reconciliation as Creating an Inclusive Nation State

Asked about the NURC's definition of reconciliation, Executive Secretary Fatuma Ndangiza stressed the difficulty of coming up with a single definition of reconciliation because it has many different meanings to different people who suffered from various forms of violence in the history of Rwanda. Then she described the central challenge to national reconciliation in Rwanda as follows:

Certainly, in short, I can say that with national reconciliation, the government has the challenge of creating a framework that brings together all Rwandans, ensuring the unity of Rwandans, and also ensuring access to and control over various opportunities within the country for all Rwandans. And then of course, as the government creates this framework, Rwandans who have problems [with their past] can reconcile. Maybe it could be at individual level, it could be at community level, at different levels of society.⁷

The conception of national reconciliation underlying the view expressed by Ndangiza seems akin to the structure-oriented conception of reconciliation, which, as discussed in Chapter 2, focuses on the building of structures and institutions as the foundation of an inclusive state in which all citizens are treated with equal rights, thereby fostering a strong sense of common citizenship. As discussed in Chapter 2, this structure-oriented conception contrasts with a relationship-oriented conception, which emphasises the restoration of relationships through emotional and attitudinal changes of conflicting parties.

Another senior official of the NURC also stressed that what matters is not a

⁶ For example, in NURC's study on 'The Role of Women in Reconciliation and Peace Building in Rwanda', reconciliation is defined as 'a process through which a society moves from a divided past to a shared future' (2005, 22). This definition seems vague and not particularly useful for understanding specific challenges of reconciliation in Rwandan society.

⁷ Interview in Kigali, 12 Dec 2002.

friendly relationship between former adversaries or people with different backgrounds but the creation of a social, economic and political environment in which all Rwandans are entitled to equal rights:

It's totally all right even if people don't like each other. [...] What I think important is to respect rights of each individual, be it a Hutu or a Tutsi or anybody. Irrespective of his background, he must have rights to work, live, be educated and so forth.⁸

This structure-oriented conception of reconciliation seems to underlie important ingredients of the government's programme for national unity and reconciliation, such as the rule of law, democratisation, human rights and civic education. The work of the NURC in recent years is generally geared to create a political and socio-economic context at the national level that is conducive to reconciliation at community and interpersonal levels.⁹ Unlike relationship-oriented reconciliation, what matters for the structure-oriented conception upheld by the government is not the restoration of relationships between groups or individuals but the fostering of a new positive relationship between the individual citizen and the nation.

2.1.2. Reconciliation as National Identity Building

As a key ingredient of the above structure-oriented vision of reconciliation, the government makes the challenge of national identity building a high priority. As will be discussed later in this chapter, since coming to power in July 1994, the current PRF government has promoted a historical narrative asserting that there was strong unity among Rwandans before colonization. This narrative further claims that because of the racial ideology imposed by White colonisers, Rwandans became divided into so-called 'ethnic groups' of Hutu, Tutsi and Twa

⁸ Interview in Kigali, 14 June 2002.

⁹ See Appendix 4.

which had previously been only occupational categories, and that this *externally* imposed division is the root cause of the Rwandan genocide. Based on this particular reading of Rwandan conflict, what is required today for national unity and reconciliation is rejecting and replacing the divisive ethnic identities with a single, unified identity for all Rwandans, *ubunyarwanda* (Rwanda 1999, 2006).

Ndangiza stressed the importance of inculcating a strong sense of national identity among Rwandans in the process of unity and reconciliation. After discussing various distinctions and even discord existing among groups of Rwandans with different backgrounds, she stated:

They are living together as Rwandans for the first time. But in their mind, some of them still regard themselves maybe as Ugandans because they lived in Uganda for a long time. Others could see themselves as Congolese. Others see themselves as survivors [...] So we have to help Rwandans realise that they are all Rwandans before anything else [...] Tutsi, Hutu, Congolese, Ugandan, Francophone, Anglophone. What is important is that first of all, our identity is Rwandan, wherever you come from, whenever you left [the country].¹⁰

In the official discourse, the word 'reconciliation' is more often than not uttered together with the word 'unity' as a phrase: 'unity and reconciliation' (*ubumwe n'ubwiyunge*).¹¹ The two words are combined in this particular order: 'unity and reconciliation'; 'unity' always precedes 'reconciliation' when they are used together. This slogan of 'unity and reconciliation' seems to indicate an important presumption underlying the government's nation building effort: there was strong unity for Rwandans in pre-colonial Rwanda and it is this 'Rwandan-ness' which binds all the people with different backgrounds together, even survivors and perpetrators of the genocide. In short, the 'restoration' of pre-colonial unity based

¹⁰ Interview in Kigali, 12 Dec 2002.

¹¹ *Ubumwe* (unity) and *Ubwiyunge* (reconciliation) linked by a conjunction *na* = *Ubumwe n'ubwiyunge* (unity and reconciliation)

on the Rwandan identity is a key element of the government's conception of national reconciliation.

2.1.3. Reconciliation as Repairing Relationships

Neither the NURC nor any other government organ has specifically articulated its conception of reconciliation that is applicable to the community or interpersonal level. However, reconciliation at this lower level of society is generally understood in line with the Rwandan conception of *ubwiyunge* discussed in Chapter 6: the healing of broken relationships between the parties who have been separated from each other by enmity and/or mistrust. For example, the following statement in the NURC's official website can be seen as a reflection of this relationship-oriented conception:

So far the growth of several community- based reconciliation associations -- involving survivors, perpetrators, and people with family members in prison -- is an indicator that reconciliation is taking place at the community level.¹²

Survivors and perpetrators of the genocide are generally considered to be adversarial parties whose relationships were severely damaged by the genocidal violence committed by the latter against the former. Stating that their working together in the same association is an indicator of reconciliation demonstrates the relationship-oriented conception of reconciliation, which focuses on the restoration of interpersonal or inter-group relationships damaged by violations or conflicts.

The government's effort at 'reconciliatory justice' through *gacaca* courts also presumes essentially the same relationship-oriented conception of *ubwiyunge*. As discussed in the previous chapter, the *gacaca* system is designed to facilitate restoration of the social relationships damaged by the

¹² Accessed on 14 March 2009.

genocide, by addressing reparative and restorative dimensions of justice for the people and the community involved. What is considered as central to the process of 'reconciliatory justice' is a transaction of apology and forgiveness between the perpetrator and the survivor of genocide. A strong emphasis on this forgiveness-centred conception of reconciliation in the *gacaca* process is clearly evidenced by the inclusion of the Confession, Guilty Plea, Repentance and Asking for Forgiveness Procedure in the present *gacaca* law.¹³

Acknowledgement of wrongdoings by the perpetrator and sincere pardon by the victim, based on perpetrators' remorse, are presumed in this particular procedure as conditions for reconciliation. Victims are expected to offer forgiveness to these repentant perpetrators for reconciliation to be achieved.

2.2. Reconciliation for Whom?

The official discourse of national unity and reconciliation avoids specifically discussing *who* needs to be reconciled with *whom* in today's Rwanda. In interviews of several government officials, there were two typical answers to this question. The first answer was an expression referring to all Rwandans, such as 'Rwandans from all walks of life'. The second answer was one which rejected or downplayed the Hutu – Tutsi dimension of reconciliation. Representing the NURC, Ndagiza also responded to the question of *who* in reconciliation in line with these typical answers. Speaking of her own experience as a child of a Tutsi refugee who was forced to flee Rwanda in 1959, she stressed that the challenge of reconciliation is concerned with 'all Rwandans':

When we talk about reconciliation in Rwanda, we are not stressing it for ninety-four event. We go back. Pre-colonial era to the present day. [...] For example, in 1959, my father was forced to flee the country against his will. I

¹³ Articles 12 -16 of Organic Law N° 13/2008 of 19/05/2008

grew up in a refugee camp in another country. I was denied the right to come back to my country. [...] Now that I'm back, I could have hatred about the whole regime that chased my father away or the people who stayed in the country, the people who might have taken away my father's property. So maybe I need reconciliation with the people I find in Rwanda. [...] So there needs to be reconciliation between us, Rwandans of different backgrounds.¹⁴

After stressing the need for reconciliation for 'all Rwandans', Ndangiza moved on to utter another typical answer to the question of *who* in reconciliation in Rwandan society:

When you talk about reconciliation in Rwanda, what often comes to your mind is the Hutu and the Tutsi. But it's beyond that because personally I don't have a grudge on any Hutu, but I have a grudge on the past of this country, the past that denied me the right to live in my country. So it depends on what you feel is the barrier to reconciliation from any perspective.

Several other government officials interviewed also downplayed or rejected the Hutu/Tutsi dimension of reconciliation in their responses to the question of *who*.

2.3. One-Sided Framework of Reconciliation

As the statements of the two commentators stressed, reconciliation is a challenge for all Rwandans, given that none of them are free from the legacy of violent conflict. The importance of recognising the complexities of reconciliation in Rwandan society cannot be overemphasised. It is certainly much broader and more complex than relationship-building between the perpetrator and the survivor of genocide or between Hutus and Tutsis. Also, in post-genocide Rwanda, the question of *who* remains highly contentious in unity and reconciliation efforts as much as in the justice-related efforts discussed in the previous chapter. Addressing the issue of *whose* relationships need to be

¹⁴ Interview in Kigali, 12 Dec 2002.

mended at the interpersonal or community levels would necessitate difficult and painful interpersonal confrontations between former enemies or between perpetrators and victims. It would also require all the parties involved to agree on specific aspects of the past, those concerning the sufferings of not only one side but both or all sides.

Despite the government's slogan of 'reconciliation for all Rwandans', the *gacaca* process and other community-level reconciliation initiatives promoted by the government only look at the issues of reconciliation that arose out of the genocide and other atrocities committed by the former Hutu regimes. Here we can see a close parallel between the government's efforts at post-genocide justice and those of unity and reconciliation for the last 15 years. The previous chapter highlighted the fact that issues of human rights abuses committed by the RPF/RPA, the national army of the post-genocide government, are mostly neglected in the government's efforts at post-genocide justice. Similarly, such issues are rarely mentioned as those relevant to national or community reconciliation in official documents or addresses; when they are mentioned, it is in the context of rejecting them as irrelevant or denouncing the people who raised them.

There are two cases to illustrate this point. The first case concerns the issue of remembering non-genocide victims who were killed by atrocities committed by members of the RPF. One evaluation report of the NURC (2004b, 14) comments on 'some people' who 'do not make any difference between genocide and other crimes committed during the war in which [...] civilians were forcefully involved and killed'. The report declares that the present government is 'determined to remember and to bury in dignity' only the victims who were brutally murdered in the atrocities committed by the previous governments, even

though ‘this does not mean that whoever has lost his/her relative during the war cannot bury him/her in dignity’ (ibid). The second case in point concerns the issue of state compensation to so-called innocent prisoners of genocide, the people who have been found innocent after prolonged detentions. Despite the fact that these people did seriously suffer from their detentions without formal charges for many years after the genocide, their suffering has never been officially acknowledged as something which deserves a measure of reparation such as financial compensation and public apology by the Rwandan state. When asked about the government’s view on state compensation for innocent Rwandans’ prolonged detentions, a high-level official of the National Service of Gacaca Courts (NSGC) rejected even the possibility of considering it:

It’s really impossible. Since we don’t have compensation for victims [of genocide], how can we give it to those people who are not victims? They would have died in prison if *gacaca* had not taken place.¹⁵

The official’s reaction seems to show a negative attitude of the government toward the issue of reparative measures, such as compensation and apology for innocent genocide prisoners, and toward the possibility of commemoration for so-called victims of the war. In post-genocide Rwanda, there are few people who dare to raise these issues in public. This is because, as will be discussed in detail shortly, making such a speech can be done only at the risk of criminal prosecution, as it can be interpreted by government authorities as a speech to spread ‘divisionism’ or ‘rudely minimise’ the genocide and the suffering of its victims.

There is an apparent contradiction between the two kinds of reconciliation promoted by the government for the different levels of society: the vision of national reconciliation is essentially about the creation of an inclusive society for

¹⁵ Interview in Kigali, 20 Jan 2009.

all Rwandans, while the kind of reconciliation implicit in the *gacaca* process assumes a crude dichotomy between two sides divided by the genocidal violence, those on the side of perpetrators and those on the side of victims. What is presumed to be required for reconciliation in the latter situation is perpetrator side's acknowledgment of its wrongdoing, request for forgiveness, and provision of reparations, with the victim's side offering forgiveness in response. However, issues of reconciliation which are of profound importance for those classified under the perpetrator side, whatever crucial implications those issues may have for reconciliation at the community and national levels, are totally obliterated in the official discourse on national unity and reconciliation (e.g. reconciliation between the victims of RPF crimes and those accountable for them or between innocent genocide prisoners who were wrongly incarcerated and the Rwandan state which is responsible for their situation). If we accept that the history of ethno-political violence in Rwanda cannot be reduced to simply that of genocide and that social relations in Rwanda are not simply those of victim versus perpetrator, the slogan of 'reconciliation for all Rwandans' is no more than empty rhetoric until the current framework applied to reconciliation is broadened in scope and complexity.

3. Reconciliation and the Politics of National Identity Building

The government's structure-oriented conception of national reconciliation stresses national identity building as its central component. As suggested in this chapter's introduction, this strong emphasis on forging a national identity can be seen as the government's central response to the paramount problem of the Hutu/Tutsi divide that is based on racialised ethnic identities. The following sections will sketch out four interconnected themes underlying the government's

national identity building endeavour. In the view of the government, all four themes are essential ingredients of its project to replace the 'divisive' ethnic identities with a unified national identity for all Rwandans.

3.1. Instilling the Official Historical Narrative

The official historical narrative promoted by the Rwandan government has been outlined by several authors, including Des Forges (1999), Eltringham and Van Hoyweghen (2000), Pottier (2002), Eltringham (2004), Longman and Rutagengwa (2004) and Hintjens (2008a, 2008b).¹⁶ The narrative is often articulated in public addresses by President Kagame himself. In a 2005 speech on the theme of national reconciliation, Kagame maintained:

The truth is that the Bahutu, Batutsi, and Batwa form one ethnic group – the Banyarwanda, sharing the same language, culture, [and] history, and they have always lived in the same geographical location. [...] Although the Bahutu, Batutsi, and Batwa entities existed, they were not primary identities [...] In fact, the Rwandan identity reference was the clan first. Then, depending on their social status and their proximity to the monarchy and ruling clan, they could be identified as Bahutu, Batutsi, or Batwa. But the Belgian colonial administration chose to create artificial divisions among Rwandans that reflected their own bitter divisions in their country, and that would obviously facilitate colonial exploitation and subjugation.

This particular portion of Kagame's speech contains three key elements of the official historical narrative: 1) there was unity among Rwandans in the pre-colonial era who shared the same language, culture, history and territory; 2) distinctions between the categories of people called Hutu, Tutsi and Twa were not a primary identity for Rwandans; 3) it was White colonisers who created the myth of ethnicity and imposed 'artificial divisions' on Rwandan society as part of their divide and rule policy.

¹⁶ Also see *The Unity of Rwandans* (Rwanda 1999) for the official version of the Rwanda history discussing pre-colonial unity among Rwandans.

The next portion of Kagame's speech reveals other important elements of the official historical narrative, asserting the link between the divisive colonial legacy and the 1994 genocide:

Successive post-colonial governments politicised these Eurocentric perceptions and ended up rupturing the social cohesion of the Rwandan society. They promoted an ideology that entrenched differences, created institutions that marginalized and discriminated against one section of Rwandan society, the Batutsi, and rewarded injustices and human rights abuses committed against them. [...] So, from a divisive colonial legacy and subsequent chronic bad governance, Rwanda was plunged in 1994 into a genocide, which goes down in the annals of human history as the most brutal, and the fastest.

Here, two particular conditions are blamed as responsible for the genocide: 'a divisive colonial legacy' and 'subsequent chronic bad governance' of the post-colonial governments, with the latter characterised by discrimination and injustices against Tutsis. In this part of the speech, another key element of the official historical narrative is also stressed: that is, in the history of Rwanda, there is 'a single, coherent and consistently victimized group' (Eltringham and Van Hoyweghen 2000, 226), identified in the President's own words above as 'the Batutsi'. After the attacks against Tutsis in 1959, argues the official narrative, 'almost in a regular manner, killings of the Batutsi became a habit' (Official website of the government of the Republic of Rwanda).¹⁷ The political upheaval in 1959 is presented as the beginning of the Tutsi genocide. Based on this particular reading of Rwandan history, the government asserts that, for the pre-existing unity among Rwandans to be restored, it is imperative to inculcate 'undistorted' Rwandan history into the minds of Rwandans.

Longman and Rutagengwa (2004) maintain that while the official narrative

¹⁷ History section of the official website of the government of Rwanda <<http://www.gov.rw/>>, accessed on 12 March 2009.

is widely supported by a small but powerful minority of former Tutsi refugees who have returned to Rwanda since the end of genocide, it is not in harmony with how many other Rwandans understand Rwandan history. In the academic world, most scholars support the government's view that social categories of Hutu, Tutsi and Twa were rigidified and racialised during the colonial period through the divisive policies of the Belgian administration (Prunier 1995; Newbury 1988; Taylor 1999; Newbury and Newbury 1999; Mamdani 2001; Eltringham 2004; Vansina 2004; Straus 2006; Hintjens 2008a). However, most of these scholars also reject the notion of pre-colonial harmony among Rwandans as it is portrayed in the official narrative, pointing out the existence of pre-colonial ethnic cleavages and even the use of ethnic differentiation by the Tutsi monarchy to rule the population (Newbury 1988; Vansina 2004). Rwandan scholars living in Rwanda generally support the view of the RPF regime (Shyaka 2005; Byanafashe 1997 quoted in Longman and Rutagengwa 2004, 164-5).

Despite the contested nature of the official historical narrative, the government has been promoting it as the only acceptable version of the country's history which must be taught to 're-educate' the population and correct 'their false perception of their national history' (NURC 2003a, 26). NURC's programme of solidarity camps, or *ingando*, for demobilised soldiers, released genocide prisoners, students, teachers and community-level leaders has been instrumental in disseminating a simplistic and yet politically correct version of Rwandan history as the basis of national unity and reconciliation (PRI 2004a; Mgbako 2005).¹⁸ Although the government downplays unresolved divisions

¹⁸ Mgbako (2005, 218) quotes a former solidarity camp participant as saying:
At *ingando*, they taught us ... the idea of ethnicity within Rwanda was a colonial concoction The colonialists brought these ideas so that they could strengthen their politics....I knew that we spoke the same language and had the same culture so I didn't understand when people spoke of different ethnic groups in Rwanda. What difference does it make if you have a thin nose or a flat nose? ...[A]fter *ingando* I identify only as Rwandan.

along ethnic lines in Rwandan society, eliminating what it considers the myth of ethnicity remains one of its key objectives in order to replace 'divisive' ethnic identities created by colonisers with a single unifying identity of *ubunyarwanda*.

3.2. Establishing Good Governance

Good governance based on the rule of law is another key theme in the official discourse on national unity and reconciliation, and as indicated earlier, it is also a key component of the government's structure-oriented conception of national reconciliation. The importance of establishing good governance is part of the government's effort to address the root causes of the genocide: the divisive colonial legacy and the bad governance of the post-colonial era. It is 'bad governance' that 'created conditions conducive to the rise of the premises of the ideology of genocide' such as 'injustice, inequalities and identity-based violence, etc' (Rwanda 2006, 219). Hence, establishing good governance in post-genocide Rwanda is a major objective of the present government, which defines itself as a government fighting against genocide and for national unity and reconciliation. The new Constitution adopted in the referendum of 26 May 2003 declares in its Preamble as well as in Article 9 that the state of Rwanda commits itself to good governance based on the rule of law and pluralistic democracy.

3.2.1. The Rule of Law

The government argues that the rule of law constitutes a fundamental principle of its governance. At least two aspects of the rule of law are emphasised: the separation of powers and the freedoms, rights and duties that are enshrined by the law for all citizens of the country. Article 60 of the Constitution stipulates the separation of three powers, namely the legislative, executive and judicial powers.

The Article states: 'The three branches are separate and independent from one another but are all complementary'. Articles 10 to 51 stipulate fundamental human rights (Articles 10 – 44)¹⁹ and 'the rights and duties of the citizen' (Articles 45 – 51).²⁰ Throughout these Articles, the Constitution repeatedly emphasises the fundamental ethos of new Rwandan society that all Rwandans are 'free and equal in rights and duties' before the law (Articles 11 and 16). Accordingly, claims a 2006 Parliamentary Report entitled *Genocide Ideology and Strategies for Its Eradication*, the present government has taken a radical departure in its governance from the previous governments which were characterised by the negation of human rights to the extent of committing genocide against their own citizens and by 'the concentration of powers in the Executive in a truly dictatorial context' (Rwanda 2006, 222-3).

The Constitution states clearly that the individual's rights and freedoms stipulated in the above-mentioned Articles are protected by the judiciary 'in accordance with procedures determined by law' (Article 44). In addition to the judiciary that is defined as 'the guardian of rights and freedoms of the public' (ibid), the government has established two 'independent' national organs for protecting and promoting human rights and for fighting against injustice, corruption and other forms of power abuse. The first organ is the National

¹⁹ Rights listed include the right to life, the right to education, the right to physical and mental integrity, the right to fight against arbitrary arrest and detention, the right to marriage between a man and a woman based on free will, the right to move, the right to asylum, the right to private property, freedom of thought, opinion, conscience and religion, freedom of the press, freedom of speech, freedom of association and assembly, the right to free choice to employment, and various rights guaranteed for workers.

²⁰ Citizens' rights and duties include the following: 'the right to participate in the government'; 'the right of equal access to public service'; 'the duty to relate to other persons without discrimination and to maintain relations conducive to safeguarding, promoting and reinforcing mutual respect, solidarity and tolerance'; 'the duty to participate, through work, in the development of the country, to safeguard peace, democracy, social justice and equality and to participate in the defence of the motherland'; 'the duty to respect the Constitution, other laws and regulations of the country'; 'the right to defy orders received from his or her superior authority' if the orders constitute violations of human rights and public freedoms; the right to 'a healthy and satisfying environment' as well as 'the duty to protect, safeguard and promote the environment'; and 'the right to activities that promote national culture'.

Commission for Human Rights (NCHR). Established in March 1999,²¹ the NCHR has been given a mandate to: raise human rights awareness of the population; examine human rights violations committed by state institutions and their officials; and investigate them and lodge complaints with competent courts (Article 177 of the Constitution). The second special organ which concerns the protection of citizens' rights as well as the fight against injustices such as the violations of those rights is the Office of the Ombudsman. The Office was established in 2004 after its mandate of 'preventing and fighting against injustice, corruption and other related offences in public and private administration' was stipulated in the Constitution.

There are concerns over some aspects of these government measures to champion the rule of law and human rights in post-genocide Rwanda. The first set of concerns is about restrictions imposed on freedoms and rights in the name of national unity. As indicated above, the new Constitution guarantees freedoms as well as equality in rights and duties before the law. While guaranteeing the freedoms of its citizens, the Constitution gives the state the role of determining the scope of these freedoms according to the laws it adopts.²² Particularly important to our discussion here are restrictions imposed in the name of national unity or the fight against divisions. In Article 33, a statement which guarantees freedoms of thought, conscience, religion and more is conditioned by another

²¹ Law N° 04/99 of 12/03/1999

²² See the statements attached to the Articles on some fundamental freedoms guaranteed by the Constitution:

- 'Freedom of thought, opinion, conscience, religion, worship and the public manifestation thereof is guaranteed by the State in accordance with conditions determined by law.' (Article 33)
- 'Freedom of the press and freedom of information are recognized and guaranteed by the State. [...] The conditions for exercising such freedoms are determined by law' (Article 34)
- 'Freedom of associations is guaranteed and shall not require prior authorization. Such freedom shall be exercised under conditions determined by law'. (Article 35)

statement which stipulates that propagation of ethnic, regional or racial discrimination, or any other form of division, is punishable by law. The government considers it imperative to strictly control types of freedom (e.g. freedom of speech, freedom of press, etc.) which can be abused to fuel conflict and divide the population, based on the country's experiences of the early 1990s which culminated in the genocide (Rwanda 2006, 232). This is certainly a legitimate concern from the viewpoint of preventing the recurrence of violent conflict. However, as will be discussed in detail shortly, the problem is that what constitutes 'division' or 'discrimination' is left ill-defined in relevant laws and thus open to arbitrary interpretation by authorities.

The second set of concerns is about the reality of separation of powers as well as the independence of 'independent national institutions' such as the NCHR and the National Electoral Commission (NEC). There are signs suggesting that the executive power enjoys supremacy over both the legislative and judicial powers, thereby undermining separation of powers in Rwanda (IRDP 2005, 55-64). The executive power vested in the President of the Republic and the Cabinet has supremacy over the legislative power vested in the Parliament by the lack of full autonomy of the NEC from the executive power (59). Thus the executive power influences the structure of the Parliament despite the fact that the Parliament has the mandate to oversee executive action (Article 62 of the Constitution). Moreover, with regard to deliberation and passing laws, there is a concern that the Parliament has more or less been content with its predominantly passive role of 'approv[ing] the bills prepared by the executive power' (IRDP 2005, 61),²³ even though the parliamentary committees 'have begun to question ministers and other executive branch officers more

²³ IRDP (2005, 60) points out that '[o]f all the laws adopted by the members of Parliament from 1994 up to 2003, the members of Parliament have never suggested any'.

energetically' in recent years (Freedom House 2009).

The executive power also maintains a grip on the structure of the judiciary by exercising significant influence over the appointment process for the President, Vice-President, and magistrates of the Supreme Court.²⁴ Furthermore, the government interference with the judicial system has been discussed repeatedly by human rights bodies (AI 2004; HRW 2005; HRW 2008a). Human Rights Watch, in its 2008 report on Rwanda's progress in judicial reform, described many cases which illustrate that 'the judiciary remains largely subordinate to the executive branch and even to elite unofficial actors who enjoy both economic and partisan political power' (2008a, 44).

The NCHR, although it is an organ which is in theory independent from the government, is accused by critics of being 'essentially government-steered', incapable of operating 'independently' (Reyntjens and Vandeginste 2005, 121) and even of being 'compliant, going along with the strategy of criminalizing Kagame's political opponents' (Hintjens 2008a, 19). For example, in December 2002, the government did not reappoint the NCHR's first president, a 'well-respected human rights defender' who had led a human rights NGO in Belgium, because the commission's 2002 report 'had been too critical of some government officials and military officers' (Front Line 2005, 36). After a new president was appointed in 2003, the NCHR became less critical about human rights records of government organs but increasingly vocal in denouncing political opposition and some civil society actors as those inciting 'divisionism'.

3.2.2. Consensual Democracy

As mentioned above, the state of Rwanda upholds multi-party democracy as one

²⁴ It is the President of the Republic who proposes the names of candidates for the positions of Supreme Court President, Vice-President and other magistrates who are then elected by the Senate (Articles 147 and 148).

of its fundamental principles, as articulated in the 2003 Constitution (Preamble, Articles 9 and 52). The 2006 Parliamentary Report proclaims, 'Democracy is the only political system where good governance is possible and is implemented' (Rwanda 2006, 226). The Constitution guarantees the involvement of Rwandan citizens in the election of their legislative and executive leaders. With regard to legislative leaders, 53 out of 80 members of the Chamber of Deputies, or lower house, are elected by popular vote, while 24 women are elected by representatives of local governments and women's organisations, and three members are elected by youth and disability organisations (Articles 76 and 77). All of them serve five-year terms. The Senate, or upper house, consists of 26 members for an eight-year term, 12 of whom are elected by local councils, eight appointed by the President, four chosen by a forum of political organisations and two chosen by universities (Article 82). With regard to executive leaders, the President of the Republic is elected by popular vote for a seven-year term (eligible for a second term), while '[t]he members of the Cabinet are selected from political organizations on the basis of their seats in the Chamber of Deputies' although competent non-politicians may be appointed to positions in the Cabinet (Articles 100, 101, 116). 'All of these provisions', claims the government, 'are perfectly in line with the promotion of political representation in compliance with the requirements of democracy' (Rwanda 2006, 228).

Kagame (2005) has stated clearly that the form of democracy which Rwanda must embrace is different from what he has called '[t]he winner-takes-all kind of Western democracy'. Western democracy, he has said, 'was not judged to be an appropriate model in our situation where all facets of our society need to have a stake in governance, and certainly not in the wake of a bitter and violent conflict'. Accordingly, the government maintains that the political system it

champions under the post-genocide Constitution is underpinned by its determination 'to avoid, as much as possible, monopolisation of power by one political organisation' and 'to associate other political forces in the management of the country' (Rwanda 2006, 228). This government's vision of 'consensual democracy' is demonstrated in several provisions in the Constitution; for example, one provision prohibits any single political party from occupying more than half of the existing positions in the Cabinet (Article 116), and another requires all the political organisations officially recognised in the country to 'organize themselves in a consultative forum' (Article 56), currently chaired by the RPF Secretary General.²⁵ Furthermore, the Constitution stresses that political organisations must not 'destabilise national unity' for them to be allowed to operate in the country (Article 52).

Given the legacy of violent power struggle between political parties on the eve of independence and during the crisis in the early 1990s, the government's concern that excessive political competition could lead to violent conflict is legitimate. However, excessive emphasis on notions such as consensus, unity and harmony can serve as a good excuse for those in power to impose restrictions on activities of other political parties and even on freedoms of speech and association. The European Union's observer mission for the 26 May 2003 referendum on the new Constitution expressed concern that 'the restrictions in the constitution...limit the freedoms of expression and association, as well as party political activities' and that 'the restrictions of the activities of parties on the ground have frozen the political game and reinforced the position of the RPF' (quoted in Reyntjens 2004, 185). The avoidance of competition between political

²⁵ The forum is expected to be responsible for: 1) 'facilitating exchange of ideas by political organizations on major issues facing the country'; 2) 'consolidating national unity'; 3) 'advising on national policy'; 4) 'acting as mediators in conflicts arising between political organizations'; and 5) 'assisting in resolving internal conflicts within a political organization upon request by that organization' (Article 56).

parties in the name of national unity seems to have helped the ruling RPF consolidate and perpetuate its dominance over Rwandan politics.

3.3. Fighting against ‘Divisionism’ and ‘Genocide Ideology’

The government has taken a range of measures to eradicate various forms of discrimination, ‘divisions’ and what it calls ‘genocide ideology’ from Rwandan soil. One of the first actions the post-genocide transitional government officially took was to remove ethnic identity as well as region of origin from people’s identity cards so that this information is ‘no longer used as a tool for allowing special favours or discrimination’ (NURC 2002a, 13). The infamous quota system for education according to ethnic identity and region was also abolished so that admission to schools is now determined solely based on the merits of pupils (11). Since 2002, the government has introduced several pieces of legislation to criminalise speeches and acts that are deemed to promote discrimination, ‘divisionism’ and ‘genocide ideology’.

3.3.1. Laws on Divisionism and Genocide Ideology

In December 2001, Rwanda adopted a law for punishing any speech or action interpreted as promoting discrimination or sectarianism (now called ‘divisionism’).²⁶ Under this law, persons found guilty of ‘sectarianism’ are liable to a maximum five years imprisonment and to the loss of their civil rights, while associations, political parties or NGOs condemned for the same charge may be either suspended and fined or dissolved. Ndagiza, NURC’s Executive Secretary, explained the purpose of the anti-discrimination law as part of the government’s effort at attaining equality, unity and reconciliation among Rwandans:

²⁶ Law N° 47/2001 of 18/12/2001

There shouldn't be any form of discrimination. Recently, we've advocated for the enactment of [a] law on discrimination because [...] as much as we educate people about reconciliation and unity, it's important to have a law in place so that perpetrators of discrimination can be punished.²⁷

During the interview in December 2002, Ndagiza suggested that then upcoming 2003 elections were clearly in sight as the background to the government's adoption of this law. She said that the law would play a vital role in suppressing any political force that promotes 'divisionism'. 'Nobody should come up with an ideology that divides people. [...] We will tell the people, "Look, if you promote any form of discrimination, this law will punish you!"'.

In the 2003 Constitution, 'fighting the ideology of genocide and all its manifestations' and 'eradication of ethnic, regional and other divisions and promotion of national unity' are stated as the first two of six 'fundamental principles' guiding the state of Rwanda (Article 9). Accordingly, the Constitution stipulates that 'revisionism', 'negationism' and 'trivialisation of genocide' as well as 'propagation of ethnic, regional, racial discrimination or any other forms of division' are punishable by law (Articles 13 and 33). A law promulgated in November 2003 regarding 'repressing the crime of genocide, crimes against humanity and war crimes'²⁸ stipulates that persons convicted of having publicly 'negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds' or for having 'hidden or destroyed its evidence' are liable to imprisonment for 10 to 20 years (Article 4).

While fighting against discrimination and acts or speeches that incite others to genocide is a commendable effort, there is also a serious downside to the measures the government has adopted toward that goal. One major problem is that because ill-defined terms such as 'divisionism' and 'genocide ideology' are

²⁷ Interview in Kigali, 12 Dec 2002

²⁸ Law N° 33 bis/2003 of 06/09/2003

open to various interpretations, related charges can be and actually have been used by the ruling RPF party to disqualify political opponents, eliminate internal dissidents and suppress criticisms against its actions and policies (Reyntjens 2004; Zorbas 2004; HRW 2008a).

The term 'sectarianism' (now replaced by 'divisionism') is defined vaguely in the 2001 anti-discrimination law as 'the use of any speech, written statement of action that divides people, that is likely to spark conflicts among people, or that causes an uprising which might degenerate into strife among people based on discrimination' (Article 1). The term 'genocide ideology' has been a part of everyday language in Rwanda for several years; in public meetings and in the media, government officials and politicians as well as clergy have been denouncing various actions as manifestations of 'genocide ideology' (HRW 2008a). Its legal definition was finally promulgated in October 2008 with the publication of the law on 'the punishment of the crime of genocide ideology'.²⁹ In Article 3 of this law, characteristics of the crime of genocide ideology are described as follows:

The crime of genocide ideology is characterized in any behaviour manifested by facts aimed at dehumanizing a person or a group of persons with the same characteristics in the following manner:

1. threatening, intimidating, degrading through defamatory speeches, documents or actions which aim at propounding wickedness or inciting to hatred;
2. marginalising, laughing at one's misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred;
3. killing, planning to kill or attempting to kill someone for purposes of

²⁹ N° 18/2008 of 23/06/2008. The law was adopted by the parliament in June 2008 and promulgated in October 2008 through its publication in the Official Gazette of the Republic of Rwanda.

furthering genocide ideology.

Rwandan authorities are reported to be expecting this law to serve a similar function as that of laws prohibiting Holocaust denial elsewhere in the world. However, according to Human Rights Watch (2008a, 42), 'it is written in far broader terms than even laws banning incitement to racial hatred, and can cover a very wide range of speech that is unquestionably protected by international convention'. Consequently, the human rights body warns, 'the public faces the very real danger that any political criticism of the government will be construed as fomenting genocide' (HRW 2009b).

3.3.2. *The Crusade against Divisionism and Genocide Ideology*

In the past several years, allegations of 'divisionism' or 'genocide ideology' have been directed at political opponents, human rights activists and journalists who have criticised policies or conduct of the regime.³⁰ The first major allegation of 'divisionism' was directed at Pasteur Bizimungu, a prominent Hutu member of the RPF and President of Rwanda from 1994 to 2000, as well as his allies after the launch of the opposition party *PDR-Ubuyanja* in 2001 (ICG 2002). The party was banned and at least 25 of its leaders and supporters, including Bizimungu, were arrested and accused of promoting divisions among Rwandans, undermining national security, and engaging in unlawful political activities (12, 30-1).³¹ In June 2004, after nearly one and a half years in detention, Bizimungu was tried and condemned to a fifteen-year prison sentence for 'embezzling state funds, disseminating literature to incite public violence and forming a militia

³⁰ See ICG 2002; HRW 2003, 2004, 2008a; AI 2005; Reyntjens 2004; Front Line 2005; Waldorf 2007; Hintjens 2008a.

³¹ International Crisis Group (2002, 31) commented in its November 2002 report that:
[...] the real problem lies in the issue of electoral competition. The PDR is recruiting as many Hutus as Tutsis and its leader, who served the RPF leaders for years, is also capable of building an extended support base among Hutus. Thus, he would have been a serious challenge running against Paul Kagame in the upcoming presidential elections.

group that threatened state security' (IRIN 2004).³² His associates were also condemned to lengthy prison sentences.

The crusade against 'divisionism' and 'genocide ideology' was intensified during the period leading up to the 2003 presidential and parliamentary elections. In March 2003, a parliamentary commission urged the government to abolish the *Mouvement Démocratique Républicain* (MDR) in its report condemning the political party, then largely seen as the only contender strong enough to challenge the RPF dominance in the upcoming election. The report claimed MDR was promoting 'genocide ideology' and creating divisions in Rwandan society (HRW 2003, 4-7). Specific charges of 'genocide ideology' made against leaders and supporters of the MDR included minimising the genocide, claiming that the RPF atrocities also constituted a genocide, and opposing compensation to genocide survivors as well as dignified reburials of bodies of genocide victims (6). Furthermore, in the same report, the parliamentary commission accused the MDR of opposing government programmes such as administrative decentralisation, genocide trials through *gacaca* courts, and instalment of the Local Defence Force (a local militia organised by the government). These accusations created an impression that criticising or simply not supporting government policies would constitute 'divisionism' (ibid).

This particular wave of the anti-divisionism/genocide ideology campaign in 2003 included not only the dismantling of the MDR but also a number of arrests, 'disappearances' and flights of supporters before the elections. The ban on the MDR forced former Prime Minister Faustin Twagiramungu, the only serious opposition contender to challenge Kagame's presidency, to stand as an independent candidate. During his severely restricted election campaign with 'no

³² Bizimungu was released from jail in April 2008 after receiving a presidential pardon three years into his sentence (FH 2007b).

airtime, no money, and no posters' (Prunier 2009, 295), Twagiramungu was repeatedly accused by government leaders and organs, including the NURC and the NCHR, of 'promoting ethnic divisions and denying the genocide' despite the fact that he was among those Hutu politicians who were targeted during the genocide (Front Line 2005, 16). During the campaign of parliamentary election that same year, the accusation of 'divisionism' was also made against the Liberal Party, the party whose political constituency is largely from genocide survivors, for 'focusing on survivors' concerns' (17).

In the middle of the 2003 election period, Uvin (2003b, 1) issued the following statement that was directed to the international donor community in Rwanda:

As predicted, what Rwanda is currently going through is not a process of democratization as much as a formal election painted on top of an increasingly totalitarian state. The closing off of all political space, the maintenance of a climate of fear, the intimidations and disappearances of potentially critical voices, the banning of the sole opposition party with some possible popular grounding, the attacks on key civil society organizations and the further muzzling of the press – all point to the undeniable fact that there is, in 2003, no free choice in Rwanda. As a matter of fact, this year of so-called democratization has seen an actual reduction in political space.

The EU election observer mission stated in its final report that '[t]he accusations of separatism and divisionism, grave accusations within the Rwandan context, had a tendency to be utilized as an argument to limit political opponent's freedom of speech during the electoral campaigns' (quoted in Front Line 2005, 18). Consequently, the end of the transition period was marked by an outright electoral victory of incumbent President Kagame, with 95 percent of the vote, and a renewed domination of the RPF over parliamentary seats. Reyntjens (2004, 186) commented as follows:

The RPF and a few small parties on its ticket gained about 74 percent of the vote, while the Social Democratic Party (PSD) won about 12 percent and the Liberal Party (PL) about 10 percent. As the latter two supported the RPF's candidate at the presidential poll, all the elected candidates form part of one and the same alliance. In addition, most of the MPs indirectly elected by organizations of women, youth and the disabled are members or sympathizers of the RPF. Rwanda has thus returned to a situation of *de facto* one-party rule.

After the internal political opposition was crushed, a broad array of civil society organisations found themselves to be major targets at which allegations of 'divisionism' and 'genocide ideology' were directed in the following years. In its June 2004 report, another parliamentary commission created for investigating killings of genocide survivors and other cases of 'genocide ideology' reported hundreds of cases of violence, threats and harassment against genocide survivors. The report called not only for measures to suppress these abhorrent violations against genocide survivors but also for the dissolution of five civil society organisations and the arrest of their leaders. The organisations included LIPRODHOR (*Ligue pour la Promotion et la Défense des Droits de l'Homme*), which was known as the only independent Rwandan human rights organisation (Front Line 2005, 21). With little or no verification, the report also made sweeping accusations of 'sowing division within the Rwandan population' against some international NGOs (INGOs) that were known for promoting rights-based development in collaboration with their local partners (21, 84-90).³³ Consequently, the work of these local and international NGOs was severely curtailed. LIPRODHOR lost not only its staff who went into exile after being

³³ The organisations named were CARE, TRÓCAIRE, 11.11.11 and Norwegian People's Aid. See Front Line (2005, 84-90) for descriptions of these INGOs. One of the allegations levelled against these INGOs reads:

These organisations give financing (or aid) based on a criterion of ethnic divisionism but also they are characterized by collaboration with small groups ... of Rwandans who fight the programme of unity and reconciliation for Rwandans [and] who decide that other associations cannot receive financing from these [international] NGOs.

(quoted in Front Line 2005, 84).

named in the report but also its independence as its leadership was replaced by persons 'reportedly hand-picked by the government' (50). The INGOs named in the report were forced to halt or substantially reduce their rights-based development programmes, and some of the local associations named in the report were dissolved, suspended or forced to curtail their activities (41-3, 57-66). The commission also charged a wide range of Christian churches, journalists running an independent newspaper (*Umuseso*), and international radio stations (BBC, Voice of America, Radio France Internationale) with either harbouring or spreading 'genocide ideology'.³⁴

The crusade against 'genocide ideology' continued in 2008, the year of parliamentary and local government elections, this time focusing on related allegations in schools. A parliamentary commission established for investigating 'genocide ideology' in Rwanda's education sector reported in December 2007 that it had observed 'genocide ideology' in 84 of the 637 schools in Rwanda (FH 2008a). Specific manifestations of 'genocide ideology' the commission identified included the circulation of anonymous letters denigrating or threatening Tutsi students or inciting violence against them and the preparation of lists of Tutsi students to be killed. In the face of sweeping criticism for its leaving the 'genocide ideology' unchecked in Rwandan schools, the Ministry of Education was compelled to take stringent measures to uproot it.³⁵ In January, following the release of the report, dozens of teachers were fired for 'conveying genocide ideology' to their students (FH 2008b). The ministry announced that student

³⁴ Bishops of the Catholic Church in Rwanda, the largest Christian denomination in the country, issued a public response to the parliamentary commission's report. In the response, the Bishops described the report as a 'hastily prepared' one which 'could serve as a pretext to spread rumours, [and] pre-judge people' and insisted that 'No one has the right to attribute to another person, identified by name, a genocidal ideology without having certain and irrefutable proof'(quoted in Front Line 2005, 27).

³⁵ *The New Times*, the newspaper affiliated with the government, reported that 'lawmakers, at one time, insinuated that Mujawamariya [the Minister of Education] could herself be harbouring genocide ideology' because of her inaction in response to the accusations (NT 2007b).

behaviours would be monitored daily by school committees (Mukombozi 2008) and that the 2008 law on ‘the punishment of the crime of genocide ideology’ would be taught in all the schools (FH 2008b). During the period of annual genocide commemoration in April 2008, all primary and secondary school teachers across the country were enrolled in solidarity camps to receive training in fighting against ‘genocide ideology’.

The crusade against ‘divisionism’ and ‘genocide ideology’ in recent years has created an atmosphere of fear in Rwandan society as ‘[r]umors abound that the current government is encouraging Rwandans to turn in their neighbours and their colleagues who might be seen as harboring such ideology’ (Freedman, et al. 2008, 665). Today, Rwandans know that publicly making the assertion of a social identity other than the officially sanctioned *ubunyarwanda* identity (e.g. tied to religious, ethnic, or other characteristics) will risk an accusation of at the least not putting ‘Rwandan citizenship first’, or at the worst embracing ‘genocide ideology’. Making a reference to terms such as Hutu, Tutsi and Twa in public is not tolerated by government authorities unless doing it serves officially sanctioned purposes such as dismissing them as divisive forms of identities, ‘deny[ing] their salience’ (Hintjens 2008a, 12), or emphasising Tutsis’ victimhood in post-colonial Rwanda in accordance with the official historical narrative discussed above. Individuals who openly disagree with or criticise what the government says or does under the banner of unity and reconciliation – for example, genocide commemoration events, the *gacaca* process of justice and reconciliation or monthly community work called *umuganda* – find themselves a target of public censure for embracing ‘divisionism’ or ‘genocide ideology’, which may result in criminal prosecution.³⁶

³⁶ During a 2008 official genocide commemoration ceremony in the town of Nyamata, the district’s vice-mayor claimed in her speech that the government was well aware that the

3.4. Remembering the Violent Past of Rwanda

Violent events in Rwanda's recent past are still fresh in people's memories. The starkly conflicting narratives of victimhood identified in this study -- the narratives advanced by Tutsi genocide survivors and those presented by Hutus who identify themselves as collective victims of RPF atrocities -- suggest that people remember the same violent periods differently according to their varied experiences with regard to each of the violent events. Memories give a sense of meaning to people's lives and shape their individual and collective identities; however, peoples' identities determine, to a significant extent, things to be stressed and things to be obscured or obliterated in their memories. Given this intimate link between memory and identity, it is not at all surprising to see the Rwandan government making a range of strenuous efforts to direct the ways in which the Rwandan people remember the past.

3.4.1. Efforts to Remember the Genocide

The government's effort to shape the collective memory of Rwanda's violent past focuses on the 1994 genocide. As already discussed, the history of tragic political violence in Rwanda cannot be reduced to the genocide, nor can the narratives of victims in Rwanda's violent past be reduced to those of genocide victims. Thus, the content of official remembrance is a highly contentious issue in Rwanda. The government justifies the focus on the genocide and its victims in official remembrances with multiple lines of argument. First, even though different individuals and groups may have different memories of the nation's

genocide ideology was embraced by some sections of the local population. To substantiate the claim, she gave an example of local people who refused to provide free labour for exhuming corpses of genocide victims based on the information identified by the local *gacaca* court (Author's personal observation during the ceremony).

It is quite possible for people to show uncooperative behaviour in response to a government's instruction to work without payment, even if their opposition has nothing to do with genocide ideology. However, such behaviour in Rwanda can bring accusations of demonstrating that ideology.

violent past, there must be a single 'official remembrance' structured for the sake of national unity and reconciliation. In the process of producing a 'harmonised' official remembrance of the past, 'the diversity of memories is sacrificed on the altar of national reconciliation' (Rwanda 2006, 197). Second, such an official remembrance organised by the Rwandan state must be centred on the genocide and its victims to avoid the trivialisation of genocide, remembering that genocide is not just a crime against its victims but also against the whole of humanity (201). In short, the Rwandan government effectively claims that for the people of Rwanda to be reconciled, there must be a single 'unified' way of remembering the nation's violent past that aligns with the official narrative centred on 'the history of genocide against Tutsis'.

The RPF-led transitional government formed in July 1994 soon began to 'perpetuate remembrance' of the genocide (214). In 1995, an investigative team was formed to make an inventory of the sites of genocidal massacres around the country. Thousands of the sites identified through the investigation have been preserved as memorial sites (215). Some of the sites, including church buildings in which killings took place, were left with human remains as a 'memory marker' of the horrendous acts perpetrated there and at many other places in the country during the 100 days of genocide (Smith and Rittner 2004, 182). Whether the remains of victims should be left exposed at the memorial sites so that nobody can deny what happened there or should rather be buried in a dignified manner has been a controversial issue, with little agreement even among genocide survivors (*ibid*). Several associations of genocide survivors reportedly spoke against the government's policy of displaying the remains of their families, with opposition based on religious and cultural grounds (Rombouts 2004). Many of the sites still display skulls, bones or corpses of victims 'as material proof' of the

horrendous crimes that were committed during the genocide.

The national mourning week has been instrumental in shaping the collective memory of the Rwandan population. The week of 7-13 April is officially designated for commemorating the genocide and its victims as well as for showing solidarity with survivors in mourning. During the week, various commemorative events are organised at different administrative levels throughout the country, and national television and radio broadcasts feature special programmes on the genocide. At the national level, one genocide memorial site is chosen for each year's commemoration ceremony, which is led by the President and attended by high ranking government leaders and dignitaries representing religious institutions, embassies and international organisations. The ceremony, which is broadcast on national television and radio, is marked by official addresses of the President and other national leaders, such as one from the Rwandan Defence Forces, and testimonies of genocide survivors in addition to a burial of victims' bodies that have been exhumed from massacre sites in surrounding areas. It seems that annual genocide commemorations fulfil multiple objectives for the government: articulating the need for strong national unity based on a Rwandan identity cutting across various social divisions; acknowledging the suffering of victims and comforting survivors; confirming the imperative of bringing perpetrators to justice; reasserting the legitimacy of the RPF government as the force which halted the genocide; and reminding various parties constituting the international community of their guilt for inaction or complicity in the genocide.

The creation of the National Commission for the Fight Against Genocide (NCFG) is considered by the government as a major achievement with regard to remembrance (Rwanda 2006, 214). Four years after its general mandate was

stipulated in the 2003 Constitution (Article 179), the commission was established by law in 2007. Responsibilities given to the commission include those directly related to the remembrance of the genocide: establish a national research and documentation centre on genocide; organise activities to commemorate the 1994 genocide; and develop and put in place strategies for fighting against genocide and its ideology as well as any attempt to distort, deny or trivialise the 1994 genocide (Article 4).³⁷ As indicated in these specific responsibilities, the government seems determined to continue sanctioning how the genocide is remembered by present and future generations. The previous chapter mentioned that as the *gacaca* process is approaching completion, the government is preparing for a special archive of the information generated through *gacaca* trials. This is another government's effort at preserving the memories of the genocide.

3.4.2. Competing Conceptions of Genocide

As indicated above, the government's focus on the genocide and its victims in the official remembrance of Rwanda's past is evident. However, exactly what is to be remembered with regard to the genocide has been far less clear in the government's discourse. During the fieldwork in 2002, there was a significant degree of confusion among Rwandan people as to what criminal acts constituted the genocide. Are they primarily the killings of Tutsis – the prime target of the Hutu extremists' plan for extermination? Or do they include the killings of Hutus or Twas who also fell at the hands of *génocidaires*? The observed confusion about the scope of criminal acts constituting the genocide can be partly attributed to the fact that the use of ethnic labels has been avoided in the official

³⁷ Law N° 09/2007 of 16/02/2007

political discourse of post-genocide Rwanda, apart from the specific contexts discussed earlier.

To investigate the scope of criminal acts accepted in the government's discourse on genocide, research for this study examined both the Kinyarwanda and the English versions of the post-genocide legal documents in which the term 'genocide' appears. Table 4 shows that how a Kinyarwanda term used to refer to 'genocide' has changed over the years. Careful review of these documents yielded important insights about competing conceptions of genocide and the politics behind the Rwandan terminology of genocide.

Table 4 Changes in the term referring to genocide in Kinyarwanda texts of post-genocide legal documents in Rwanda

No.	No. and date of promulgation	Title of the law	Term used to refer to 'genocide' in Kinyarwanda text of the law
1	08/96 of 30/08/1996	Organic law on the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity committed since 1 October 1990	<i>itsembabwoko n'itsembatsemba</i>
2	02/98 of 22/01/1998	Law establishing a national assistance fund for needy victims of genocide and massacres committed in Rwanda between October 1, 1990 and December 31, 1994	same as above
3	40/2000 of 26/01/2001	Organic law setting up "GACACA Jurisdictions" and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994	same as above
4	33/2001 of 22/06/2001	Organic law modifying and completing Organic law n°40/2000 of 26/01/2001 (the 3 rd law in this table)	same as above
5	26/2001 of 10/12/2001	Presidential order relating to the substitution of the penalty of imprisonment for community service	same as above
6		The Constitution of the Republic of Rwanda, adopted in the Referendum of 26 May 2003	<i>Jenoside</i>
7	33 bis/2003 of 06/09/2003	Law repressing the crime of genocide, crimes against humanity and war crimes	same as above

8	16/2004 of 19/06/2004	Organic law establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity committed between October 1, 1990 and December 31, 1994	same as above
9	10/01 of 07/03/2005	Presidential order determining the modalities of implementation of community service as alternative penalty to imprisonment	same as above
10	50/01 of 16/10/2005	Presidential order modifying and complementing Presidential Order n° 10/01 of 07/03/2005 determining the modalities for the implementation of community service as alternative penalty to imprisonment	same as above
11	09/2007 of 16/02/2007	Law on the attributions, organisation and functioning of the National Commission for the Fight Against Genocide	same as above
12	10/2007 of 01/03/200	Organic law modifying and complementing Organic law n°16/2004 of 19/06/2004 (the 8 th law in this table)	same as above
13	13/2008 of 19/05/2008	Organic law modifying and complementing Organic law n°16/2004 of 19/06/2004 (the 8 th law in this table) for the second time	same as above
14	18/2008 of 23/06/2008	Law relating to the punishment of the crime of genocide ideology	same as above
15		Amendment of 13/08/2008 of the Constitution of the Republic of Rwanda of 4 June 2003 as amended to date	<i>jenocide yakorewe Abatutsi</i>
16	56/2008 of 10/09/2008	Law governing memorial sites and cemeteries of victims of the genocide against the Tutsi in Rwanda	same as above
17	69/2008 of 30/12/2008	Law relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1 October 1990 and 31 December 1994, and determining its organisation, powers and functioning	same as above

Source: produced by the author based on the legal documents reviewed for this study. Full titles of the documents are provided in the bibliography.

In the 1996 Genocide Law (the first law in the above list), the government adopted one Kinyarwanda phrase to signify the horrendous acts of violence during the 1994 genocide: *itsembabwoko n'itsembatsemba*, which was translated either as a single word, 'genocide', or as a phrase, 'genocide and massacres'. The term *itsembabwoko n'itsembatsemba* is in fact a phrase

composed of two separate words, *itsembabwoko* and *itsembatsemba*, linked by a conjunction *na* (and). As discussed in Chapter 5, the compound word of *itsemba* (wiping out or decimating) and *ubwoko* (a group or category) or *itsembabwoko* literally means 'to decimate an ethnic group'. This specific Kinyarwanda notion is in fact in accordance with the notion of genocide adopted by the Genocide Convention – the acts of violence 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such' – which remains the internationally accepted legal definition today.³⁸ On the other hand, as an emphatic form of *itsemba*, the term *itsembatsemba* conveys the meaning of 'massacres carried out repeatedly' or 'extensive massacres'. Interpreted in relation to Rwanda's recent past, the former is a specific term referring to a Tutsi genocide (*itsemba-Batutsi*) while the latter refers to 'massacres' carried out in conjunction with that genocide to kill so-called 'Hutu moderates' who opposed it.

In spite of these official Kinyarwanda terms referring to the genocidal violence, there have been different ways of referring to what happened in the country in 1994. Longman and Rutagengwa (2004) reported, based on their research conducted in 2001 - 2002, clear divisions along ethnic lines in the ways their respondents explained the genocide. Observations were that most Tutsi respondents, especially Tutsi survivors, referred to *itsembabwoko*, a phrase used by Hutus only secondarily, while Hutu respondents 'were most likely to refer to *intambara*, the war, *ubwicanyi*, the killings, or more vaguely *ibyabaye*, the happenings, or *amahano*, horror or tragedy' (170). Hutu respondents also used the term *itsembatsemba* to imply massacres of Hutus, although Tutsis,

³⁸ While the definition adopted in the Genocide Convention remains the internationally accepted legal definition, there are complex debates about various definitions of *genocide* and exactly which crimes of mass violence in history qualify as genocide (Schabas 2000; Alvarez 2001).

whether genocide survivors or repatriated refugees, rarely mentioned it.

In all of the early legislation and presidential orders of post-genocide Rwanda reviewed for this study – specifically, items 1) to 5) listed above - these two Kinyarwanda words are consistently used in combination, *itsembabwoko n'itsembatsemba*. This particular way of using the terms demonstrates an important aspect of the official discourse on the Rwandan genocide in the early years after 1994: *itsembabwoko* (genocide) of Tutsi and *itsembatsemba* (massacres) of Hutu dissidents are presented as closely interconnected crimes, constituting the crime of genocide that was carefully planned and executed by the extremist faction of the former regime. In fact, the crimes were inseparable because it was impossible for perpetrators to carry out the former without the latter. According to this comprehensive conception of the Rwandan genocide, the killings of Tutsis and those of Hutus dissidents are equally prosecutable as genocide-related crimes.

The government's use of the phrase *itsembabwoko n'itsembatsemba* for several years following the 1994 genocide, however, does not mean that the two distinct yet closely interconnected kinds of violence recognised in it have carried the same weight in the official discourse on the genocide. For example, different categories of victims have been acknowledged in different ways in the public addresses of government personnel. One thing noted in personal observations is that the concept of *itsembatsemba*/massacres of Hutu dissidents (and the existence of their victims) was rarely pronounced by itself; rather, when used, it was mentioned in association with the former term (*itsembabwoko*). In contrast, the notion of narrowly defined genocide, *itsembabwoko*, was often articulated by government leaders, such as when they objected to the ICTR's attempt to seek accountability for war crimes committed by the RPF and when they justified the

government's special focus on genocide-related crimes committed by the former regime. As 'the gravest and the greatest of the crimes against humanity' (Destexhe 1995, 75-6), the notion of narrowly defined genocide was and still is emphasised (even though the Kinyarwanda word *itsembabwoko* is not used anymore) in the official discourse as a means to fight any criticism of the RPF government for its limited efforts to prosecute and punish human rights violations committed by its own members.

These Kinyarwanda words of genocide, however, ceased to be mentioned in any official document or address after they were officially replaced by a single term, *jenocide*, in the new Constitution adopted in 2003. In fact, all of the post-2003 legal documents reviewed for this study – specifically, items 6) to 14) listed above – consistently use the term *jenocide* in their Kinyarwanda versions. Additionally, in recent years the government has been placing a *de facto* ban on the use of *itsembabwoko n'itsembatsemba*, on the basis that it does not properly represent the concept of genocide as defined in the Genocide Convention. For example, the official instruction issued by the Ministry of Youth, Culture and Sport for genocide commemoration activities of April 2007 included among its ten specific instructions to ensure that *jenocide* was used rather than *itsembabwoko n'itsembatsemba*.³⁹ When some individuals participating in 2006 and 2007 commemoration meetings organised by one NGO used *itsembabwoko n'itsembatsemba* or *itsembabwoko* in public, they were corrected by other participants to use *jenocide*.⁴⁰ By the commemoration period of 2008, public uses of the term *itsembabwoko n'itsembatsemba* were rare to nonexistent, suggesting that by this time most Rwandans were aware of the government's instruction on this matter. Interestingly, however, during the same period in 2008,

³⁹ The document on file with author.

⁴⁰ Observation notes on file with author.

BBC Kinyarwanda service was still using *itsembabwoko n'itsembatsemba* as the term referring to the mass violence of 1994.⁴¹ This suggests that the BBC Kinyarwanda service, broadcast from London for Rwandan listeners, was beyond the reach of the Rwandan government's censorship at that time.⁴²

The political ramifications of this shift in the Kinyarwanda terminology of genocide are important. The shift seems to signify the government's increasing intent to stress the narrow conception of genocide in its discourse on the mass atrocities of 1994. In this particular conception, the Rwandan genocide was one committed with a single objective of exterminating the country's Tutsi minority. Since 2008, the annual commemoration of the genocide has been officially described as that of 'the genocide against the Tutsi' or '*jenoside yakorewe Abatutsi*'.⁴³ An amendment made to the Constitution in August 2008 (item 15 on the above list) replaced 'genocide'/'*jenoside*' in the original text of the Constitution with 'genocide against the Tutsi'/'*jenoside yakorewe Abatutsi*' throughout the amended text of the Constitution. All of the laws and decrees adopted since that time (including items 16 and 17 on the above list) use this particular phrase when they refer to the 1994 genocide. The media in Rwanda also uses this language, with the exception of the BBC Kinyarwanda broadcast mentioned above.⁴⁴

Stressing the notion of Tutsi genocide in the official description of the 1994 genocide seems to have two critical implications for official remembrance of Rwanda's violent past and for justice and reconciliation processes in post-genocide Rwanda. First, this emphasis obscures the fact that tens of thousands of Hutus and Twas were also victimized at the hands of the same

⁴¹ Notes on file with author.

⁴² The following section (3.4.3.) reports a more recent incident in which the Rwandan government pressurised the BBC to change its editorial line in the Kinyarwanda programme.

⁴³ This can be confirmed, for example, on the official website of the NCFG.

⁴⁴ Confirmed on 6 April 2009.

genocidal forces. This deletion risks not only obscuring the victimhood of these Rwandans but also neglecting their families' desire to commemorate their loved ones in public. Second, focusing exclusively on the Tutsis killed in the genocide evokes the sense of collective Hutu guilt discussed in Chapter 5. In the current Rwandan context where over one million Hutus have been prosecuted (with probably a majority of those convicted) for genocide-related crimes, singling out the victimhood of Tutsis in the description of the 1994 genocide as 'the genocide against the Tutsi' cannot help but reinforce the dichotomy between Tutsis as victims and Hutus as perpetrators.

There seem to be at least three possible explanations for this shift in the terminology and description of the genocide, which is highly significant but which goes largely unnoticed by external observers. First, the government probably came to see a danger that the comprehensive notion of *itsembabwoko* *n'itsembatsemba* could cause a real problem in its pursuit of post-genocide justice. For example, several grassroots informants in 2002 interviews described *itsembabwoko* and *itsembatsemba* as 'massacres of Tutsis' and 'massacres of Hutus' respectively, which suggests that many of them understood the distinction between the two notions in ethnic terms, rather than the distinction between the acts of violence which are qualified as genocide in its strict sense and the acts which are not. For the government, this particular interpretation of the terminology could have been a cause for serious concern. Interpreted in ethnic terms, the notion of *itsembatsemba* could be, and seems to have been, used to invoke the sense within the Hutu population that not only massacres of Hutu dissidents by the genocidal forces but also RPF atrocities against Hutus could be accounted for through *gacaca* justice.

Second, the shift seems to make sense when it is seen in the context of

increased '*Tutsization*' of political power in post-genocide Rwanda (Mamdani 2001, 271; Reyntjens 2004, 187-90). This term refers to the growing concentration of power in the hands of a small number of Tutsis, particularly those who repatriated from Uganda. When the transitional government was formed after the military victory of the RPF, there was a great deal of power sharing among the opposition groups to the former genocidal regime. These were the parties who had signed the 1993 Arusha Peace Accords, most prominently the RPF and the MDR, a party with a broad Hutu constituency led by Twagiramungu, who became the first Prime Minister of the post-genocide transitional government (Reyntjens 2004, 178). Official posts of the transitional government were divided among these coalition partners. However, the spirit of power-sharing rapidly died down as those considered by the RPF leadership to be 'threats' were eliminated from positions of power. In August 1995, Prime Minister Twagiramungu, Interior Minister Seth Sendashonga ('one of the rare RPF Hutu'), and Justice Minister Alphonse Nkubito resigned (180).

Twagiramungu, Sendashonga, and many others including 'government ministers, senior judges, high-ranking civil servants, diplomats, army officers, journalists, leaders of civil society and even players in the national soccer team' went into exile. Once they were outside Rwanda, these individuals accused the RPF regime of 'concentration and abuse of power, outrages by the army and intelligence services, massive violations of human rights, insecurity and intimidation, [and] discrimination against the Hutu and even against Tutsi genocide survivors' (ibid).

In early 2000, other prominent politicians resigned, including Prime Minister Pierre Célestin Rwigema, a member of the MDR who replaced Twagiramungu, and President Bizimungu, another Hutu member of the RPF (180-1). As

discussed earlier, Bizimungu was later arrested after making an announcement of his plan to launch a new party. Then, on the eve of the 2003 presidential and parliamentary elections, the MDR was banned, based on the allegation of spreading 'divisionism', which some observers considered the RPF's plot to eliminate a potential threat to its outright victory in the upcoming elections (HRW 2003, 6; Reyntjens 2004, 184-5; Prunier 2009, 295).⁴⁵ As described earlier, the RPF won an overwhelming majority with its presidential and parliamentary candidates.

In this context, with the increased marginalisation of Hutu elites from the political landscape of post-genocide Rwanda, it is not difficult to imagine that the call for justice with regard to massacres of 'moderate Hutus' diminished over the years. After all, many of those Hutus killed at the hands of genocide perpetrators were former colleagues, friends or relatives of the Hutu members of the coalition government who had once had at least some say in the government's policy making process.⁴⁶ However, political space for these Hutus who could possibly represent the voice of Hutu 'survivors' of the mass violence in 1994 had been closed off by the spring of 2003 with the abolition of the MDR through the crusade against 'divisionism'.

Third, the shift can be seen as part of an apparent RPF strategy to instrumentalise the genocide in order to legitimise the consolidation of Tutsi power (Lemarchand 2008, 72 citing Vidal 2001). As discussed above, singling

⁴⁵ Reyntjens (2004, 184) explains the politics behind the ban on the MDR as follows:
[W]ith the constitutional referendum and the presidential and parliamentary elections in view, the regime crossed the Rubicon in the spring of 2003 and ceased attempting to hide its authoritarian drift. Despite its total physical and psychological control over the political landscape, its hold on the instruments of local, provincial and national management, and its constitutional engineering, the RPF did not appear confident and set out to close off the last political spaces of dissent.

⁴⁶ The 1996 Genocide Law was promulgated in the name of then-President Pasteur Bizimungu, the representative of the Transitional National Assembly, with then-Prime Minister Pierre Célestin Rwigema as a co-signatory.

out the victimhood of the country's Tutsi minority in the description of the 1994 can serve the purpose of augmenting the sense of collective guilt among the country's Hutu majority. This can, in turn, be instrumental in suppressing both the allegations concerning RPF/A atrocities against Hutus and the expression of growing discontent with the current regime.

For the RPF regime, stifling the allegations about its past crimes through the instrumentalisation of genocide seems to have become an important political imperative with its survival at stake, not least because the regime has come under increasing attack for its alleged war crimes in recent years. In November 2006, a French judge issued international arrest warrants for nine leading members of the RPF on accusations of complicity in the downing of Habyarimana's plane on 6 April 1994 through which all of those on board, including the French crew, were killed (HRW 2008, 92). He also requested that the ICTR issue a warrant for President Kagame's arrest (AI 2007). In February 2008, a Spanish judge indicted 40 senior members of the RPF for alleged mass killings of Hutu civilians in Rwanda and refugee camps in Congo as well as the murder of seven Spanish citizens in one of the refugee camps (BBC 2008). The Rwandan government responded to these judicial challenges by breaking off its diplomatic relations with France and urging the international community to disregard the arrest warrants. It also called for sanctions against the French and Spanish judges for 'spread[ing] false information on [the] Tutsi genocide in Rwanda' (FH 2008d).

Whatever motive is behind its decision to change the way the Rwandan genocide is represented, the RPF regime now seems to be less concerned with the problem of marginalising non-Tutsi victims and is rather reinforcing the perception of collective Hutu guilt, even though such policies are detrimental to

the process of national and community level reconciliation.

3.4.3. Selectivity in Remembrance and the Moral Hierarchy of Victimhood

The question of who are and are not genocide victims or survivors remains deeply controversial in post-genocide Rwandan society (Rombouts and Vandeginste 2005). A study conducted by the parliament in May 2005 confirmed widespread confusion over the issue, finding that 62.9 percent of the total 1,636 survey respondents identified not only Tutsis but also those Hutus who were killed because they were 'opposed to divisive ideology' as victims of the genocide, whereas 31.9 percent of them said only Tutsis were entitled to the status of genocide victims (Rwanda 2006, 198).

Even though there is no legally binding official definition of a genocide victim in Rwanda, the following definition used in a 2002 Ministry for Local Government and Social Affairs (MINALOC)⁴⁷ study counting the victims of the genocide seems to indicate an important aspect of the government's position on the issue. A final report of the study defines genocide victims as 'all persons which have been killed in the period between 10/1/1990 and 12/31/1994 *because they are Tutsi or they can be associated by lineage with a Tutsi, or they are friends with a Tutsi or have a particular affinity with one, or they exhibit political thoughts and/or belong to a political party contrary to the ideology of the divisionist politics before 1994*' (Rwanda 2002, 15, *italics by this author*).⁴⁸ The 2006 Parliamentary Report on genocide ideology states that the same definition is applied to the official remembrance of the genocide (Rwanda 2006, 197).⁴⁹

⁴⁷ The ministry is currently called the Ministry of Local Government, Good Governance, Community Development and Social Affairs.

⁴⁸ The report states that this definition is adopted from one stipulated in 'the law number 8/96'. Although the report seems to refer to the Organic Law N° 8/96 of 30 August 1996 on 'the organization of prosecutions for offences constituting the crime of genocide or crimes against humanity committed since 1 October 1990', there is no definition of genocide victim in the law.

⁴⁹ This report refers to the same Organic Law N° 8/96 of 30 August 1996 as the source of the

Thus, the official remembrance of the genocide concerns, at least in theory, not only Tutsi victims of genocide in a strict sense of the term as the destruction of a particular group but also victims with other identities (Hutu and Twa) who were killed because of their association with Tutsis or because they opposed the extremists' project of exterminating Tutsis.

The examination of the related legal documents as well as the two study reports mentioned above suggests that the RPF-led post-genocide government, at least in its early years, sought to strike a balance between two important concerns. The first of its concerns was to avoid 'lumping together' Tutsi victims of *itsebabwoko*, or genocide in a strict sense of the term as the destruction of a specific group of people, and non-Tutsi victims of *itsebatsemba*, or massacres committed against those considered as dissidents. It was important to separate the types of violence because, according to the government's claim, '[c]onfusion on remembrance would lead to the negation or trivialisation of genocide' (200). The second concern was to not exclude the latter category of victims, in order to counteract a perception widely held among the Hutu population that the government calling itself 'the Government of National Unity' only cared about the victimhood of Tutsis. In fact, even though it is a widely held perception in Rwanda, such a sweeping claim that there is no acknowledgement of non-Tutsi victims in official remembrance of the genocide is incorrect.⁵⁰ The

definition.

⁵⁰ For example, Vidal stated:

The commemoration explicitly deny the status of victim to those Hutu who, even though they did not kill, were massacred so as to create a climate of terror. How can one speak of reconciliation when the exposure of skeletons has as its only purpose to remind the Tutsi that their own people were killed by Hutu? This is tantamount to keeping the latter in a permanent position of culpability. (Vidal 2001 quoted in Lemarchand 2008, 72)

Another incorrect statement, which is seen even within scholarly circles, is that the term 'survivor' is applied only to Tutsis in Rwanda (Mamdani 2001, 267). There is a widespread perception that the identification of survivor is limited to Tutsis who were in the country at the time of genocide and that the victimhood of many non-Tutsi 'survivors' of genocidal violence is not recognised in post-genocide Rwanda. However, as clearly indicated in Chapter 4, there are people recognised as genocide survivors even though they are not Tutsi (e.g. Hutu widows of Tutsis killed, children

above-mentioned Parliamentary Report declares: 'Certainly, during the genocide, the victims were not only Tutsi but also Hutus who were against the divisive ideology [...] Those who died because of their opposition to that ideology are indeed victims of genocide' (Rwanda 2006, 197). In recent years, the government has made its recognition of 'moderate Hutus' massacred during the genocide more visible than before through holding official ceremonies for the politicians killed during the genocide, most notably the Hutu Prime Minister of the time, Agathe Uwilingiyimana (FH 2007a, 2008c).

That said, however, the examination in Section 3.4.2 of how the 1994 genocide has been presented in the official discourse revealed 'an implied moral hierarchy' (Pottier 2002, 126) between different categories of genocide victims: victims who were killed because of their Tutsi identity ('those killed because of who they were') are given a greater moral significance than those who were killed because of their political views and/or actions. Moreover, with regard to the categories of victims who were killed outside the scope of the genocide before, during and after that time period, the government clearly rejects the possibility of official remembrance on the grounds that the present Rwandan state is only responsible for commemorating the victims of the crimes committed by the state, not by other parties, and that expanding the scope of official remembrance would 'lead to the negation or trivialisation of genocide' (Rwanda 2006, 200). According to this government policy, then, the victimhood of those who were killed outside the scope of genocide (e.g. victims of RPF crimes) has even less significance than the second category of genocide victims with non-Tutsi identities. As Rombouts and Vandeginste (2005, 339) report, '[v]ictims of RPF crimes experience that they are ranked completely at the bottom of the ladder' because

of mixed parentage with Hutu husband – Tutsi wife union, etc).

their victimhood receives no recognition, and even worse, 'it is deliberately refused on many occasions'.

The controversy surrounding the hierarchy of victimhood is not usually discussed in public. However, it has recently surfaced in a highly volatile way. On 25 April 2009, the BBC's Kinyarwanda service broadcast the programme '*Imvo n'Imvano*' ('The Source of a Problem') on the theme of forgiveness in post-genocide Rwanda. It included a telephone interview with former Prime Minister Twagiramungu, now residing in Belgium, who criticised 'the government's attempt to have the country's entire Hutu population apologize for the genocide, since not all Hutu people had killed Tutsi or otherwise participated in the genocide' (HRW 2009c). The programme also aired another highly controversial comment by a Rwandan of mixed-ethnic background living in the country. The man, after claiming that the bodies of Rwandans which were found floating in the waters of Lake Victoria during the genocide were those of Hutu victims killed by the RPF forces, questioned why the government had prohibited their relatives from mourning for their loved ones (HRW 2009c; RSF 2009).⁵¹

In response, the government imposed a temporary ban on the BBC's Kinyarwanda service, despite the fact that Rwanda was preparing to host a regional symposium celebrating 'World Press Freedom Day' the following week (Karuhanga 2009). The government reportedly accused the BBC of airing 'blatant denial of the 1994 Genocide against the Tutsi of Rwanda' in its programme, thereby demonstrating 'total disregard for Rwanda's unity and reconciliation efforts' (ibid). Two months later, the government finally lifted the ban, with Information Minister Louise Mushikiwabo stating that the BBC had agreed to make changes on its editorial line in compliance with the government's

⁵¹ Content of the programme was cross-checked with Alexis, the research assistant who had listened to it. Phone conversation with Alexis, 27 April 2009.

demand that it never again commit genocide denial in its programmes (Ndikubwayezu 2009).

4. Conclusion

This chapter reviewed a range of unity and reconciliation efforts of the RPF-led government over the last 15 years. The review revealed fundamental contradictions within the government's efforts at reconciliation and national identity building, which largely emanate from the one-sided framework applied to the process of reconciliation. In this one-sided vision of reconciliation, issues which are of profound importance for those classified under the perpetrator's side are ignored as the complex history of political violence and social relations in Rwanda is often reduced to genocide and victim versus perpetrator. Thus, when based on this simplistic and distorted version of history, efforts such as 'reconciliatory' *gacaca* justice and official remembrance of the genocide are at odds with the government's stated goal of unifying and reconciling Rwandans as one nation.

Although the reviewed unity and reconciliation efforts are all considered by the government as essential elements for replacing divisive, racialised ethnic identities with a single unified Rwandan identity, they suffer from serious tension within themselves, rooted in the same problem of one-sidedness. Most of the efforts reviewed are generally geared to stress commonalities of Rwandans as members of one nation. The official historical narrative puts a strong emphasis on the historical, social and cultural heritage shared by Rwandans which cuts across ethnic lines. The efforts at establishing good governance as well as eradicating discrimination and 'divisionism' are essentially for building social and political institutions which guarantee equal rights, freedoms and access to

opportunities and resources for all Rwandans without any discrimination. Thus, this set of efforts constitutes a strategy for forging a strong sense of Rwandan citizenship. However, this government's strategy is severely counteracted by another set of efforts which essentially divide Rwandans into different categories according to their experience with the country's violent past.

As noted above, the government's focus on the genocide and its emphasis on the primacy of Tutsis' victimhood are clearly observed in its efforts to shape the collective memory of Rwandans, particularly in its efforts to sanction the ways the genocide is commemorated. In order to avoid the trivialisation of genocide and the suffering of its victims, it is important to make distinctions between victims of *genocide* who were killed because of their Tutsi identity (victims of genocide in a strict sense of the term as the destruction of a particular group in whole or in part) on the one hand and victims of *massacres* who were killed because of their political views and/or actions as the *genocide* was committed. However, the moral hierarchy of victimhood attached to the current distinctions is not conducive, to say the least, to the efforts to forge an inclusive national identity cutting across ethnic fault lines; rather, this hierarchy sharply contradicts the notion of common Rwandan-ness the government has been trying to inculcate in the collective consciousness of the Rwandan people. The problem is worsened because many perceive that the hierarchy is structured simply along ethnic lines, although, as repeatedly highlighted in this thesis, the reality is much more complicated than that.

The government's increasing emphasis on the primacy of Tutsis' victimhood in its presentation of the 1994 genocide has now created a situation very close to the one mentioned above as an incorrect description of reality. In other words, unknown numbers of non-Tutsi victims of the more comprehensively defined

genocide are severely marginalised, if not completely ignored, in the public discourse, and 'survivors' of related crimes as well as their families are effectively silenced in the process of pursuing justice and reconciliation. The increased marginalisation of these citizens could have enormous negative impact on the whole project of national identity building, for it may provide sections of the Rwandan population still subscribing to the essentialist view of ethnicity yet another reason to reinforce that view.

Intensive fieldwork for this study in 2002 and ongoing experience as an NGO peace worker in Rwanda for the last four years have confirmed that Rwandans whose narratives are marginalised or silenced in the official discourse still have a strong desire to share their painful experiences with others, with the hope that somebody will acknowledge their sufferings too. Telling one's own story is indeed a fundamental need for the victim of violence. As discussed in the previous chapter, in the early years of *gacaca*'s development, many hoped that the 'participatory' *gacaca* process would finally give them such an opportunity to tell their own stories. However, that hope has been completely shattered for those whose narratives are not in conformity with the official one. Instead of facilitating the emergence of a space for openly debating and then reconciling conflicting narratives in Rwandan society, the RPF regime chose the path of imposing its own narrative on the entire population and criminalising by law those who openly contest that narrative. Preserving the genocide as 'the defining moment of Rwandan history' and presenting itself as the guardian against possible genocide (Hintjens 2008a, 32), the regime seems determined to carry on the battle to 'remove from the soil of Rwanda any trace of conditions that could possibly lead to a repeat of the genocide' (Mamdani 2001, 271).

Unfortunately, past records of Rwanda's fight against 'divisionism' and

'genocide ideology' examined above show that it has been intermingled with the RPF's political manoeuvres to consolidate its power. Mamdani (2001, 271) suggests that these two agendas are essentially inseparable in the minds of the Tutsi-dominated RPF leadership who, in his analysis, are firmly convinced that concentration of power in the hands of Tutsis is 'the precondition of the Tutsi survival' and that for this reason, 'the pursuit of power with impunity' is morally justified. The RPF leadership are exposed to a great temptation to use what Reyntjens calls 'genocide credit' (2004, 199) whenever it is deemed useful for achieving their political objectives. In fact, this credit has proven to be a very effective means of not only silencing or eliminating dissidents inside Rwanda but also curtailing criticism from outside observers with regard to the regime's poor human rights record and authoritarian governance (Reyntjens 2004, 199-200; Hintjens 2008, 89; Lemarchand 2008, 73).

This picture may seem overly daunting and pessimistic. But if a public expression of one's sense of victimhood is perceived as creating divisions or trivialising or even negating the genocide, acts constituting a criminal offence in today's Rwanda, it will be extremely difficult for Rwandans with varied experiences to reconcile their conflicting narratives of victimhood and to reformulate their social identities into ones that celebrate differences yet also celebrate their unity as Rwandans.

PART IV

SYNTHESIS AND CONCLUSION

CHAPTER NINE

LESSONS FROM RWANDA'S EXPERIENCE

1. Introduction

This thesis makes a modest contribution to the clarification of the complex relationship between *justice* and *reconciliation* in societies which are deeply divided by the legacy of collective political violence. Each of the terms encapsulates a variety of meanings and complex processes, making it difficult for scholars and practitioners alike to attain a terminological consensus. As Bloomfield (2006, 4) puts it, 'the absence of any agreed use of the vocabulary' is still apparent today not only among scholars but also among government and non-government actors who are concerned with post-violence peacebuilding. In addition, there are actual political differences here, as illustrated through the case study of Rwanda. What lessons can we draw from Rwanda's experience in its quest for justice and reconciliation examined in the case study?

This chapter first synthesises the main case study findings presented in the four preceding chapters (Chapters 5, 6, 7 and 8). Then, the final sections of the chapter present lessons from Rwanda's experience, mainly with regard to conceptual understandings of post-violence justice and reconciliation.

2. Justice and Reconciliation Challenge in Rwanda

The case study adopted a bottom-up approach, first explaining the challenge at the grassroots level, and then moving to the analysis of related government policies and efforts. After presenting key findings of the grassroots study in two rural communities, Chapter 5 examined the sense of victimhood held by

grassroots informants who had varied experiences of the genocide and other types of political violence. This examination revealed a complex web of individuals and families with a profound sense of victimhood that resulted from the complex local history of political violence. They were sharply divided into two identity groups over the question of who can legitimately lay claim to victimhood: genocide survivors (Tutsis as well as Hutus with mixed ethnic background) versus Hutu residents who considered themselves as collective victims of RPF/A atrocities. Both groups appeared to perceive the history of political violence in ethnic terms as attributable to the historically hostile relationships between 'the Hutu' and 'the Tutsi', two internally homogeneous and yet mutually exclusive corporate groups. These findings indicated that this problematic, dichotomous construction of Rwandan society based on an essentialist, racialised view of ethnicity was profoundly internalised by different sections of the local population at the time of fieldwork in 2002. Chapter 6 explored the grassroots conceptions of justice and reconciliation based on the analysis of the views expressed during the fieldwork and also examined the divide along the same ethno-political lines over their sharply conflicting views on what constituted the past wrongs and whose needs of justice and reconciliation should be considered. However, they shared basic conceptions of justice and reconciliation by identifying both retribution and reparation as important ingredients in the process towards restoration of relationships damaged by past wrongs.

The second part of the case study reviewed a range of major justice and reconciliation efforts by the Rwandan government. Chapter 7 focused on the shift from a punitive to a reconciliatory approach to post-genocide justice with a particular focus on the evolution of *gacaca*-based reconciliatory justice. While confirming the unique restorative and reconciliatory potential of the *gacaca*

system, Chapter 7 also discussed the huge discrepancy between *gacaca*-based reconciliatory justice in theory and in practice. The chapter demonstrated that an overall one-sided framework of post-genocide justice is a primary factor in thwarting *gacaca*'s reconciliatory potential. Chapter 8 examined four categories of the government's unity and reconciliation efforts focusing on the overarching theme of national identity building. This is the government's primary response to the paramount challenge of dismantling the racialised and politicised ethnic identities that it considers the root cause of the Rwandan genocide. However, the examination of the conceptual underpinnings of these efforts and the political dynamics surrounding them revealed fundamental tensions within the government's endeavour to forge an inclusive national identity cutting across various social divisions, including those along ethnic lines.

The following is a synthesis of the main case study findings:

2.1. An Innovative Approach Grounded in Rwandan Conceptions

The government's *gacaca*-based reconciliatory justice endeavour has involved Rwandans in every hill across the country since its nationwide phase was launched in January 2005. In this sense, it is a national-level process of justice and reconciliation. However, this thesis discusses it primarily as an effort to advance reconciliation at the level of the local community whose members became deeply divided by the genocidal violence in 1994. As the discussion in Chapter 7 has clearly indicated, the *gacaca* system created by the Rwandan government is designed to seek a 'thick' form of reconciliation that is akin to a relationship-oriented reconciliation with an emphasis on notions such as repentance and forgiveness (Chapter 2). As discussed, under the *gacaca* system, offenders are urged to confess and repent their wrongdoing and ask for forgiveness from victims, their community and the nation of Rwanda in public in

exchange for significantly reduced sentences. Victims, on the other hand, are expected to 'forgive' the offenders (at least many of them feel that way) by accepting willingly or reluctantly the reduction of punishment imposed on their victimizers and their return to the community sooner or later. Accordingly, the *gacaca* system seeks, at least in theory, the restoration of intra-communal relationships between members of the same community who were divided into the victim group and the offender group by the 1994 genocide, and this inevitably involves emotional encounters between the two groups.

Chapter 7 highlighted the remarkably restorative features of the *gacaca* system, even though some of those features have never been fully put in force. In theory, the *gacaca*-based reconciliatory justice approach is effective in realising the restoration of social relationships damaged by the genocidal violence as it addresses not only retributive but also reparative and restorative needs of the people and the community involved. It should be stressed, though, that the *gacaca* system retains retributive punishment of offenders as its primary function. Thus, it is a comprehensive approach to post-violence transitional justice which addresses not only retributive but also restorative dimensions of rectificatory justice.

One main argument in this thesis is that there is remarkable congruence between the conception of justice underlying the *gacaca* system (Chapter 7) and the grassroots conception of justice identified in this study (Chapter 6), particularly in terms of two important dimensions of psychology of justice – 'justice as *what*' or distributive justice and 'justice as *how*' or procedural justice. With regard to 'justice as *what*', both sets of conceptions understand justice in a broad term as a process towards the outcomes of retribution, reparation and restoration as defined in Chapter 3. With regard to 'justice as *how*', both of them

give much emphasis to informal, community-based procedures in which ordinary people play critical roles in deliberative processes to administer justice. It can be said therefore, with regard to the *what* and *how* dimensions of justice, that the government's approach to transitional justice is grounded in the people's conceptions of justice and its relation to reconciliation. We may also appreciate the Rwandan *gacaca* approach as an innovative *both/and* model of transitional justice based on an integrated response to the needs of retribution, reparation and restoration, thereby seeking to transcend tensions between justice and reconciliation which may be deeply felt in the aftermath of violence.

2.2. A Pragmatic Structure-Oriented Approach to National Reconciliation

Unlike *gacaca*'s conception of reconciliation as the healing of relationships damaged by genocidal violence, the conception underlying the unity and reconciliation efforts at the national level focuses on the building of structures and institutions required for maintaining durable peace after violent conflicts. The assumption underlying this structure-oriented reconciliation is that, as Chapman (2002, 5) puts it, it is possible 'to develop a strong sense of national identity, the affirmation of times based on a common citizenship, and/or a shared commitment to the legitimacy of political institutions' without transforming former enemies into friends.

The unity and reconciliation efforts examined in Chapter 8 focus on the overarching theme of forging an inclusive national identity cutting across various divisions created in decades of ethno-political violence. Most of the government's efforts reviewed in the chapter are generally geared to stress commonalities shared by Rwandans. The efforts to instil the official historical narrative are centred on the notion of Rwandan-ness and a common historical, social and cultural heritage shared by *Banyarwanda*, the people of Rwanda. The

efforts to establish good governance based on the rule of law are essentially about the building of the foundation of an inclusive society in which all citizens are treated equally and fairly based on their rights and duties given by the state. The efforts to fight against discrimination, 'divisionism' and 'genocide ideology' are based on the determination to prevent any individual or organised group from dividing the people of Rwanda. In short, these efforts constitute a strategy for forging a strong sense of Rwandan citizenship and enhancing people's loyalty to the state of Rwanda.

As noted in Chapter 8, this government's structure-oriented approach can be seen as a pragmatic approach to national reconciliation, particularly in the aftermath of mass violence such as genocide. When memories of brutal killings, tortures and rapes are still fresh, many people are likely to find it unbearable to confront relational (interpersonal or inter-group) aspects of reconciliation in specific terms. Under such difficult circumstances, it seems commendable to stress commonalities shared by members of the society and put forth a forward-looking, structure-oriented vision of national reconciliation. It can be necessary, at least for some time, to obscure possibly divisive relational aspects of reconciliation in public discourse. In the light of these theoretical and contextual understandings about the challenge of reconciliation faced by the Rwandan people, the government's approach examined above is arguably a pragmatic approach to post-genocide reconciliation.

2.3. Constraints on the Rwanda's Quest for Justice and Reconciliation

Despite the positive characteristics highlighted above, the Rwandan government's efforts at justice and reconciliation have serious limitations. In this section, let us recap this thesis's main arguments about constraints imposed upon Rwanda's quest for justice and reconciliation.

2.3.1. The Gap between Theory and Practice of Reconciliatory Justice

Gacaca-based reconciliatory justice in theory provides the people with valuable time and space for telling their own narratives truthfully, listening to those of others attentively, and having shared conversations and debates over what happened in the past, reconciling their conflicting narratives. In theory, numerous *gacaca* hearings create an environment on the hills across Rwanda that are conducive to the 'localized integrative shaming' necessary for prompting atonement and acknowledgment by those carrying different degrees of responsibility for past atrocities. In theory, reparative measures embedded in the *gacaca* system (i.e. apologies and material reparations by offenders and state-funded compensation) respond to the profound reparative needs of victims and in turn, help their recovery from the damage caused by the genocide.

The government claims that its *gacaca* endeavour has already achieved its threefold-goal of truth, justice and reconciliation more or less according to the theory above, even though no study has established *gacaca*'s reconciliatory impact on Rwandan society. Although establishing its long-term impact is certainly beyond the scope of this study, the body of evidence presented in Chapter 7 strongly suggests that the government's *gacaca* endeavour has not realised much of its unique restorative potential. The chapter highlighted four major sets of evidence which support this argument.

First, the *gacaca* process in reality has failed to draw active public participation which was considered a critical condition for its success. While there were a number of reasons for the lack of active participation, Chapter 7 demonstrated that many Rwandans who did not identify themselves as victims of the former genocidal regime opted for minimum involvement in *gacaca* proceedings.

Second, problematic tendencies have been observed in those offenders who opted for the Confession and Guilty Plea Procedure to get their sentences dramatically reduced, including: the tendency to ascribe much of the blame to other offenders; the tendency to self-incriminate by those who have already been under long-term detention with the expectation of seeing an immediate release with no additional punishment; and the tendency among well-known offenders to take the guilt of others on themselves in exchange for financial or social reward. Incidences related to these problematic tendencies among confessed perpetrators seem to have led many genocide survivors to become suspicious about the truthfulness of confessions and apologies made during or outside the *gacaca* proceedings.

Third, the Community Service programme so far has been detached from its originally intended objectives of reintegrating genocide offenders and promoting reconciliation at the community level. Despite its great potential to provide offenders with the opportunity to engage in concrete acts of reparation for individuals and families they harmed during the genocide, as it stands now, there is no indication that the government is seriously searching for creative ways of implementing Community Service to fully tap its restorative potential.

Fourth, there is an increasing disillusionment with the failed promises of compensation among genocide survivors. As discussed, the government seems to have abandoned the idea of establishing the state-sponsored Compensation Fund which was once considered to be a key restorative element of the *gacaca* system. Furthermore, the community of genocide survivors has been frustrated by the lack of enforcement of reparation orders issued by *gacaca* courts.

These sets of evidence show us that there is a significant discrepancy between *gacaca*-based reconciliatory justice in theory and in practice. What it

has actually achieved in reality does not appear to match what it was supposed to achieve in theory in terms of its reparative and restorative objectives discussed above.

2.3.2. *The One-Sided Framework of Justice and Reconciliation*

The government's *gacaca* endeavour was found to be deeply controversial in terms of 'justice as *who*' or whose needs of justice should be regarded as warranting consideration. Chapter 6 reported that the local residents of Gitera and Kibarama were sharply divided over this very question of *who* between the two sides: genocide survivors who supported *gacaca*'s exclusive focus on genocide-related crimes on the one hand and the vast majority of Hutu residents who called for the inclusion of crimes committed by the RPF/A forces against Hutus.

Chapter 7 demonstrated that the most controversial aspect of the *gacaca* process is that it is implemented within an overall one-sided framework of post-genocide justice, the framework in which categories of victims other than the one of genocide victims are excluded from the scope of justice. As noted, there was a strong tendency on each side to deny or downplay the victimhood of *the other*, thereby negating *the other's* legitimacy to demand justice. In the face of this starkly conflicting situation, the government chose to include the former but exclude the latter from the scope of post-genocide justice. This apparent failure to address the critical dimension of 'justice as *who*' is a primary factor which has thwarted *gacaca*'s potential to serve as a community-based forum for reconciling sharply conflicting narratives of victimhood in Rwanda.

The enthusiasm about 'people's *gacaca* courts' among Hutus diminished at an early stage of *gacaca*'s pilot phase after government authorities sent a clear message that they would not tolerate any deviation from the narrowly defined

jurisdiction of *gacaca* courts to try only 'genocide-related' crimes. In subsequent phases, oppositional voices of those who desired to raise issues of RPF/A crimes and other violent crimes committed outside the scope of genocide in front of *gacaca* courts were effectively silenced. Accordingly, against the wishes of many people, it has become apparent that there is extremely limited space for them to tell their narratives if they are not directly concerned with the genocide. Also, numerous reports of intimidation and assassination to silence potential witnesses as well as cases of corruption suggest that genocide survivors, mostly but not exclusively Tutsis, have been put under enormous pressure not to tell their full stories which would implicate many more people in the genocide. Genocide survivors who chose to speak out felt very frustrated by the rest of the local population who chose otherwise, thereby failing to acknowledge the wrongs committed against and the sufferings borne by the victims/survivors of genocide. These suggest that the social environment which characterised many of the *gacaca* courts is one of denial, frustration, bitterness and fear, which is certainly not conducive to the localized integrative shaming crucial for inducing atonement and acknowledgment by those carrying different degrees of responsibility for past atrocities.

We saw in Chapter 8 that basically the same one-sided framework is applied to the array of unity and reconciliation efforts reviewed in this study. Despite the tendency to obscure the *who* (or relational) dimension of reconciliation in the government's official discourse, the kind of reconciliation implicitly promoted through the *gacaca* process at the community level is one in which offenders of genocide-related crimes acknowledge their wrongdoing, seek forgiveness from victims' families/survivors and make reparation as a condition of their reintegration into the local community. This particular vision of community

reconciliation can be only plausible for communities where the past victimization is limited to one of genocidal violence committed under the auspices of the former regime. This study clearly established that the vision was not perceived as plausible by the great majority of local residents in the two fieldwork communities. The accounts of the RPF's war crimes documented in other sources¹ strongly suggest that the residents of the two communities are not the only exceptions.

To be sure, the government's insistence on not conflating the RPF's abuses with the crime of genocide by the former regime has merit too. In order to avoid 'the risk of mutually offsetting levels of blameworthiness' (Drumbl 2002, 20, n15), it is quite important not to blur the distinction between the genocide in 1994 and the killings by the RPF forces in Rwanda before, during and after 1994. *Based on my cumulative experience of conducting an intensive fieldwork in 2002, working as a peace worker for a local NGO and interacting daily with Rwandans with different backgrounds for nearly four years since October 2005, it seems imperative that, with regard to killings perpetrated inside the territory of Rwanda, the term 'genocide' must be restricted to the mass killings committed under the auspices of the former regime, on the grounds that they were executed with intent to exterminate all the Tutsis and anyone who was perceived to stand in their way, whereas the RPF killings did not have the same genocidal character.* The risk of 'mutually offsetting levels of blameworthiness' is real, considering that the so-called 'double-genocide thesis', the claim that Hutus were massacred in a 'counter-genocide' by the RPF as Tutsis were killed by the Hutu Power regime, is an important element of political discourse among the community of Hutu oppositions in exile,² which was also confirmed inside Rwanda during the

¹ See Section 4 of Chapter 4 and Section 4 of Chapter 7

² See for example, James Gasana, the former Minister of Defence (1992-93) who has been in

fieldwork. It is therefore important to exercise utmost care in not equating the RPF crimes with the genocide committed by the former regime.

Nevertheless, through failing to account for human rights violations committed by the members of the RPF in a transparent manner and neglecting profound needs of acknowledgement and other forms of reparation for the victims of those violations and their families, the one-sided justice and reconciliation reinforced the perception among many Hutus that the justice and reconciliation the current government pursues is merely one in Tutsi terms where only Hutus are punished and required to atone for the crimes they committed. It is crucial to understand that this one-sided framework appears to have created a situation where many genocide survivors, mostly Tutsis but also those with mixed ethnic background, have become deeply frustrated because it has further strengthened many Hutus' denial about different degrees of responsibility, not only criminal but also moral in nature, for the crime of genocide.

2.3.3. *Tension within the National Unity and Reconciliation Efforts*

Most of the unity and reconciliation efforts examined in Chapter 8 are geared to stress commonalities as *Banyarwanda*, the people sharing historical, social and cultural heritage and as citizens of the Republic of Rwanda. Their overarching purpose is to forge a unified national identity cutting across all the existing divisions and develop a strong sense of Rwandan citizenship, thereby enhancing people's loyalty to the state of Rwanda. As discussed above, these efforts can be seen as constituting a pragmatic, structure-oriented approach to national reconciliation in the aftermath of mass collective violence such as the

exile, claims that: 'It is estimated that between 1.5 and 2 million Rwandans were killed in the Tutsi genocide and in the Hutu counter genocide that the international community is not yet willing to investigate' (1997, 108, n1).

Rwandan genocide. Seemingly excessive emphasis on notions like consensus, unity and harmony in government policies may be also interpreted as a vigilant measure of precaution to prevent the recurrence of violent political conflict in the future.

However, this set of governmental efforts to advance national reconciliation through emphasising unity, harmony and common Rwandan-ness is severely counterbalanced by another set of efforts which the government says is indispensable for national reconciliation: that is, remembering the nation's violent past and its victims through a 'harmonised' official remembrance (Rwanda 2006, 197). As various accounts presented in this thesis clearly show, what can be a 'harmonised' way of remembering the past is a highly contentious issue in Rwanda. However, the RPF-led government has been exclusively focusing on what it considers to be the history of the Rwandan genocide and its victims.

The way the genocide itself is commemorated has significantly changed over the last 15 years in a negative way from the view point of national reconciliation; the primacy of Tutsis' victimhood has been increasingly emphasised in the official remembrance *at the expense of* remembrance for those victims with other identities who were killed by so-called massacres. At least for some years following the genocide, the government attempted to strike a difficult balance between two important concerns: asserting the primacy of Tutsis' victimhood in the genocide and counteracting a popular perception that the government cares about only Tutsis' victimhood. There is a certain level of legitimacy in this policy for making distinctions between the category of victims who were killed because of their ethnic identity and that of victims who were killed due to other reasons — for avoiding the trivialisation of genocide and the special characteristics of the suffering inflicted on victims of genocide in the strict

sense of the term. This thesis noted, however, that the moral hierarchy of victimhood implied in these distinctions is not conducive to efforts to forge an inclusive national identity cutting across ethnic lines, as it sharply contradicts the notion of common Rwandan-ness, the notion which underpins the national identity for all Rwandans.

The government's increasing emphasis on the primacy of Tutsis' victimhood in its presentation of the 1994 genocide has entailed the increased marginalisation of non-Tutsi victims and has augmented the collective guilt imposed on the entire Hutu population. This inevitably reinforces the public perception that the hierarchy of victimhood and the victim/perpetrator dichotomy are structured along ethnic lines, thereby giving sections of the Rwandan population subscribing to the essentialist construction of 'the Hutu' vs. 'the Tutsi' yet another reason to reinforce their racialised ethnic identities.

3. Lessons from Rwanda's Experience

Main lessons from the case study are presented under three headings corresponding to the key conceptual issues discussed in Chapters 2 and 3.

3.1. Justice and Reconciliation as Complex, Interactive Processes

The case study of Rwanda confirmed the validity of the proposed conceptual framework of justice and reconciliation discussed in Chapter 3 mainly in two distinctive ways. First, it clearly shows the interconnectedness of multi-level, multi-dimensional challenges of post-violence justice and reconciliation. At the national level, the government's efforts consist of two interconnected challenges: the challenge of creating an inclusive nation state with structures and institutions that champion the rule of law and consensual democracy, and the challenge of fostering a strong sense of loyalty to the nation state by forging a unified national

identity cutting across social divisions. At the community and interpersonal levels, the government focuses on the restoration of relationships damaged by the genocidal violence through *gacaca*-based reconciliatory justice. This process of reconciliatory justice represents an integrated response to the retributive, reparative and restorative needs of the community and its individual members affected by violent crimes committed during the genocide. The case study also indicated significant tension between the forward-looking effort to forge a national identity and the backward-looking effort to deal with issues of past violations. All of these point to the importance of paying due attention to the interconnected nature of various justice and reconciliation processes at different levels of society and trying to minimise tensions and maximise synergies between them.

Second, Rwanda's experience points to the importance of understanding justice and reconciliation as a dynamic, interactive process. As pointed out above, the conceptions of justice and reconciliation underlying related policies of the Rwandan government have changed significantly over the years. Justice and reconciliation were once considered to be incompatible alternatives, but later, with the introduction of the *gacaca* system, these two policy objectives were put forth as not only compatible but also mutually reinforcing. Underlying the government's move to adopt the policy of reconciliatory justice was a significant shift from a *static* conception of justice (justice as a pre-condition of reconciliation) to a *dynamic* one – justice as an evolving process towards the interconnected goals of retribution, reparation and restoration. This does not mean that there is no more tension within the justice and reconciliation process promoted by the government. However, the shift in the government's approach from punitive to reconciliatory justice seems to have alleviated the tension to a

great extent. These observations confirm the need for a conceptual framework which pays due attention to the changing nature of and the dynamic interactions between the justice and reconciliation processes.

3.2. Possibilities of Transcending the Dichotomies

Chapter 3 discussed the layers of dichotomies surrounding the challenge of post-violence justice and reconciliation, namely: the peace/justice dichotomy; the retributive justice/ restorative justice dichotomy; and the punishment/forgiveness dichotomy. This study presented the Rwanda's approach to reconciliatory justice as one which points to the *possibility* of transcending the dichotomies. According to Rwanda's experience, these layers of dichotomies can be possibly overcome by putting forth a *both/and* approach to justice and reconciliation even in a society which experienced mass violence such as genocide. Let us recap briefly below how these dichotomies were addressed in the Rwandan approach to reconciliatory justice.

In the years following the genocide, the government's thinking on justice and reconciliation was a 'first justice, then reconciliation' approach with the presumption that 'the pursuit of justice and the quest for peace are in fundamental tension and that the former must be fulfilled before the latter can be undertaken' (Amstutz 2004, 104). However, this dichotomous thinking that considered justice as a pre-condition to peace and reconciliation in a strict sense faded out from the late 1990s as the government prepared for the introduction of the *gacaca* system. Grounded in the grassroots conception of justice and reconciliation, *gacaca*-based reconciliatory justice sought to address people's needs and desires for retribution and reparation as an integral part of the rectificatory justice process towards the restoration of damaged relationships. This shows the practical possibility of pursuing justice which is beyond the

retributive/restorative dichotomy. Furthermore, Rwanda's experience also demonstrates that forgiveness and punishment are not necessarily incompatible alternatives in the context of a post-violence society. For several years following the genocide, with fresh memories of unspeakable atrocities, forgiveness was a taboo word inasmuch as it was equated with impunity or 'forgive and forget'. In subsequent years, however, the *gacaca* process promoted the notion of forgiveness for those perpetrators who confessed and repented their wrongdoings. But this did not mean that those 'forgiven' were exempted from punishment. Rather, their punishment was significantly reduced. In other words, the Rwandan *gacaca* system took a *both/and* approach with regard to the issue of punishment and forgiveness.

3.3. The Question of Who and the Challenge of Identity Change

This study confirmed the following observations with regard to 'justice as *who*' or the issue of *who* is included or excluded from the scope of justice. First, as Opatow (2002) argues, *who* is a crucial dimension of justice which deserves due attention in formulating policies of post-violence justice, particularly because, as Opatow warns, the way choices are made about *who* is often very vague and murky. Second, as the conflicting narratives of victimhood presented in Chapter 5 clearly indicate, in the aftermath of violent conflict, this *who* can be at the heart of a dispute between adversarial groups all laying claim to victimhood and demanding justice for their own side. Third, when these groups in dispute consider themselves as collective victims of the enemy group, post-violence justice faces a serious dilemma. Because adversarial identity groups have a common tendency to minimise or negate the victimhood of *the other*, the notion of even-handed justice is likely to enrage one or more groups.

A case in point is the conflicting demands for justice promoted on both sides

of the ethno-political divide. On the one hand, the vast majority of Hutu residents in the two fieldwork communities denounced what they perceived as one-sided victor's justice dictated by the interests of Tutsis, and demanded justice not only for the victims of genocide who are primarily Tutsis but also for Hutu victims of RPF/A crimes. On the other hand, the genocide survivors firmly rejected the notion of even-handed justice, insisting that their particular form of victimhood should not be equated with other forms of victimhood. What the former considered as a legitimate demand for justice was perceived by the latter as nothing but a grave injustice to themselves and their loved ones who perished during the genocide. What made these conflicting demands seemingly irreconcilable was that they were so intimately interwoven with their deep sense of collective victimhood --- the core of their identities --- caused by their enemy group.

In this study, reconciliation of 'ethnicized' conflicting narratives clearly emerged as a key challenge in the quest for justice and reconciliation in post-genocide Rwanda. What lessons can we learn from Rwanda's experience, which may be applied to other post-violence societies, particularly those which experienced identity-based violent conflicts? One important lesson is the great relevance of Kelman's conception of *reconciliation as identity change* to the conceptual understanding and practice of post-violence justice and reconciliation during or after identity-based conflicts. As discussed in Chapter 2, Kelman (2004) argues that reconciliation is best understood as a process through which the collective identities of parties to conflict and their narratives are 'negotiated' so that their identities/narratives are dissociated from the negation of *the other* or, in this particular case, the other's victimhood, which constitutes a key element of each party's own identity/narrative. He maintains that such identity change may

be facilitated by helping the parties to engage in the process of negotiating 'the conditions for reconciliation, which turn on such issues as truth, justice, and responsibility' (121). Then, the process of rectificatory justice, if it is structured for that end, can play a critical role in advancing reconciliation, providing conflicting parties with the time and space to listen to and reconcile each other's narratives.

As a community-based forum for truth-telling and deliberative justice proceedings rooted in Rwandan cultural tradition, the *gacaca* process of reconciliatory justice has a unique potential for facilitating the process of reconciling the conflicting narratives of victimhood in Rwandan society. However, because it is overshadowed by the overall framework of one-sided post-genocide justice, *gacaca's* reconciliatory potential has never been fully realised. Quite contrary to what Kelman's theory of reconciliation suggests, the RPF-led government chose to address the challenge of identity change through a completely different strategy: imposing a single official narrative on the whole population. Whether this strategy will succeed at the end in shaping the collective memory of Rwandans and their identities remains to be seen. But one thing which is very clear by now is that, as documented in Chapter 8, the strategy necessitated the regime to take coercive measures, in the name of national unity, to silence those who desired to advance counter-narratives, and in so doing, it violated the very values it claims to champion, such as human rights and democracy.

Telling one's own story is a fundamental need for the victim of violence. In the early years of its development, many Rwandans hoped that the *gacaca* process would give them an opportunity to tell their own stories. However, that glimmer of hope shattered completely for those whose narratives were not in conformity with the official one. Instead of facilitating the emergence of space for

sincere truth-telling and open dialogue, the RPF regime chose the path of imposing its own narrative on the entire population and criminalising those who voice counter-narratives, again in the name of unity and reconciliation and the fight against 'genocide ideology'. Consequently, its project for creating a united and reconciled Rwanda has become, to say the least, a highly controversial endeavour.

Having illustrated all this, this study shows another important lesson from Rwanda's experience. That is, the discourse on national unity and reconciliation can be used to suppress the narratives of various victim groups that are inconvenient for those in power. This makes asking the question of *who* even more critical for those who are interested in assisting various efforts at justice and reconciliation in post-violence societies.

4. Conclusion

I began this thesis with the story of Ange, a survivor of the genocide, who shared her story of sorrow and hope when I first visited Rwanda nine years ago. Then in the following chapters, I presented accounts of ethno-political violence in Rwanda's recent past, which cannot be reduced to only the genocide against Tutsis. In so doing, did I trivialise the genocide and the unspeakable sufferings of Ange and hundreds of thousands of other survivors who went through a 'terrifying existential crisis'? Did I make the terrible mistake of equating the horrendous crimes by the *génocidaires* with those by RPF soldiers who halted the genocide?

I believe I did not. In this study, I have attempted to pose a difficult question: how can we talk about what happened in Rwanda's violent past in a way that heals the painful and divisive memories it brings back to all Rwandans? There is

no easy answer to this mind-boggling question. However, this thesis clearly demonstrates the necessity to search for ways to somehow reconcile existing conflicting narratives in the quest for justice and reconciliation.

4.1. Towards a Horizontal Differentiation of Victimhood

This thesis has discussed the so-called victim competition between different categories of victims who advanced conflicting narratives characterised by their insistence on the primacy of their own group's victimhood and the minimisation of the victimhood of *the other*, defined as the enemy group. This problematic tendency is certainly not unique to Rwandan victims/survivors of genocide, crimes against humanity, war crimes or other types of human rights violations. It is a fairly common tendency of victims of violent crimes, particularly those committed in the context of identity-based conflict. But what makes the Rwanda's case particularly complicated is that Tutsis endured not only extreme injuries and irreparable losses in great magnitude but also an existential crisis of their entire community being annihilated. As discussed earlier, genocide survivors' identity is deeply rooted in this experience of existential crisis and that of 'being hunted down', and therefore, it is a great injustice to them if their victimhood is equated with that of others who do not share those special characteristics, be it 'moderate Hutus' who were massacred by the *génocidaires* or those who were killed by RPF/A atrocities. On the other hand, as the accounts presented in this thesis suggest, there are many Hutu victims of RPF/A atrocities who are neither able nor willing to understand distinct characteristics of genocide survivors' suffering. As Rombouts and Vandeginste (2005, 338) point out, both sides are 'blinded' to the victimhood of *the other*: genocide survivors by their horrifying existential suffering and victims of RPF atrocities by the wholesale denial of their suffering in Rwandan society today. This problematic situation is

exacerbated by the officially sanctioned moral hierarchy of victimhood which is perceived by many Rwandans and outside observers as being structured along ethnic fault lines.

The victim's tendency to insist the primacy of her/his victimhood and to minimise the victimhood of members of the enemy group is common and understandable, particularly when the victimization she/he suffered is that of genocide. Do we have to accept the existing moral hierarchy of victimhood as one of the inevitable consequences of the Rwandan genocide? Rombouts and Vandeginste (2005, 340) say it is not the case: certainly, 'such vertical hierarchy is not the only way to conceive of multiple groups or categories of victims'. But then, do we treat all victims equally without distinction, which would certainly outrage the community of genocide survivors and probably other groups of victims?

There must be a third way, a way to transcend the dichotomy between classifying victims into a rigid hierarchy and treating all of them equally without recognising their distinct characteristics. The key to the resolution of this dilemma lies in differentiating various categories of victims *horizontally* rather than *vertically*. Rombouts and Vandeginste explain:

This *horizontal* structure allows for differentiation without hierarchy. This implies that all victim groups are recognised in their specific victim situation, without necessarily implying that various victims are compared to one another. Victims do not have to consider the other victim as equal to him; nevertheless it is important that victims are able to recognise the suffering the other victim has to go through. (340)

This *horizontal* differentiation of victimhood seems to provide Rwandans with an approach which is conducive to their aspiration of building a reconciled Rwanda for future generations. This is a difficult but crucial step in the Rwanda's quest for justice and reconciliation.

4.2. Differentiating Mutuality from Moral Equivalence

The problem with the government's narratives of the RPF/A's conduct before, during and after the genocide is that they demonstrate a common tendency to justify or downplay its human rights abuses as violence that was either 'necessary' intervention for stopping the genocide or 'understandable' acts of vengeance by individual soldiers who lost their loved ones in genocidal massacres. Moreover, the government not only justifies or downplays them but also shows no tolerance of the counter-narratives of those pointing out unjustifiable acts of violence on the part of the RPF/A. At the thirteenth commemoration of the genocide, President Kagame (2007) vehemently spoke the following words to the nation of Rwanda and to the international community:

RPF should be the one to judge the killers and those that assisted them. Others are trying to distort history by changing the facts of what happened, but they know very well that they have no authority to judge RPF.

The tendency to downplay or justify one's own acts of violence are, of course, not unique to the RPF leadership. It is indeed quite a common tendency demonstrated by parties to a violent political conflict who 'usually believe that they have struggled in defence of a just cause' (Govier 2006, 125). Those who believe in their just cause also have a tendency to resist suggestions that they too may have done something morally unjustifiable in the course of their violent struggle. This study indicated clearly that the RPF-led government and President Kagame himself are not free from such a tendency.

What can we do then as we are confronted with this persistent tendency? A crucial step seems to lie in differentiating 'mutuality of acknowledgement' from 'moral equivalence'. According to Govier (2006, 127), mutuality of acknowledgement requires all the parties to 'reflect on, and if appropriate, admit to any wrongs they have committed, [...] regardless of their relative power as a

result of the military or negotiated settlement' and then to 'acknowledge the existence and needs of victims in other groups as well as the degrees of responsibility among militants and leaders'. Even though it requires much painful effort to *negotiate* competing narratives among conflicting parties, it does not necessarily lead them to avoid making meaningful moral distinctions with regard to legal and moral responsibilities for the wrongdoings committed by members of their own group and those of the enemy group during the prolonged violent conflict. Govier's distinction between the two concepts has direct relevance to the challenge faced by the RPF leadership, the challenge to transcend the dichotomy between lumping the crimes together without any meaningful distinction and turning a blind eye to those committed by its own side, no matter how firmly they believe that their struggle was for a just cause, the liberation of Rwanda from the dictatorial, genocidal regime.

4.3. An Unmet Challenge

After three years of nationwide implementation of the *gacaca* courts, the government currently says that it will complete all the *gacaca* trials by the end of 2009 and then start sharing with the international community valuable lessons learned from the experience of the Rwandan innovation of reconciliatory justice. Rwanda's experience of reconciliatory justice through *gacaca* courts and other justice and reconciliation efforts for the last 15 years certainly provides a wealth of useful lessons concerning conceptual understandings and practical aspects of post-violence justice and reconciliation. The case of Rwanda represents a unique *both/and* approach to post-violence justice and reconciliation. It shows the world that even after a mass atrocity like genocide, a nation may pursue not only justice but also reconciliation. It also shows that the layers of dichotomies surrounding the challenge of post-violence justice and reconciliation - the

peace/justice dichotomy, the retributive/restorative justice dichotomy and the forgiveness/punishment dichotomy - are not necessarily irreconcilable contradictions and are thus possibly transcendable. This thesis discussed that underlying this government's success in advancing an innovative *both/and* approach to post-violence justice and reconciliation is a significant shift in its conception of justice, particularly in the dimensions of 'justice as *what*' and 'justice as *how*'. Rwanda's experience shows, however, how the challenge of addressing 'justice as *who*' in the aftermath of violent conflict which ended with the military victory of one party can be left out from the search for an innovative approach to post-violence justice and reconciliation. Consequently, the government's endeavour in the quest for justice and reconciliation falls short of meeting the paramount challenge of *reconciliation as identity change* in the face of the still powerful, dichotomous construction of ethnicity in Rwanda. Unless the critical issue of *who* is tackled and an optimal degree of mutuality, not moral equivalence, is attained, the prospects for reconciliation in post-violence societies such as Rwanda will remain elusive.

Appendix 1

Interviewees in the Grassroots Study

1. Gitera Sector

No	Pseudonym	Sex	Category	Ethnicity
1	Serge	M	SG	T
2	Phanuel	M	SG	T
3	Anastasié	F	SG	T
4	Pierre	M	SG	T
5	Nadine	F	SG	T
6	Felix	M	SG	T
7	Diane	F	SG	T
8	Bosco	M	SG	T
9	Theoneste	M	SG	T
10	Emmanuel	M	SG	T
11	Eric	M	SM	H
12	Caliste	M	SM	H
13	Paul	M	SM	H
14	Juliette	F	SM	H
15	Jean Baptiste	M	SM	H
16	Cyprien	M	P	H
17	Rose	F	P	H
18	Fabien	M	PC	H
19	Alphonse	M	FP	H
20	Stephanie	F	FP	H
21	Edith	F	FP	H
22	Tito	M	FP	H
23	Goretti	F	FP	H
24	Sylveste	M	FP	H
25	Justin	M	FP	H
26	Prisca	F	FP	H
27	Marie	F	FP	H
28	Alexi	M	O	H
29	Boniface	M	O	H

2. Kiberama Sector

No	Pseudonym	Sex	Category	Ethnicity
1	Pascal	M	SG	M
2	Jean	M	SG	M
3	Odette	F	SG	M
4	Alice	F	SG	T
5	Aimable	M	OR	T
6	Chantal	F	SM	H
7	Damien	M	P	H
8	Gaspard	M	P	H
9	Fabrice	M	P	H
10	Olivier	M	P	H
11	Julienne	F	FP	H
12	Monique	F	FP	H
13	Eliyabo	M	DR	H
14	Claude	M	DR	H
15	Esther	F	O	H
16	Antoine	M	O	H
17	Anastase	M	O	H
18	Saveri	M	O	H
19	Muze	M	O	H

Note: Descriptions of the codes referring to categories and ethnicity of interviewees are as follows:

Categories: SG (survivors of genocide); SM (survivors of 'massacres'); P (prisoners); FP (families of prisoners); OR (old caseload refugees); DR (demobilised rebels); O (other).

Ethnicity: T (Tutsi); H (Hutu); M (Persons of mixed parentage).

See Section 2.2. of Chapter 5 for an explanation of these different types of ethnicity in Rwanda.

Appendix 2

Interviews in the Government Policy Study

Government Institution		No. of Interviewees
NSGC	Kigali head office	5
	Gitarama provincial office	1
	Gisenyi provincial office	1
NURC	Kigali head office	6
	Gitarama provincial office	1
	Gisenyi provincial office	1
Ministry of Justice		1
Office of Prosecutor General		2
SETIG		1
MINALOC		2
NCHR		1
	Total	22

Appendix 3

Responses to Two Fundamental Questions about Inter-group Forgiveness

Those who are deeply sceptical about the notion of inter-group forgiveness often raise two questions: whether groups can forgive and whether groups are morally entitled to forgive. These fundamental questions about the possibility of inter-group forgiveness are examined below, primarily based on a philosophical account provided by Govier (2002), one of the leading scholars on forgiveness and trust as philosophical concepts.

Can groups forgive?

'Can groups forgive?' is a question of whether such a seemingly personal process as forgiveness, which involves significant changes in emotions and attitudes, can be applied to inter-group relations. Unlike individuals, Govier and Verwoerd maintain, groups have neither a mind or a conscience nor 'feel such sensations as grief and pain' (2002, 188). Govier (2002, 87-92) provides a insightful responses to this 'fundamental scepticism' about inter-group forgiveness. She says that inter-group forgiveness 'requires that groups can be subjects and objects of forgiveness' and the notion can make logical sense only when three presuppositions are established (87). The first is whether a group can act as a collective moral agent which is capable of performing differently from unrelated individuals. After examining the nature of collective actions by different groups (like a choir singing a musical work, a church congregation running a soup kitchen and an unorganised mob storming a building), Govier maintains that these groups are all engaged in actions which 'do not just happen in the absence of human deliberation, intention, and desire' (88). Then, she

states (ibid):

They are describable in the language of responsibility and evaluation, and they are not the actions of individual human agents. Therefore, they are the products of collective human agency, the actions of groups. Groups can act. The actions of groups are performed by individual members related to each other in various ways so that what they do can constitute group actions.

In making the case for the second presupposition, whether a group as such can be harmed unjustly, Govier considers examples of collective victimization. These include the Rwandan genocide, in which people were harmed because of their group membership or social identity. Her accounts illustrate that direct harm (mistreatment, discrimination or extreme violence) inflicted on one group member may cause significant harm to other members of the same group as they feel insecurity and vulnerability based on their group membership (89-90).

Govier then addresses the third presupposition: whether 'groups can have - and can amend - feelings, attitudes, and beliefs about various matters, including harms they have suffered at the hands of others' (87). To illustrate her argument, she uses a case of a group which boycotts products produced by child labour in Pakistan. The deliberations, decision-making and actions which generated signed statement and the boycott clearly points to group *beliefs*, *attitudes* and *desires* (91).¹ Regarding this third presupposition,¹ Govier concludes:

Groups deliberate about policies and actions, and when those deliberations culminate in decisions, we are able to make attributions on the basis of those decisions. Groups can also deliberate about what to believe and what attitude to adopt. Fundamental scepticism about group forgiveness can be answered. (92)

¹ Respectively, 'that the products were produced using child labor and boycotts are a plausible way to change that' (belief), 'that child labor is unacceptable' (attitude) and 'that child labor end' (desire).

Are groups morally entitled to forgive?

The idea that victims are the only legitimate entities to forgive is a common assumption for many (Amstutz 2005, 81). 'Forgiveness', writes Bloomfield (2006, 23), 'is something (often one of few things) that remains in the power of victims to give or withhold'. The notion that forgiveness is a victim's prerogative is often expressed by those opposing the idea of amnesty or any 'pushy' efforts to promote forgiveness by governments or other institutions like churches. For example, the South African TRC was criticised by many victims of human rights violations 'on the ground that it had been too forgiving, had pre-empted what should have been their exclusive right to forgive, and had wrongly put pressure on victims to forgive' (Govier 2002, 93). One South African, directing his criticism to former TRC Chairman Archbishop Tutu, complained:

Black people are made to reconcile while they are not being reconciled with. Tutu knows very well that he is not the person to forgive on behalf of victims.
(quoted in Govier, *ibid*)

Charles Villa-Vicencio, the former TRC's Director of Research was known to be against the state-sponsored commission's involvement in efforts to promote interpersonal forgiveness (Chapman 2001, 252). He also writes: 'We can forgive harm done to us', but 'it is not in our power to forgive harm done to others' (quoted in Amstutz 2005, 82).

Govier (2002, 92) explains the logic of those who are sceptical about inter-group forgiveness on the basis of victim's prerogative to forgive:

[E]ven if it should be logically possible for groups to forgive, it would not be morally appropriate for them to do so. Only individuals can be victims of wrongdoing, and only victims are entitled to forgive.

While the notion that victims have a supreme moral authority in matters of forgiveness is plausible, it needs to be qualified with regard to who victims really

are (Amstutz 2005, 82). Govier (2002, 93) classifies victims of a serious wrongdoing into three groups: 'primary victims' who have been directly harmed physically or psychologically; 'secondary victims', family and friends of primary victims who have been harmed indirectly as a result of the injuries or loss of a loved one; and 'tertiary victims', a community or society that has collectively suffered injuries primarily in psychological terms because of violence inflicted on its members.

The case of post-genocide Rwanda illustrates Govier's distinctions among different categories of victims very well. The genocide primarily targeted Tutsis and those Tutsis who were killed or injured are clearly primary victims. Family, relatives and friends of those who were killed or injured are secondary victims even though many are primary victims as well because they too suffered direct physical and psychological injuries and economic losses. Finally, the entire Tutsi community (all the people who have a sense of social identity as Tutsi), including those who were not in the country or had not been born, constitutes a class of tertiary victims who have a sense of collective victimhood.² Considering that these secondary and tertiary victims have been also harmed by violence, it is reasonable to assume that they are also entitled to forgive those who caused their sufferings, not on behalf of primary victims but for themselves. Accordingly, Govier argues that 'in the virtue of the harms done to secondary and tertiary victims', groups are morally entitled to grant and receive forgiveness (95).

From this presupposition, the possibility of forgiveness and reconciliation emerges in cases of extreme violence like murder and genocide and serious historical crimes whose primary victims are no longer alive. If only primary victims are entitled to offer forgiveness, there is no possibility of forgiveness in

² In many parts of Africa, traditionally, the ancestors or the dead who were killed in violent conflicts in the past are considered to be another category of victims, having a substantial role in forgiveness and reconciliation (Sarpong 1988). I thank Sue Cutter for this point.

these cases because they are dead and (according to a widely held assumption in modern western societies) the dead cannot forgive. However, if secondary and tertiary victims (family and friends or representatives of the community to which the victim belonged) are considered to be legitimate entities to forgive, the victimizer or victimizer group may have the possibility of receiving at least 'partial forgiveness' (Amstutz 2005, 83).

Appendix 4

Main Programme Areas of the National Unity and Reconciliation Commission (NURC)

1. Civic Education

A department specialising in civic education is in charge of two main responsibilities: developing a training syllabus and materials to promote national unity and reconciliation; and organising training at 'all levels of Rwandan society via workshops, seminars and discussions in the interest of unity and reconciliation' (NURC's official website).³ The civic education syllabus covering citizens' rights and duties as well as their expected contribution to national unity and reconciliation was integrated into the national curriculum so that all the pupils in Rwanda are taught 'values of peace, love, human rights, patriotism, unity and reconciliation and their duty to become good citizens'.⁴

Probably the most high profile activity implemented by the NURC is known as *ingando*, a solidarity camp organised for different target groups, including students at secondary and university levels, teachers, demobilised soldiers and combatants (ex-FAR and ex-RPF soldiers as well as ex-militia members), community leaders and released prisoners of genocide. An *ingando* is organised as a residential camp with the number of participants ranging between a few hundreds and a thousand. It lasts for between three weeks to two months. The number of participants and the length of each *ingando* vary depending on the target group, time available, etc. Although specific activities and topics covered during each camp vary, mainly according to the target group, there are five

³ Accessed on 14 March 2009.

⁴ Interview with Fatuma Ndangiza, Executive Secretary of NURC, Kigali, 12 Dec 2002.

central themes around which training sessions are organised: ‘analysis of Rwanda’s problem, history of Rwanda, political and socioeconomic issues in Rwanda and Africa, rights, obligations and duties and leadership’ (ibid). Participants in an *ingando* are guided to ‘correct their false perception of their national history’, ‘build within themselves a renewed sense of Rwandan nationality’, and ‘share their vision and perspective in solving the variety of problems facing the country’ (NURC 2002b, 26).

2. Conflict Management

NURC’s conflict management programme has two main objectives. The first is to monitor whether various parties in the country (e.g. government organs, public and private institutions, political parties, community leaders, etc.) ‘respect and observe policies and practices of national unity and reconciliation’ (NURC’s official website).⁵ The second objective is to build the capacity of Rwandan people in conflict management and peacebuilding. With regard to the first objective, one of its key activities concerns monitoring of legislative developments that have implications for the process of unity and reconciliation. The commission provided professional input for legislation such as the Organic Law for setting up *gacaca* courts and organising prosecution for offences constituting genocide and other crimes against humanity (N° 40/2000 of 26/01/2001), the law penalising discrimination or sectarianism (N°47/2001 of 18/12/2001), the law suppressing the crime of genocide, crimes against humanity and war crimes (N°33 bis/2003 of 06/09/2003) as well as the new constitution adopted in the Referendum of 26 May 2003. The commission also plays the role of a watchdog by monitoring and publishing reports on the conduct

⁵ Accessed on 14 March 2009.

of various parties in society from the perspective of unity and reconciliation.

With regard to the second objective, the NURC has been conducting seminars and training to build the capacity at different levels of Rwandan society to monitor, prevent and manage conflicts. The commission supported the National Service of Gacaca Courts (NSGC) in training lay judges of *gacaca* courts to equip them with skills in conflict management and in understanding the policies of unity and reconciliation. More recently, a great deal of the commission's training effort has been directed at the capacity building of *Abunzi*, members of a Mediation Committee 'elected by the population on the basis of integrity to resolve day to day conflicts before referring them to conventional courts' (NURC's official website).⁶ The Mediation Committee or *Komite y'Abunzi* is comprised of twelve residents from the sector who do not have positions within local government or judicial organs (Article 159 of the Constitution). It is reported that *Abunzi* deal with 80 percent of local-level conflicts, thereby significantly reducing the burden of judicial proceedings through the formal justice system (IJR 2005, 12).

In recent years, the department in charge of conflict management has been playing an increasingly active role in the areas of research and advocacy for the promotion of unity and reconciliation. Research and monitoring reports published by the NURC cover a range of issues including popular participation in the *gacaca* process (NURC 2003), presidential and parliamentary elections in 2003 (NURC 2004a), women's role in reconciliation and peacebuilding (NURC 2005a), land property (NURC 2005b), analysis of the Rwandan conflict (Shyaka 2005), causes of violence in post-genocide Rwanda (NURC 2008a) and social cohesion in terms of interpersonal trust among Rwandans and their trust in the government's programmes (NURC 2008b).

⁶ Accessed on 14 March 2009.

3. Support to Community Initiatives

The NURC's programme for supporting community initiatives in terms of financial grants and training originated from its realisation, through the grassroots consultations mentioned above, that poverty is a serious impediment to unity and reconciliation. The promotion of community-based associations through which various categories of vulnerable people 'work hand in hand to address their shared needs and improve their own welfare' became an important strategic emphasis of the commission.⁷ Vulnerable groups the commission identified included: orphans and child-heads of households; widows of genocide and women whose husbands are imprisoned; genocide survivors in general, those with disabilities and illness including HIV/AIDS; the elderly; and Batwa people who are historically marginalised in Rwandan society (NURC 2001, 18). The commission understands that poverty alleviation is not its central mandate. Yet it believes that support to community initiatives offers a vital opportunity to 'mainstream its central message and values of unity and reconciliation' into the grassroots development process as well as 'to gather evidence about the progress of reconciliation, areas of ongoing or emerging conflict and about best practices to address these issues' (ibid). After making an inventory of such grassroots initiatives across the country, the NURC helped some associations secure financial support from international NGOs and donor agencies. In 2006, over 360 community-based self-help initiatives have been registered all over the country, including over 60 associations who have received external grants through the NURC. The NURC claims that most of these groups 'comprise perpetrators and survivors and their activities range from promoting reconciliation in communities to income generating activities' (NURC's official

⁷ Interview with Ndagiza, Kigali, 12 Dec 2002.

website).⁸

The NURC also has promoted the formation of unity and reconciliation clubs in schools and higher education institutions. Students who took part in *ingando* were encouraged to form such clubs in their own schools so that a space is created for 'students from different backgrounds get together promote reconciliation in places of learning' (ibid).

⁸ Accessed on 14 March 2009.

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