Transitional Justice: Lessons from Rwanda

Alana Tiemessen
PhD Candidate
Department of Political Science
University of British Columbia
alanaet@interchange.ubc.ca

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Rwanda’s post-genocide experience with transitional justice\(^1\) is varied and complex. The Rwandan case study presents us with two distinct transitional justice strategies to evaluate: the International Criminal Tribunal for Rwanda (ICTR) and the grassroots Gacaca courts.\(^2\) On the one hand, the International Criminal Tribunal for Rwanda (ICTR) represents a dying breed of transitional justice. The ICTR is an ad-hoc United Nation’s institution with an international jurisdiction, located outside the territory of the population affected by the violence, and uses formal trial and punishment procedures. Both the tribunal’s successes and failures have been instructive for the design and execution of future transitional justice strategies, such as the International Criminal Court (ICC).\(^3\) On the other hand, Rwanda’s Gacaca courts have sought to provide a kind of justice that is both institutionally and culturally different from the ICTR. For better or for worse, Gacaca’s restorative justice principles of community participation, truth-telling, and reintegration have a much greater impact on local communities than the ICTR.

This paper will address several aspects of Rwanda’s transitional justice experience. First, how do we characterize Rwanda’s two-sided approach to justice in the aftermath of atrocities? Where does Rwanda fit in the generational evolution of transitional justice strategies? Second, what attempts have been made by the ICTR and Gacaca to have a greater impact on peace and reconciliation at the local level and to what degree have these been successful? While Rwanda does not present us with an intended and coherent hybrid justice strategy, I will argue in this paper that both the

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\(^1\) Transitional justice is defined as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.” See, Ruti G. Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003).


\(^3\) While meant to be a default mechanism for states unwilling or unable to execute their own trials, it is hoped that the permanence of the ICC will render ad hoc institutions like the ICTR (and its sister tribunal for Yugoslavia) unnecessary.
ICTR and Gacaca demonstrate an attempt to achieve local ownership. This early form of a hybrid transitional justice strategy provides important lessons about the potential benefits and drawbacks of local ownership for future strategies where retributive and restorative justice elements are combined with more institutional coherence and efficiency. The primary lesson to be taken from Rwanda is that both grassroots and international transitional justice strategies can foster local ownership, albeit in very different ways. However, deteriorating insecurity and perceptions of victor’s justice can impede localization of both transitional justice strategies.

**Hybrid Transitional Justice**

**Hybrid Tribunals**

In the post-Nuremberg era, the first generation of transitional justice was characterized by the widespread use of truth commission in Latin America. The second generation is primarily identified with the United Nations ad hoc tribunals for Yugoslavia and Rwanda. Hybrid institutions reflect the third-generation of transitional justice. The definition of “hybrid” transitional justice largely reflects the many cultural and institutional possibilities for justice in post-conflict societies. Many scholars and practitioners identify a hybrid tribunal or trial by its mix of international and national personnel, jurisdictions, and applicable laws. Naomi Roht-Arriaza argues, “in theory, these hybrid institutions can combine the independence, impartiality and resources of an international institution with the grounding in national law, realities and culture, the reduced costs, and the continuity and sustainability of a national effort.”

Hybrid tribunals are commonly located inside the territory where the crimes were committed, which is a marked departure from the models of the ad hoc tribunals. The Guatemalan Historical Clarification Commission (1994) and the Haitian Truth and Reconciliation

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Many arguments have been put forward as to why the international community has departed from the models of the ad hoc tribunals and prescribed hybrid tribunals as an appropriate and practical institution for atrocities accountability. The relative inefficiency of the ad hoc tribunals as compared with the enormous financial burden they have placed on the United Nations is one reason for this institutional change. A Report by the Secretary-General cites that by 2004 the ad hoc tribunals cost more than a quarter of a billion dollars per annum, roughly 15 per cent of the total UN general budget. This “donor fatigue” of Security Council members partly explains why the ad hoc tribunals were not replicated for the cases of Cambodia and Sierra Leone. However, these hybrid tribunals have been funded by voluntary contributions and, in the case of Sierra Leone, this approach led to a financial crisis and the diminished security and sustainability of the court.

One of the strongest arguments for the increased use of hybrid tribunals is the need for more local ownership of transitional justice despite the fact that post-conflict societies have a diminished capacity to carry out such processes. Local ownership is an ill-defined concept often associated with the goals of peacebuilding in transitional societies. In most cases, local ownership means local actors are designing, managing, and implementing policies, institutions, and/or activities. However, local ownership of international policies, activities, and institutions is not a paradox. In this scenario local ownership of international strategies means fostering awareness and engagement of the

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5 Roht-Arriaza, "The New Landscape of Transitional Justice."
8 Secretary-General, "The Rule of Law and Transitional Justice in Conflict Post-Conflict Societies," vol., : 14-15, para 43.
policy, activity or institution in order to give it value and relevance to the local population.

The desire for local ownership comes from both the international community and national governments. While many recognize the need for international leadership in terms of resources, national governments are increasingly asserting their sovereignty and hybrid tribunals “represent an attempt by states to reinsert themselves into the post-conflict legal process.”9 As a result, hybrid tribunals are a practical compromise which recognizes that “domestic judicial procedures are preferential to alternate international remedies and that when domestic political and legal structure are not sufficiently developed, hybrid trials containing some national elements are preferable to international trials.”10

Hybrid Strategies

This discussion has so far focused on the use of hybrid tribunals, which primarily reflect the retributive justice values of a formal trial and punishment process. However, the empirical reality of the contemporary generation of transitional justice reflects the use of hybrid strategies: a combination of processes, which reflect both retributive and restorative justice values, in one or several institutions. Retributive justice values are exhibited through trial and punishment with a primary focus on the defendant(s), formal legal professionals judge guilt or innocence, and punishment is carried out by imprisonment or the death penalty. Alternatively, restorative justice has community and victim-centered values whereby processes of reparation, compensation, truth-telling, and community participation repair communal and individual harm.

Hybrid transitional justice strategies use elements of both retributive and restorative justice values in one institution at the local or international level, or a

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strategy can separate these values into two institutions, such as a tribunal and a truth commission. Several contemporary case studies reflect this hybrid strategy. The Special Court for Sierra Leone (SCSL) is a hybrid tribunal, however, the simultaneous operation of the Truth and Reconciliation Commission for Sierra Leone (TRCSL) enabled Sierra Leone to pursue both a truth-telling process and trials. The United Nations Transitional Authority in East Timor operated a Serious Crime Unit that was a trial and punishment process; concurrently, local authorities administer a restorative form of justice in the villages as part of the Commission for Reception, Truth, and Reconciliation (CRTR).

The creation of hybrid tribunals is a logical response to the problems of the ad hoc tribunals as they resolve the issue of physical and political distance to post-conflict societies. However, hybrid strategies promise to impact peace and reconciliation more directly. The combination of justice values renders them more culturally and socially appropriate which allows strategies to adapt to contextual differences in the atrocities and nature of post-conflict societies. As the Secretary-General’s report states: “we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.”11 With hybrid strategies, respect and support for the local ownership entails the international community’s support for restorative justice values that have a greater impact on survivors, such as compensation, truth-telling, and popular participation in the justice process. The central challenge of hybrid strategies is to align the expectations and values of both the international community and the local community.12

Endorsing and prescribing restorative justice values is a radical departure from the processes in both ad hoc and hybrid tribunals, which still adhere to international

standards of criminal law and the retributive justice values of the international community. Rwanda’s justice experiment with both types of justice values renders it an important case study from which to assess the potential of a hybrid strategy at the local level.

**Rwanda as a Hybrid Transitional Justice Strategy**

The Rwandan case study can be assessed as a hybrid transitional justice strategy in several respects. First, while the ICTR and Gacaca operate independently of each other, their processes, participants and outcomes are complementary. The ICTY is an international ad hoc tribunal that follows retributive justice values and the semi-indigenous grassroots Gacaca courts follow restorative justice values. Second, both Gacaca and the ICTR have a mandate to achieve peace and reconciliation amongst Rwandans and thus have made an effort to foster local ownership with their processes. The Gacaca courts are a more obvious attempt at local ownership as they are designed, managed and implemented by a variety of local actors. However, their proximity and intimacy to the local population also means that their benefits and drawbacks will be more significant at the local level. Alternatively, the designers, managers and implementers of the ICTR have been actors external to Rwanda, namely the United Nations. Despite the initial creation and institutional design of the ICTR being decidedly in favour of external ownership, the inclusion of local outreach and capacity building programs demonstrates that it has come to realize the importance of the local level in achieving its mandate. Therefore, local ownership of the ICTR has come to mean fostering awareness and engagement with the Tribunal in order to have a greater impact on reconciliation at the local level. The remainder of this paper will discuss and evaluate the various processes of the ICTR and Gacaca that engender local ownership and the impact these efforts have had on reconciliation and local perceptions of justice.
The ICTR and Local Ownership of Transitional Justice

The Security Council acted upon the Rwandan government’s request under Chapter VII of the United Nations Charter to establish the International Criminal Tribunal for Rwanda in 1994. The Statute of this Tribunal closely resembles its sister tribunal in The Hague, the International Criminal Tribunal for Yugoslavia. The ICTR is located in Arusha, Tanzania and is composed of three organs: the Chambers and Appeals Chamber; the Office of the Prosecutor, in charge of investigations and prosecutions; the Registry, responsible for providing overall judicial and administrative support to the Chambers and Prosecutor. A Deputy Prosecutor to assist with prosecutions before the ICTR is based in Kigali. Previously the ICTY and ICTR had to share a chief prosecutor; now Rwanda has its own chief prosecutors, Hassan Jallow. The ICTR has a temporal jurisdiction of 1994 and its mandate is to prosecute the leaders and masterminds of the Rwandan genocide.

Despite its characterization as international justice, the International Criminal Tribunal for Rwanda has both the mandate and institutional components to foster local ownership of transitional justice within Rwanda. First, the ICTR witness assistance unit and information centre in Kigali represent an attempt to bring awareness and relevance to Rwandan communities and individual survivors. While the effectiveness of these components is questionable, the Tribunal’s recognition of the need for local relevance and protection of survivors’ needs and rights is an important lesson for a new generation of transitional justice strategies.

Second, the ICTR is the first international tribunal to articulate the goal of “national reconciliation” in its mandate, found in Security Council Resolution 955. The Tribunal’s Information Officer and Outreach Program Advisor argues that “the most this legal institution can do is to assist with reconciliation in limited ways as an

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ancillary contribution to its main judicial function of trying the cases before it.”  

However, he further argues that the following functions and institutional specificities of the Tribunal can contribute to reconciliation:

1) the Tribunals’ record provides a truth that is unavailable from the work of historians;

2) the concept of individual criminal responsibility …should contribute significantly to reconciliation;

3) the Tribunal serves as an impartial arbiter in establishing beyond dispute the fact that there was a genocide against the Tutsi in Rwanda in 1994;

4) the trial process may also assist with reconciliation because it has the effect of giving voice to victims and survivors…

While it is difficult to evaluate whether in the absence of the Tribunal that there would be more or less reconciliation in Rwanda, it is possible to gauge local perceptions of the Tribunal and the extent to which Rwandan feels that the Tribunal has had a positive, negative or benign impact on their communities.

**ICTR and Local Outreach**

The ICTR’s outreach programme has a variety of components and “particular attention is given to mass media and interpersonal communication in order to convey efficient and persuasive message to targeted audiences inside and outside Rwanda.”

The programme disseminates information about the Tribunal in Kinyarwanda to the general Rwandan public, media and research organizations, arranges visits to Arusha and provides training and seminars to Rwandan journalists and law students, and

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contributes to local capacity building of the Rwandan judicial system and media. It is hoped that increased awareness and interaction of the Tribunal’s work will foster a sense of local ownership over the outcomes, albeit not the process, thus fulfilling its mandate of reconciliation.

Assisting and exposing the Rwandan media to the Tribunal is an important function of the outreach programme. The first priority is accorded to radio, which is more widely available to Rwandans. Financial support has been provided to the Office Rwandais de l’Information (ORINFOR) and the Ministry of Justice to Report from Arusha. By assisting these two institutions, the ICTR claims to have “filled the information gap about the Tribunal that exists in the rural areas of Rwanda.” Additionally, the Tribunal has future plans to establish a weekly radio program for Rwandans. This programme will be broadcast by private radio stations and present thirty minutes of news, analysis, summaries of events, interviews with ICTR officials, and commentary. Finally, documentaries have been produced by the Tribunal in association with Internews, an American-based media organization, which advocates for and assists journalists around the world. The video reels produced by Internews show the Tribunals trials and judgments in addition to trials at the National Courts and Gacaca; the documentaries have been shown to 200,000 Rwandans and 80,000 prisoners. Documentary viewings are followed by a question and answer session led by a Rwandan official from the Tribunal. Unfortunately, Internews’ “Justice in Rwanda” program is facing termination due to a lack of funding.

The Information and Documentation Centre of the International Criminal Tribunal for Rwanda was opened by the ICTR’s registrar, Mr. Agwu Okali, in Kigali on 25 September 2000 is a focal point of the outreach program. At the opening ceremony

of the Centre, Okali explained that the “principal work of the tribunal is to try genocide suspects. . . those trials must make justice a reality to the Rwandan people and thus contribute to the process of national reconciliation within Rwanda itself.” The Centre’s name in Kinyarwanda is Umusanzu mu Bwiyunge, meaning a “contribution to reconciliation.” The Umusanzu is comprised of three facilities: a public information area that features print and video information of the Tribunal’s proceedings, including judgments and proceedings in Kinyarwanda; a library with volumes on international law, the Rwandan genocide and other related issues; a Victims Assistance Programme, which provides counseling and support for victims who are serving as witnesses, or potential witnesses, at the tribunal.

The Tribunal claims that the Information Centre “is fully utilized by the Rwandan public, particularly students and researchers, who wish to get first-hand information about the Tribunals.” Claims by tribunal officials that the Centre hosts nearly one hundred visitors a day are likely exaggerated as no independent researcher has been able to verify observing such a high number of visitors in one day. Additionally, the location and design of the Centre demonstrates that it is only Rwandan elite, students, researchers and public officials, living in Kigali that can access the information and services available. The vast majority of Rwandans live in rural areas, have no access to telecommunications (with the exception of radio), and are illiterate; therefore the Umusanzu cannot possibly have relevance for this large portion of the population.

22 ICTR, Ictr Information Centre Opens in Kigali.
23 ICTR, Ictr Information Centre Opens in Kigali. While the information area and library are housed within the Umusanzu in Kigali, the Victims Assistance Programme was launched in the town of Taba.
24 ICTR, Achievements of the Ictr.
26 The low number of visitors and prevalence of law students among them was also evident when I personally visited and observed the Umusanzu in February 2006.
The efforts of the ICTR to both inform and engage the Rwandan population have had a negligible impact on Rwandan communities. In a survey completed in February 2002, 87.2 per cent of respondents in four communities claimed that they were not well informed or not informed at all about the tribunal. However, despite the lack of information, attitudes towards the tribunal fell largely within the “neutral” category and slightly more positive attitudes than negative. The survey data also indicates that ethnicity was a more significant factor on questions relating to the ICTR as opposed to other justice strategies in Rwanda; more Hutus than Tutsis had favourable attitudes toward the ICTR and Tutsis were more inclined to agree with the statement that the ICTR was a waste of money and should not prosecute RPF members. Overall the survey data shows that the largest portion of respondents, slight less than fifty per cent, had a neutral attitude toward the ICTR. This information is important as it demonstrates that the ICTR has neither positively nor negatively impacted Rwandans but has largely been irrelevant to reconciliation. Furthermore, of the three justice strategies (Gacaca, national trials, and the ICTR) addressed in this survey, participants responded that the ICTR was the least likely to contribute to reconciliation.

The ICTR and Victor’s Justice

The International Criminal Tribunal for Rwanda has not only been unable to reconcile Rwandans, but unable to reconcile itself with the Rwandan government. While the ICTR has many normative and institutional shortcomings, there are three primary reasons for the rift between the Tribunal and the GOR. First, Rwanda’s distaste for the Tribunal is a result of anger toward the international community for not

intervening in the genocide. Second, Rwanda cast the sole vote against the creation of the ICTR on the Security Council due to disagreements over the Tribunal’s short temporal jurisdiction, the absence of the death penalty, and its location in Arusha, Tanzania. However, as Victor Peskin argues, “even if it were located in the heart of Kigali, the Tribunal would likely still suffer a crisis of legitimacy... fuelled by conflicting conceptions of justice, by Rwandan anger at Tribunal mismanagement and the slow pace of trials, and by the Tutsi-led Rwandan government’s efforts to control the Tribunal’s prosecutorial agenda for its political ends”

This brings us to the final factor behind this difficult relationship: the Kagame government strategically uses and abuses the Tribunal to further its own political and military agenda. This agenda primarily consists of safeguarding the Tutsi political and military elite from investigation and prosecution while simultaneously pursuing Hutu genocidaires by military and judicial means. The fact remains that no member of the RPF will be prosecuted by the Tribunal, or any other credible judicial body. It is this paradox that takes us to the dilemma of “victor’s justice”.

The accusation of victor’s justice stems from the perspective that the Rwandan Patriotic Front (RPF) is considered the liberator of Rwanda from the Hutu genocidaires. The current GOR is largely comprised of former RPF including their leader and now president, Paul Kagame. Despite the elimination of ethnic identities in Rwanda the composition of the government, military, civil society, and the upper class represent a

33 The Security Council's completion strategy requires that all trials at the ICTR be completed by 2008; for this goal to be realized all investigations were to be completed by 2004. However, a recent diplomatic row between France and Rwanda has raised the possibility of the RPF being prosecuted for shooting down President Habyarimana's plane, an event which "triggered" the genocide and is tantamount to a war crime. French Judge Louis Bruguiere's investigations and accusations have sparked numerous protests in Rwanda and reawakened awareness of France's support for the Hutu genocidaires. Since the dispute began in late 2006, Rwanda has cut off diplomatic ties with France and applied to become a member of the Commonwealth. Moghalu, Rwanda's Genocide: The Politics of Global Justice 131.
“Tutsified state.”\textsuperscript{34} An official discourse of “Rwandaness” and repression of ethnic identity has masked the Tutsification of state institutions and justified the elimination of Hutu-based political opposition. Furthermore, the RPF has been accused of committing mass human rights violations, including war crimes and crimes against humanity, as they advanced into Rwanda from Uganda in 1994; some estimate that the RPF killed more than 30,000 Hutu civilians in 1994.\textsuperscript{35}

The origin, structure, and mandate of the ICTR prevent it from being a “victor’s court” and “allows the prosecution to investigate and prosecute serious violations of international humanitarian law on all sides of the conflict.”\textsuperscript{36} However, the degree to which the ICTR has been willing to investigate RPF crimes has varied among different prosecutors. The first chief prosecutor, Richard Goldstone, argued the court was created primarily to deal with the crime of genocide, that the crimes of the Hutu genocidaires far out-weighed those of the RPF, for which there was little evidence.\textsuperscript{37} Prosecutors Louise Arbour and Carla Del Ponte began preliminary investigations into the RPF, however, Arbour’s concerns about the security of investigators and Del Ponte’s difficult relationship with the GOR prevented the Tribunal from turning investigations into prosecutions.

International tribunals not only rely on prosecutors but on the cooperation of states to turn over witnesses, suspects and legal assistance. With each attempt to investigate RPF crimes the GOR put up obstacles to the Tribunal’s operations and accused the court of institutional bungling and illegitimacy. The Rwandan


\textsuperscript{36} Peskin, "Beyond Victor's Justice: The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," 214.

\textsuperscript{37} Peskin, "Beyond Victor's Justice: The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda," 222-23.
government’s working relationship with the ICTR has been a mixed bag of cooperation, indifference and opposition. Cooperation from the government has stemmed from the ability of the tribunal to apprehend suspects who fled to other countries and the desire to gain legitimacy with the international community so that it may gather assistance for its national judicial system. The former ICTR Prosecutor, Carla Del Ponte, rebuked the Rwandan Government in the summer of 2002 for its “failure to provide government records…failure to cooperate in investigations of violations of the international law by the RPF in 1995” and the introducing travel regulations that have prevented key witnesses from travelling to Arusha to testify.38 In addition to government opposition, the genocide survivor’s group, IBUKA, has occasionally advised survivors not to participate in the Tribunal and has organized numerous protests against it in Kigali and other major towns.

The turf war between the ICTR and the RPF-led government has damaged the legitimate authority of both parties within Rwanda. The momentous normative achievements of the ICTR have been hemmed in by its inability to overcome the political obstacles inherent in meting out impartial justice.39 While the ICTR is an international institution, which can claim to be neither the victor nor the victim in this conflict, its inability and unwillingness to prosecute RPF crimes has rendered it a victor’s court by proxy. The government’s influence over the tribunal is “enabling them to have their suffering in the war acknowledged and their vanquished enemies prosecuted on the world stage, while leaving their own war crimes unexamined and unpunished.”40 The Rwandan government has been able to legitimize its rule and discredit the Tribunal through its strategic decision making on when and how to cooperate with the Tribunal’s mandate. Whether or not the ICTR will be able to fulfill

its mandate of reconciliation will depend entirely on how it is viewed within Rwanda itself; “the tribunal would have had a greater impact in this area if it had been able to prosecute some Tutsis for war crimes.”41

Lessons from the ICTR

The first lesson to be taken from the ICTR is that international transitional justice strategies do have options for engendering local ownership and fulfilling a mandate of reconciliation. Outreach programmes have the potential to create awareness of the tribunal’s proceedings, judgments, and actors, and to engage the local population in a dialogue about justice and reconciliation. Media training and local capacity building of the judicial system can benefit the local level by transferring international leadership, resources, and human rights knowledge to local actors.

The second lesson, as a corollary to the first, is that programs to foster local ownership must have the right resources, timing, and strategies in order to achieve any measure of reconciliation. The outreach program of the ICTR has not been successful because of its slow start, lack of resources, and urban location. Furthermore, the media and judicial training by the ICTR has been haphazard and hampered by a difficult political relationship with the Government of Rwanda.

Finally, the most important lesson to be learned from the ICTR is that local ownership becomes an impossibility of the tribunal cannot devise a good working relationship with the national government. On a practical level this is necessary as tribunals rely on states, particularly the “victimized” state, to provide resources, witnesses and often the criminals themselves. On a political level the international community must come to realize that even international tribunals can still be rendered a victor’s court by proxy. The dominant perception of the tribunal is one of victor’s justice any attempts at local ownership will fail.

Gacaca and Local Ownership of Transitional Justice

Gacaca, meaning “justice on the grass”, is an indigenous dispute resolution mechanism that was reinvented by the post-genocide Rwandan government to judge genocide cases in local communities. As a primarily restorative justice strategy, Gacaca’s processes of community participation, truth-telling, and compensation are meant to achieve reconciliation through a swift and culturally appropriate mechanism for accountability. While reconciliation is the ultimate goal of Gacaca, its practical benefits cannot be ignored. Rwanda’s prisons are overcrowded and the number of suspects is estimated at over 761,448 in all categories of criminal responsibility. The approximately 12,000 Gacaca courts spread across the country are able to prosecute these cases more quickly than a national court system.

The legal foundation for genocide prosecutions is Rwanda’s Organic Law; this law was developed in 1996 and has a temporal jurisdiction of 1 October 1990 to 31 December 1994. The Organic Law is most significant for its categorization of criminal responsibility: category one is for the most serious criminals and comprises those in a position of authority and orchestrators; category two comprises perpetrators and accomplices; category three is for those who looted or stole property. The Gacaca courts primarily handle suspects in categories two and three, however, category one suspects will face Gacaca during the information collection phase of their trial only. Based on the progress of the pilot courts, the National Service of Gacaca Jurisdictions (NSGJ) presently estimates that 11.5% of suspects are category one, 61.6% in category two, and 26.9% in category three.

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44 NSGJ National Service of Gacaca Jurisdictions, Context or Historical Background of Gacaca Courts (Kigali, Rwanda: Government of Rwanda, 2005).
Gacaca courts have several phases that begin with information collection and documentation, followed by the categorization of criminal responsibility by Gacaca judges, and finally judgement and sentencing. As of July 2006 all Gacaca courts had begun their trial phase of judgment and sentencing and it is estimated that all trials will end by December 2007.\textsuperscript{46} During the information collection and documentation phase a general assembly (i.e. the community) acts as the prosecutor to identify perpetrators, victims, and present evidence. Any member of the community who has any information to present for or against an accused is encouraged to step forward. This is often a very intimate encounter between the accused and the community as the accused must be tried in the community where his/her crimes were committed. Moderating and adjudicating the exchange is the responsibility of the five judges (\textit{Inyangamugayo}).

Gacaca judges were elected by their communities as “persons of integrity” in 2001. In addition to their moderating role in the first phase of the trials, they are responsible for subsequently categorizing the criminal responsibility of the accused and making judgement and sentencing decisions in the final phase.

Plea bargaining is a controversial but key element of the process that allows for the possibility of immediate release if a suspects confesses. Those who confess are released back into their community or into “solidarity camps” (\textit{Ingando}) to finish out their sentence by doing community work and receiving education before reintegrating. Punishments range from life in prison to community service and reintegration. Only category one suspects can receive the death penalty through the national court system. However, the Rwandan government has recently proposed legislation that excludes genocide suspects from receiving the death penalty.\textsuperscript{48} This surprising political

\textsuperscript{47} NURC National Unity and Reconciliation Commission, \textit{Ingando} (Kigali, Rwanda: Government of Rwanda, 2006).
manoeuvre is largely a strategic and pragmatic one which will enable the extradition of
genocide suspects who have fled the country.

*Gacaca and Local Reconciliation*

The restorative justice value and the pragmatic necessity of Gacaca courts are
evident in their mandate and process. According to the Government of Rwanda, there
are five objectives to the Gacaca courts:

1) To reveal the truth about what has happened
2) To speed up the genocide trials
3) To eradicate the culture of impunity
4) To reconcile the Rwandans and reinforce their unity
5) To prove that the Rwandan society has the capacity to settle its own
   problems through a system of justice based on the Rwandan custom 49

Objectives two and three speak to the pragmatism of Gacaca. Neither the ICTR nor the
national court system can handle over 700,000 suspects and “eradicating impunity” has
the utilitarian value of deterrence. Objectives one, four and five speak to the restorative
justice values that render Gacaca a culturally appropriate and more effective vehicle for
peace and reconciliation. Furthermore, these objectives speak to the importance of local
ownership over the outcomes of justice in terms of reconciling individuals and
communities and building local capacity. With regard to the justice process, there are
three restorative justice elements to the Gacaca courts that facilitate local ownership:
community participation, truth-telling, and compensation. The degree to which each of
these elements is achieved affects the perceived legitimacy of the process and its ability
to achieve its reconciliation objectives. The following is a description of these processes
and an evaluation of their progress and impact thus far.

*Community Involvement*

49 NSGJ National Service of Gacaca Jurisdictions, "The Objectives of the Gacaca Courts," (Government of
Rwanda, no date), vol.
The Government of Rwanda (GOR) requires all Rwandans to attend Gacaca during the information collection phase of the trial; attendance is voluntary during the judgment/sentencing phase. Participation is also enforced as citizens can be reprimanded or punished for not participating if it can be shown that they know something about the crime or criminal. Local researchers and survivors agree that there are significant regional disparities in the levels of attendance and participation. The largest disparity is between Gacacas in Kigali-city and the rest of Rwanda. Local authorities force Rwandans outside of the capital city to attend Gacaca by requiring shop closures and rounding up the community.

There are several explanations for the urban-rural disparity. First, authorities at the National Service of Gacaca Jurisdictions claim that residents of Kigali have more important jobs to attend to and it is unreasonable to expect them to attend. Second, many residents of Kigali are returnees (former refugees not present during the genocide) and therefore have little stake in Gacaca. Finally, Kigali elite form the basis of RPF support in the country and as such are accorded greater leeway with their civic responsibilities.

The GOR, in particular the NSGJ, claims that Rwandans freely and happily participate in Gacaca courts. This is not necessarily true in all Gacacas for several reasons. Community members are reluctant to participate because of the trauma associated with recalling violent memories of the genocide. Many are reluctant to provide testimony against an accused for fear of reprisals from the accused once released or family members of the accused. Furthermore, many will not provide testimony in favour of an accused if the majority of the community attending the Gacaca has provided testimony against the accused. Finally, Gacaca courts in areas

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50 Anonymous interviews with local researchers, activists, and survivors in Rwanda in January/February 2006.
51 Anonymous interviews with officials at the National Service of Gacaca Jurisdictions and local researchers in Kigali, Rwanda in January/February 2006.
particularly hard hit by the violence or where a significant numbers of suspects remain have much lower levels of participation in Gacaca.

*Truth-Telling*

There is a consensus among government officials, donors, researchers, and especially Rwandans that truth-telling is *the* most important principle of Gacaca. The empirical significance of truth-telling is evident in the large number of truth commissions operating in post-conflict regions of the world.\(^{52}\) Furthermore, truth-telling is advocated as an important restorative justice value for its ability to reconcile and heal survivors and perpetrators, and provide both knowledge and acknowledgement of the crimes committed. Acknowledgement is particularly necessary when crimes have been committed in a political and social environment of myths, misinformation, and secrecy.\(^{53}\) In Rwanda the benefits of healing, reconciliation, knowledge and acknowledgement are expected from truth-telling. However, truth-telling is also the trade-off for punishment and the plea-bargaining aspect of Gacaca facilitates and reflects this trade-off. Knowing the practical difficulties of punishing large numbers of accused, survivors highly value the truth-telling/plea-bargaining component. Those who support and oppose the Gacaca courts agree that without truth-telling there can be no justice and certainly no reconciliation.

Rwandans recognize that truth-telling is the responsibility of all Gacaca participants. However, the reconciliation benefits are ultimately for the survivors. Truth-telling is important for survivors who do not know what happened to their relatives and want the truth to help them get past their hatred and sadness. It is


important for survivors who do know what happened to their relatives and will not forgive until the accused confesses to their crime(s). Finally, truth-telling is important for all survivors who want to be able to locate and identify their deceased family members so they can provide a proper Christian burial.\footnote{One important caveat to this benefit is that the GOR is not allowing burials where bodies have been found in mass graves.}

Despite the expected benefits of this restorative justice component, the truth-telling component of Gacaca is in jeopardy. Truth-telling has not met expectations among both survivors and accused and therefore the impact of truth-telling on reconciliation has not been born out. The number of confessions in Gacaca courts across Rwanda is much lower than expected: there were only 2,883 confessions among the 63,447 suspects in the pilot phase Gacaca courts.\footnote{National Service of Gacaca Jurisdictions, Gacaca Process: Achievement, Problems and Future Prospects.} Additionally, many of the accused are telling partial-truths and admitting to lesser crimes in order to take advantage of the plea-bargaining system. This has had a detrimental effect on the popular opinion of the Gacaca courts and jeopardized attempts to build respect for the rule of law.

The truth-telling component is also not benefiting female victims of sexual violence. Very few accused are confessing to charges of rape because rape is a category one crime (receiving the harshest punishment including death). By identifying rape as a category one crime there has been little justice for victims of sexual violence and no change in the social stigmas associated with rape victims in the communities. For example, accusations of rape are usually brought forward by local NGOs or officials; victims of rape rarely come forward on their own for fear of the social and family repercussions.

**Compensation**

The Organic Law references the need for compensation and the eventual legislation to determine payments and recipients. Despite the overwhelming desire and need for compensation among survivors, this aspect of accountability through the
Gacaca courts or national court system has not be realized to any significant degree. In a document produced by the NSGJ the GOR states that the reparation for damaged properties will be compensated by restitution, repayment, or labour and “other forms of compensation for the victims shall be determined by a particular law.”

There is currently a draft law in place for a compensation scheme that has been put forward by the Ministry of Justice to Parliament and the Senate. The GOR has not made the contents of this draft law known to the public. However, government sources interviewed during field research have stated that there will be “no compensation as such”.

The draft law will award compensation only to the poorest of survivors in the form of health and education assistance. The compensation scheme will acquire funds from the government, donors, and assets seized from wealthy perpetrators.

Determining how a compensation scheme will work is incredibly complex. There are a number of parties involved and a number of options available for determining amounts and recipients. Three types of compensation have been suggested. The first type is compensation from the government to the falsely accused for lost time in prison or because they too want to be considered survivors.

The second type is compensation from the accused to the survivors. This comes in the form of reparations for damaged or destroyed property or a minimal but symbolic compensation for the loss of family members can play an important role in reconciliation at the community level.

Finally, compensation from the government to survivors is by far the most controversial but the most significant. Many survivors articulate the need for the government to take responsibility for the actions of past governments. There is a strong conviction among

57 Anonymous interviews with National Service of Gacaca Jurisdictions officials and local researchers in Kigali, Rwanda in January/February 2006.
58 Many falsely accused argue that they are survivors as well because they have lost family members, property, contracted diseases, and life-long injuries. However, they are not considered to be among the survivors because of their pre-genocide ethnic identity as Hutus and their once legal status as “accused.”
59 Currently the Gacaca courts occasionally order the accused to pay reparations for damaged or destroyed property. However, these reparations are ad hoc and inconsistent as there is not system in place to determine the amount or form of reparation.
Rwandans that this was an elite orchestrated genocide. As such, they believe it necessary for the government to compensate survivors as a form of retroactive accountability and acknowledgement.

**Gacaca and the Security Implications of Local Ownership**

The goal of transitional justice is to achieve peace and reconciliation. To properly evaluate this goal is to understand the dynamic relationship between individual and national security, and security and justice. The definition of peace is often equated with national security; however, the context of the Rwandan genocide demonstrated that individual insecurity contributed to national and regional insecurity. This correlation has continued into post-genocide Rwanda where the legacy of violence and poverty at the local level is a challenge for achieving national peace. The relationship between justice and security is also a dynamic one. Local justice can breed insecurity and, alternatively, increased insecurity can have a detrimental impact on the legitimacy and effectiveness of justice. There is considerable evidence to indicate that Gacaca is contributing to individual insecurity in several forms. Direct causation between Gacaca and individual insecurity is difficult to ascertain. However, there is a significant degree of consensus from the media, NGO and regional organization reports, and my own primary and secondary research that there is a strong correlation between Gacaca and insecurity. A survey conducted in February 2002 revealed that “perceptions of deteriorating security conditions and of increased poverty were associated with more negative attitudes toward the two domestic justice initiatives,” i.e. Gacaca and national trials.60

Vengeance killings are widespread and consistent throughout Rwanda. When the Gacaca trials started in earnest in July 2006 the government was acutely aware of

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the potential security repercussions. Justice Minister Edda Mukabagwiza told the New Times: “nobody should fear; witnesses should give their testimonies freely and the suspects should be able to co-operate and not intimidate or cause harm to witnesses…. Maintain the security of witnesses and survivors.” Security problems related to Gacaca have steadily increased since the trial phase began. The Rwandan media frequently reports on attacks and threats against survivors and judges, and the increasing numbers of suspects fleeing from the Gacaca into Burundi and Uganda.

There are many types of violent acts committed in relation to the Gacaca courts. First, vengeance killings or violent acts against survivors are frequent. Those who are expected to testify or have already testified against an accused are killed, attacked, or threatened by family members of the accused or the accused him/herself upon release. Second, vengeance killings or violent acts occur against the accused are killed after they are released back into their community by the family members of the victims or survivors. Third, Gacaca judges are frequently intimidated or threatened by the accused or their family; several instances of judges being killed have been reported in the local media. Often charges of corruption against Gacaca judges are offered as a possible explanation for their insecurity.

Exact estimates of the number of killings are disputed as not all of them are reported in the local media or by the government. Furthermore, violence against survivors and judges are often more widely reported by the local media than violence against the accused or their families. The New Times (a well-known pro-government newspaper) only reports on attacks against survivors and judges and scarcely mentions the insecurity of non-survivors. This problem with estimates and bias is particularly evident in a recent dispute between Human Rights Watch (HRW) and Ibuka, the umbrella survivors’ organization. In a January 2007 report (“Killings in Eastern

61 Munyaneza, "Gacaca Trials Start Enmasse Tomorrow."
HRC reports that increasing violence committed by and against survivors. The report specifically documents two incidents of killings in which thirteen people were killed in November 2006; the first incident was an attack against survivors, which was followed by the reprisal killing of eight people by survivors, including children.

HRW also criticized the GOR for not responding in a comprehensive and impartial manner. The controversial aspect of this report is its identification of reprisal crimes committed by survivors against others in their community. Both Ibuka and the Rwandan National Human Rights Commission have reacted strongly to this report with Ibuka accusing “these human rights groups” of being “associations of criminals.”

Benoit Kaboyi, Executive Secretary of Ibuka, argues that the “report is totally one sided.” Ibuka subsequently published their own figures of violence resulting from the Gacaca courts. These figures indicate very high levels of violence against survivors in the form of murders (i.e., 170 since 2000), attempted murders, intimidation and assault, and destruction of property by setting houses on fire, destroying crops and livestock.

Finally, Ibuka also provided evidence that “tracts” (anonymous letters) “against survivors, witnesses and Gacaca judges have been on a steady increase in the recent past.”

Another important security implication is population displacement. There have been many reports from the international media and UNHCR over the last year that thousands of Rwandans have fled their communities as refugees and internally displaced persons for fear of the Gacaca courts. There are many competing explanations for these reports. Most of these refugees are fleeing from the province of Butare.

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63 HRW, Killings in Eastern Rwanda.
65 Agaba, "Ibuka Raps Rights Groups over Report."
67 Agaba, "Ibuka Releases Figures of Violence against Survivors."
(southern Rwanda) and are fleeing to Burundi and there are few reports of population displacement from other areas of the country. It is possible to explain this anomaly in Butare as a result of the fear propaganda spread by former Interahamwe in Burundi and perpetrators still in positions of local authority in Butare. These groups are accused of inciting fear among the population that Gacaca will take away their homes and their family members if they do not flee. The people of Butare are often accused of being highly susceptible to rumours and obedient to authority owing to the strong elite presence of the National University in the town. While the majority of these refugees have now been returned, there are still steady reports of individuals and small groups fleeing Gacaca.68

The security implications of Gacaca have led regional and international observers of Gacaca to question its legitimacy and value in the unity and reconciliation agenda. The African Union’s Peer Review Mechanism completed a country report on Rwanda in June 2006 that seriously questioned the operations and legitimacy of the Gacaca courts. The report states:

“While the Gacaca courts are viewed by the Government and some segments of Rwandans as the main alternative means for dispute resolution and a much-needed way to achieve justice and reconciliation, there are serious concerns about their legitimacy and ability to win trust and confidence in dispensing justice, while strictly conforming to contemporary international human rights norms and standards.”69

“. . .People in rural areas fleeing in fear of being accused... this fear is based on allegations that the Gacaca courts are a camouflage for ‘victor’s

justice’ . . . the Government has a singular challenge to assure all citizens that the Gacaca are not designed for retribution or witch hunting.”

The GOR has provided diplomatic responses to these issues within the report itself: “In Rwanda, Gacaca is seen in the category of creative innovations under difficult circumstances, designed to address our specific problems.” However, President Kagame’s statements in the media were much harsher and accused the researchers of reporting only what they heard, and not what they saw.

The Government of Rwanda promotes an agenda of unity and reconciliation through many programs and policies, however, Gacaca in particular embodies the GOR’s agenda and expectations. The façade of unity and reconciliation is appealing to the international community as it outwardly seeks to establish the truth about the genocide, eradicate impunity, erase ethnic identities from the public spheres, and reconcile Rwandans. However, this agenda has allowed the government to suppress political and social dissent by identifying any opposition to its policies and legitimacy of rule as an expression of divisionism and genocide ideology. Therefore, it has been in the interest of the government to permit extensive reporting on violence against survivors, who are primarily Tutsis, and question and denounce public attention to crimes committed by survivors. In response to the increasing insecurity surrounding the Gacaca courts, the Minister of Internal Security “warned genocide suspects and other extremists who harass intimidate and torture genocide survivor” and disclosed that his ministry was “set to organize sensitization meetings aimed at encouraging people to discard the genocide ideology.” The government has used reports of

70 AU, Country Review Report of the Republic of Rwanda, 35 para 97
71 AU, Country Review Report of the Republic of Rwanda, 139
73 See background and objectives of the National Unity and Reconciliation Commission: http://www.nurc.gov.rw
violence against survivors as evidence of a persistent ideology of genocide, divisionism, and revisionism among the Rwandan population.

Furthermore, the GOR, Ibuka, and the National Human Rights Commission blames actors both inside and outside (i.e. Human Rights Watch) of Rwanda of divisionism and inciting ethnic hatred if they raise awareness of crimes committed by the government or survivors. For example, the National Human Rights Commission’s response to the HRW report on the killings of and by survivors states: “… Human Rights Watch persists through its written documents presenting Rwanda mainly on the basis of ethnic matters and this can set Rwandans against themselves… the documents points out a segregationist logic which consequence is setting an ill feeling and creates mistruth with Rwandan Community.”

**Gacaca and Victor’s Justice**

As with the ICTR, a discussion of the local ownership of Gacaca would not be complete without mention of its characterization as “victor’s justice”. The Tusification and authoritarian nature of the Rwandan state has carried over to the Gacaca process. The Gacaca courts have not and will not prosecute RPF crimes for two reasons. First, despite the “grassroots” value assigned to Gacaca, the authority of judges and participation of communities are heavily controlled and monitored by the state. A social climate of fear and suspicion of authority precludes any effort to bring RPF suspects to justice. Second, the Gacaca courts have been structured to prohibit investigations into war crimes, which has all but eliminated the possibility of prosecuting former RPF. The government claims that these war crimes will be dealt with by the national court system and military trials, however, this has yet to come to fruition.

The most serious consequence of victor’s justice in the Gacaca courts is its use as a forum to recontextualise and politicize ethnic identities in post-genocide Rwanda.

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75 Munyaneza, "Rights Body Blasts Hrw over Report."
The Gacaca courts collectively assign guilt to Hutus, i.e. the accused, and rewards and vindicates survivors, i.e. Tutsis. According to Mahmood Mamdani, *victims* refer to both Tutsis and Hutus that were targeted in the genocide. However, the living victims refer almost solely to “Tutsi genocide survivors” and “old case load refugees” who were primarily Tutsis that fled after the 1959 Hutu Revolution. The term *survivor* refers to all Tutsis who remained in the country during the genocide and survived. A corollary to identifying *victims* and *survivors* is the need to identify some as *perpetrators*: the danger is that all Hutus are deemed perpetrators as their survival of the genocide seemingly assumes their participation or complicity. The social and economic benefits of Gacaca are heavily skewed in favour of survivors and this, combined with its characterization as victor’s justice, invites the danger of Gacaca dividing communities again by ethnicity and threatening a resurgence of violence.

**Lessons from Gacaca**

The first lesson is that the Gacaca courts, in theory, are the epitome of local ownership. They have been re-invented by national leaders and have been managed and implemented by community elders and authorities. Additionally, the participation and support of locals is essential to the ability of the Gacaca courts to reconcile Rwandans and prevent a recurrence of violence. The international community has largely supported the Gacaca courts with its funding, praise, and occasional legal and human right assistance. This, if anything, is how local ownership of transitional justice should work.

The second lesson to be taken from Gacaca is despite the great potential of local ownership of transitional justice its intimate nature has much more potential to threaten local stability than an externally imposed justice. The insecurity resulting from the Gacaca courts is having a pervasive effect on the public perception of justice, let alone

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its ability to reconcile Rwanda. The causes of insecurity reveal the lingering fears of ethnic and economic rivalry; the government’s responses to insecurity reveal the depth of authoritarian control over policies of unity and reconciliation. Therefore while the allure of Gacaca as grassroots justice is appealing to the local and international community, local ownership should be evaluated with an eye to the legitimacy of the local owners and the extent to which transitional justice can be hijacked by rivalries reminiscent of the violence itself.

Conclusion

Hybrid strategies represent the contemporary generation of transitional justice. The evolution of justice in the aftermath of atrocities has shown increasing awareness of the need for local ownership in the form of engaging local actors, engaging local communities, and adopting more culturally and socially appropriate justice values. Local Ownership is a reasonable goal for both grassroots restorative justice strategies and international retributive justice strategies. Both the ICTR and Gacaca courts seek to achieve reconciliation in Rwanda through different conceptions of local ownership. However, while local ownership is entire premise of the Gacaca courts, the ICTR has had to deliberately devise new programs to accomplish this goal. Rwanda does not represent an intentional and coherent hybrid strategy yet there are still lessons to be learned from the combined use of restorative/local and retributive/international transitional justice strategies in the aftermath of atrocities.
Bibliography


