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Master thesis

**The Role of Gacaca Court System in Restoring Relations between Hutu
and Tutsi in the Post-war Rwanda**

Mentor:

Prof. dr Nemanja Džuverović

Student:

Nevena Mančić

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Declaration of Academic Integrity

Hereby, I declare that I have composed the presented paper independently on my own and without any other resources than the ones indicated. All thoughts taken directly or indirectly from external sources are properly denoted as such.

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1. Introduction

1.1. Statement of the problem

Even after 24 years of peace in Rwanda, the importance of genocide that occurred in 1994, as one of the hardest moments in human history, should be acknowledged as a valuable lesson to humanity. What happened in Rwanda that year was the most organized program of genocide when, approximately 800,000 people were killed. It all begun on April 6th 1994, as Rwandan President Juvenal Habyarimana returned from a round of talks in neighbouring Tanzania. He was killed when his plane was shot down outside of the country's capital, Kigali.¹ After that the outburst of extreme violence started. What happened in Rwanda can be described as "a populist genocide", where everybody, including children, participated in killing their neighbours with common farm tools (the most popular was the machete).² While not all Hutus participated in killing and not all victims were Tutsi, Hutus did execute the vast majority of the killings and Tutsis were mostly the target of their aggression.³ To understand the conditions that created fertile ground for such a torture it is important to mention the class tensions that were initiated during the colonial period. There are three main ethnic groups in Rwanda: Hutu that involve 85% of the population, Tutsi that include 14%, and 1% of the population that belongs to Twa tribe. Tensions started to rise after the independence from Belgium in 1962.⁴ In the 1990's, the Hutu political elite blamed the Tutsi population for increasing political, social, and economic problems in the country. They also associated Tutsi civilians with the Rwandan Patriotic Front (RPF) rebel group.⁵ They were founded in Kampala, Uganda in 1988, as political and military movement with an aim to secure reparation of Rwandans in exile and to reform the Rwandan government.⁶

Hence, the genocide started as seek for revenge on the power that belonged to the elite that had ruled the country. After the devastation of the country caused by the bloodshed the victims of the genocide were numerous. The violence left the country in shambles as a great

¹*The Rwandan Genocide*, Available from: <http://endgenocide.org/learn/past-genocides/the-rwandan-genocide/>, (Accessed 27 January 2017).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ *Outreach Programme on the Rwanda Genocide and the United Nations*, Available from: <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>, (Accessed 27 January 2017).

The Rwandan Patriotic Front (RPF) was composed mainly of Tutsi exiles in Uganda, many of whom had served in President Yoweri Museveni's National Resistance Army, which had overthrown the previous Ugandan government in 1986. RPF included some Hutus as well, but the majority were Tutsi refugees.

many public leaders, community officials, and respected business leaders were killed, along with a much of the citizenry in areas all over Rwanda.⁷ Signing of the Arusha agreement in 1994 did not mark the end of the conflict in Rwanda.⁸ The country was left torn apart and needed more than just a reconstruction policy framework set out by the international community. The post crisis period left Rwanda with a lot to deal with especially after the following results of the genocide attack: 12% of the entire population was wiped out, the majority of the population that remained were left with physical and mental traumas to deal with, women were infected with HIV/AIDS as a result of rape cases and majority of the children were also mentally affected as they witnessed the entire carnage. Not to mention that infrastructure was destroyed and the entire population relied on relief or donated basic needs.⁹ Another stepping stone for reconciliation was a disagreement on the aspects of national history. The existence of three ethnicities was established but it was never very clear how they developed. After the end of genocide, the government was initiating the version of history in which Hutu and Tutsi lived in peaceful coexistence before colonialism. The government's official website claims that "while the relationship between the king and the rest of the population was unequal, the relationship between the ordinary Bahutu, Batutsi and Batwa was one of mutual benefit mainly through the exchange of their labour. The relationship was symbolic."¹⁰ Hutus always considered Tutsi as foreigners who wanted control over the region which led to ideological turmoil between these groups when Tutsis were favoured by colonials. Even though they shared the language, customs and culture, the tensions grew out of government's ban to use terms of ethnic categories. Since independence, there have been several power struggles between Hutus and Tutsis, including a series of massacres that occurred in 1963, 1964, 1973, 1990, 1992, and 1993.¹¹ These events led to bloodshed. Since 1994, no history lessons have been taught in Rwandan schools because there was no consensus on the past, and government publications refuse to include an ethnic breakdown of society.¹²

⁷ Toran Hansen, *The Gacaca Tribunals in Post-Genocide Rwanda*, Center for Restorative Justice and Peacemaking, Minnesota, 2005, pp. 1.

⁸ Ibid.

⁹ *Outreach Programme on the Rwanda Genocide and the United Nations*, Available from: <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>, (Accessed 27 January 2017).

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

Fridtjof Nansen, the First High Commissioner for Refugees, said that the impossible is what takes a little longer, and Rwandan genocide seemed to be one of the impossible cases.¹³ Throughout the 1990s, more than 100.000 waited in detention for trials to begin which was an enormous burden for one of the poorest countries in the world.¹⁴ Most of the prisoners have been in custody for more than 10 years.¹⁵

Beside everything in the years that followed justice had to be restored. This was the most difficult task due to a large number of perpetrators so the judicial system was based on three levels: the International Criminal Tribunal for Rwanda (ICTR), the national court system and the Gacaca courts.

Rwanda redesigned Gacaca courts to work together with ICTR and national court system. Gacaca courts were enabled to handle crimes committed between October 1, 1990 and December 31, 1994, and by adopting the same four categories of genocide suspects as contained in Organic Law 08/96.¹⁶ By giving a focus on the healing of victims and perpetrators, Gacaca courts in Rwanda represent a model of restorative justice which, without a doubt, had a significant role in post-genocide era.¹⁷ Gacaca courts were a form of traditional, indigenous restorative justice instrument. The government formed 10.000 Gacaca courts across the country where perpetrators would be put on trials for genocide in the communities where crimes were committed. Gacaca courts, as form of justice, were set out with a goal to provide some measure of reconciliation where perpetrators would be judged by their neighbours.

1.2. Statement of purpose

This thesis is going to focus on the importance of the Gacaca court system as a traditional community court system that Rwandan government established to bring the justice and reconciliation from the bottom up level. It was a very specific way to restore unity and

¹³ Available from: <http://www.unhcr.org/fridtjof-nansen-1920-1930.html>, (Accessed 20 February 2018).

¹⁴ William Schabas, *War Crimes and Human Rights: Essays on the Death Penalty, Justice and Accountability*, Cameron May Ltd, London, 2008, pp. 560.

¹⁵ Ibid, pp. 560.

¹⁶ "Organic Law No 40/2000 of 26/01/2001 Setting up and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994.", Gazette, Kigali, 2001. Available from: <http://jurisafrika.org/docs/statutes/ORGANIC%20LAW%20N0%2040.pdf>, (Accessed 20 February 2018).

¹⁷ Leslie Haskell, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, Human Rights Watch, New York, 2011.

reconstruct Rwandan identity. The Gacaca trials served until 4th May 2012.¹⁸ They promoted reconciliation by providing a means for victims to learn the truth about the death of their family and relatives. They also gave perpetrators the opportunity to confess their crimes, show remorse and ask for forgiveness in front of their community.¹⁹ In academic terms, revising the effects of Gacaca courts will emphasize the importance of the post-conflict peace building as well as the challenges during this process. So far, Rwanda has managed to reconstruct the nation using the appropriate measures of development for their conditions and that can launch a certain example for the process of peace building for the states today. Thus, the aim of this research is to show that Gacaca, unlike the Western court system, emphasizes reconciliation and healing as well as re-establishing community relationships and reintegrating offenders into their communities.²⁰ In other words, the aim is to show that participatory nature of this process is important since it brings up the form of justice that promotes democratic decision-making in the community and gets at the truth better than traditional court system.²¹ It also shows that it is easy to place the offenders into prisons, but for restoring ruined society back together it takes courage and self-determination in facing with harms in a culturally appropriate manner.

1.3. Research question

The main research question in this analysis is: “Has the role of Gacaca courts in restoring relations between Hutu and Tutsi been effective enough to prevent future violence?” This broad question opens more concrete questions that will be addressed in this research:

What is more important – community rehabilitation and individual reconciliation or deterrence of further ethnic violence?

Was the addressing of ethnic and class tensions in a culturally appropriate manner enough to provide the peaceful coexistence in Rwanda?

¹⁸ *Outreach Programme on the Rwanda Genocide and the United Nations*. Available from: <http://www.un.org/en/preventgenocide/rwanda/about/bgjustice.shtml>, (Accessed 27 January 2017.)

¹⁹ Ibid.

²⁰ Toran Hansen, *The Gacaca Tribunals in Post-Genocide Rwanda*, Center for Restorative Justice and Peacemaking, Minnesota, 2005.

²¹ Ibid.

1.4. Research methods

In the process of collecting and data processing various general scientific methods will be used. The very nature of the research and its goals demand the usage of appropriate methods and techniques. Content analysis and deductive approach to data will be specifically required. The main method will be qualitative analysis of the secondary data sources such as books, articles and documents that are describing the role of Gacaca courts in achieving peace in Rwanda.

Besides that, the main analytical and synthetic methods, such as analysis and synthesis, induction and deduction and generalization and specialization, will be applied. All those methods are in the core of general scientific methods. They are all connected which is the reason for their utilization.

Data collection

Even though the effectiveness of Gacaca system has been criticized and set under the magnifying glass, in this thesis we want to point out the positive outcome of community-based rituals on reintegration in affected communities and its impact on long-distance effects for secure future and co-existence. Therefore, this research will mainly rely on the work of Phil Clark who addressed the holism and hybridity in the case of Gacaca courts and describing how is “justice without lawyers” achievable, as well as Paul Christoph Bornkamm’s work about “justice on the grass” which is the core value of Gacaca system.

2. Theoretical framework

2.1. Lederach's conflict transformation theory and Barton's restorative justice theory

John Paul Lederach's conflict transformation theory

Peacebuilding theory has been present in international agenda for more than 20 years. Since then it is experiencing a shift from international to local actors with a support in transformation theories. Two theoretical frameworks have pushed this shift in focus towards local.²² Liberal peace theory has an overarching rationale for international support to local actors by considering vibrant civil society as an essential component of liberal democracies.²³ The other influence was conflict transformation, which created theoretical guidance for local support.²⁴ The most influential was John Paul Lederach's conflict transformation theory.

Conflict transformation theory accepts the core understanding of peacebuilding as a long-term multi-task transformative contribution to social change, helping to create a just and sustainable peace.²⁵ Lederach introduces four central dimensions of conflict that affect situations and changes in society and those are *personal, relational, structural* and *cultural*. According to his theory, reconciliation is placed at heart of developing long-term infrastructures for peacebuilding within societies, and it comes from truth, justice, mercy and peace.²⁶ When it comes to dimensions of conflict, transformation theory understands them as highly important because social conflict evolves from them and produces changes in them. Therefore, transformation as an approach recognizes that conflict is a normal and continuous dynamic within human relationships.²⁷ In Lederach's words conflict brings with it the potential for constructive change. Positive change doesn't always occur and many times conflict results in long-standing cycles of destruction, but the key to transformation is a proactive bias toward seeing conflict as a potential catalyst for growth.²⁸ He proposes

²² Thania Paffenholz, "International peacebuilding goes local: analysing Lederach's conflict transformation theory and its ambivalent encounter with 20 years of practice", *Peacebuilding*, Routledge, London, 2013, pp. 2.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid, pp.3.

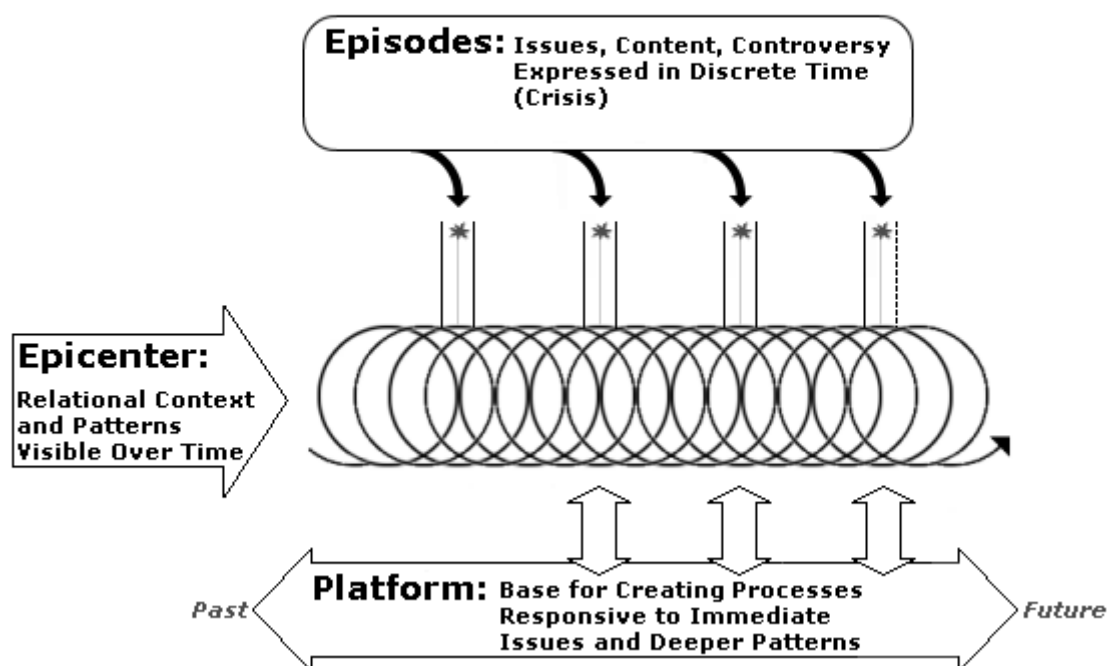
²⁶ Ibid, pp.5.

²⁷ John Paul Lederach, *Defining Conflict Transformation*, Available from: <http://restorativejustice.org/10fulltext/lederach.html>, (Accessed 9 July 2017).

²⁸ Kenneth Obeikwe, "In Search of Appropriate Peacemaking/Peacebuilding Paradigm in Dealing with Africa's Intrastate Violent Conflicts: Considering Lederach's Faith-based Conflict Transformation and Peacebuilding Approach", *Journal of Peace, Conflict and Development*, Issue 13, February 2009, pp. 8.

dialogue and face to face interaction as an essential way to engage and promote the process of reconciliation in society. He argues that people must actively participate in decisions that reflect their co-existence in community life. Therefore, in seeking for justice, human conflict needs to be channelled through adaptive responses.²⁹ To satisfy those responses, Lederach proposes a conflict transformation platform that has to be short-term responsive and long-term strategic.³⁰ It must be able to produce creative responses for societies that live with painful memories from the past and deeply rooted animosities.

Transformational Platform



Picture 1. Transformational Platform. <http://www.beyondintractability.org/essay/transformation>

Conflict transformation is widely applicable on African soil considering the fact that Africa's conflicts are localized and complex. On that matter the applicability of transformational platform is visible in post-war Rwanda focusing on Gacaca courts and their role in reconciliation process. After genocide, what Rwanda needed more than the hierarchical statist

²⁹ John Paul Lederach, *Defining Conflict Transformation*, Available from: <http://restorativejustice.org/10fulltext/lederach.html>, (Accessed 9 July 2017).

³⁰ John Paul Lederch, "Conflict Transformation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. 2003.

diplomatic or military approach, is a moral trajectory of reconciliation at peace.³¹ Lederach's transformational platform sets the framework that is appropriate in dealing with the nature of conflict in Rwanda. As picture indicates, changes in society are both linear and circular which highlights the importance of local inputs in reconciliation process. In other words, Rwanda needed an inner-oriented complex and creative nonviolent process of conflict transformation and peacebuilding.³² This process required working towards the change of the people's hearts, restoration of relationships and sustainable holistic change over a long time which is why Gacaca is a suitable local input.³³

Transformation lies in *understanding*. As Lederach says:

*“Conflict transformation is to envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships.”*³⁴

This process must strive to understand the roots of people's perceptions and address the systemic changes needed to provide access and respectful participation.³⁵ To create such environment, empowerment of individuals in the community is the key that upholds the commitment to change and restore relations. Therefore, conflict transformation and peacebuilding must nurture community and work for the empowerment of the people to be active and full participants in the decisions and environment that affects their lives.³⁶

Furthermore, this indicates the significant role of indigenous third party mediators with the cultural epistemology of the people.³⁷ Individuals create their sense of security by articulating and producing culture in their pursuit of meaningfulness. This builds the structural framework of Lederach's elicitive approach. He suggests that it is important to ensure the sustainability of the peace process or anchor the process around indigenous peace actors or

³¹ Kenneth Obeikwe, “In Search of Appropriate Peacemaking/Peacebuilding Paradigm in Dealing with Africa's Intrastate Violent Conflicts: Considering Lederach's Faith-based Conflict Transformation and Peacebuilding Approach”, *Journal of Peace, Conflict and Development*, Issue 13, February 2009, pp. 10.

³² Ibid, pp. 10.

³³ Ibid, pp. 10.

³⁴ John Paul Lederach, *Defining Conflict Transformation*, Available from: <http://restorativejustice.org/10fulltext/lederach.html>, (Accessed 9 July 2017).

³⁵ John Paul Lederach, "Conflict Transformation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. 2003.

³⁶ Kenneth Obeikwe, “In Search of Appropriate Peacemaking/Peacebuilding Paradigm in Dealing with Africa's Intrastate Violent Conflicts: Considering Lederach's Faith-based Conflict Transformation and Peacebuilding Approach”, *Journal of Peace, Conflict and Development*, Issue 13, February 2009, pp. 18.

³⁷ Ibid.

mediators.³⁸ Again, here Gacaca practice has a history of considerable duration. The very core of Lederach's approach is organic, but yet complex web of actors and roles that engages all levels of the community. At this stage, Lederach introduces three categories of peace actors. Each and every of them have a different role in the structure of conflict transformation. He indicates on top level, middle range, and grassroots actors.³⁹

Top level includes the elite group of high level leaders in military, religious and political circles that are visible for the society and participate in negotiations. Their aim is to achieve the settlement for violent conflict that creates the ground for the engagement of lower level of population. Another level is middle-range whose actors are linked with the development of civil society. These actors include ethnic and religious leaders, academicians, and humanitarian leaders of nongovernmental organizations.⁴⁰ They enjoy the enormous flexibility and power to influence the lowest levels of society and can emphasize the importance of ongoing relationships. Their peacebuilding activities and roles include problem-solving workshops, training in conflict resolution, and peace commissions.⁴¹

The last one is grassroots level. Here we have masses with everyday struggles. Actors here are the ones that get involved in local initiatives with a goal to achieve peace among people. These leaders operate at the pressure of the real pathetic situation of the masses-their fears, deep-seated hatred, and animosities-to bring about structural changes that advance mutual accommodation.⁴² Practical ideas and initiatives from grassroots level can produce a peace process that embraces the different population level and actor and produce concrete result.⁴³ The above mentioned face-to-face interaction and dialogue is fundamental for this level. Traditional and indigenous peace-making is rooted in communication among ordinary people that are both the actors and victims of conflict and violence. Through such communication is where we find ideas, definitions and solutions for conflict transformation. Here is where dialogue plays a crucial role in the maintenance or change of social structures.⁴⁴ Through dialogue, these structures can be modified to become more responsive and just.⁴⁵

³⁸ Ibid, pp. 19.

³⁹ Ibid.

⁴⁰ Ibid, pp. 20.

⁴¹ Ibid, pp. 21.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ John Paul Lederch, "Conflict Transformation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. 2003.

⁴⁵ Ibid.

At this point, conflict transformation theory explains what happens after the peace agreement is reached. In Lederach's opinion, peacebuilding is a web of different levels, activities and actors that are holding the process of reconciliation together. Evidently, the peace process in Rwanda needed to provide the space for the participation and role of religious peace actors, non-governmental organizations, and other sociological authorities, together with secular peacebuilding practitioners and technocrats.⁴⁶

Overall, Lederach's work influenced the practice of supporting the 'local' in a major way. His transformational theory intertwines two of his most important postulates that are pillars of holistic approach to conflict in which dialogue, social justice and conflict are ahead of resolution. Those are a capacity to envision conflict positively with a potential for constructive growth, and a willingness to respond in ways that maximize this potential for positive change.⁴⁷

In the end, what Lederach's conflict transformation theory suggests is that the paradigm of restorative justice and relationship entails a process of encounter and reconciliation that neither neglects the rights, dignity and wellbeing of the oppressed nor overlooks the dignity of the oppressors, but helps to lift both parties beyond their conflict issues into a more justice-full ongoing interdependent relationship.⁴⁸

Charles Barton's restorative justice theory

Leaning on the importance of dialogue and face-to-face interaction between oppressed and the oppressors, Charles Barton's restorative justice theory argues that justice would be achievable in the dialogue between the victim and the offender in the presence of their community. It demands emotional and psychological healing. According to this, the key to reconciliation is the victim's forgiveness which results with the offender's reintegration into community with a symbolic reparation that will provide satisfaction for the victim and the sense of new beginning for the offender.⁴⁹

⁴⁶ Kenneth Obeikwe, "In Search of Appropriate Peacemaking/Peacebuilding Paradigm in Dealing with Africa's Intrastate Violent Conflicts: Considering Lederach's Faith-based Conflict Transformation and Peacebuilding Approach", *Journal of Peace, Conflict and Development*, Issue 13, February 2009, pp. 22.

⁴⁷ John Paul Lederch, "Conflict Transformation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. 2003.

⁴⁸ Kenneth Obeikwe, "In Search of Appropriate Peacemaking/Peacebuilding Paradigm in Dealing with Africa's Intrastate Violent Conflicts: Considering Lederach's Faith-based Conflict Transformation and Peacebuilding Approach", *Journal of Peace, Conflict and Development*, Issue 13, February 2009, pp. 25.

⁴⁹ Charles Barton, "Theories of Restorative Justice", *Australian Journal of Professional and Applied Ethics*, vol. 2, no. 1, July 2000, pp. 41-53.

Restorative justice theory introduces the empowerment model that puts a different perspective to the response on a crime in criminal justice system. The question that arises is: *What is a fair and just response to a criminal act?*

In the opinion of Charles Barton, restorative practices reinstate the basic notions of retribution and deterrence that have been neglected in modern sentencing schemes, that restorativeness contributes new and deeper meaning to those notions and values, and that in doing so restorative justice practices improve and promote society's response to crime.⁵⁰ There are four theoretical explanations of restorative justice theory that support the work of Gacaca courts in Rwandan society. Those are *reversal of moral disengagement, social and moral development, emotional and moral psychological healing* and *reintegrative shaming*.⁵¹ In addition to these theoretical explanations, restorative justice philosophy emphasizes individual and community healing and the creation and reestablishment of social harmony and peace through the criminal justice response to offence.⁵² In Barton's words, what needs to be done is the transfer of power from the hands of state to the hands of community. Before we proceed to the elaboration of four pillars of restorative justice theory, it is important to mention that restorative justice is a challenge for practitioners since the path to healing and reconciliation is never easy and the goal is difficult to achieve. Practitioners need to overcome difficulties by taking the parties through an empowering process of consultation, discussion, venting, and negotiation that will bring them to the point where reconciliation and healing, if these are at all possible, can easily and naturally happen.⁵³

In our criminal justice system prosecutors don't really pay attention to victims of the crime, justice is often reflected in the eyes of the legal response for the state and the public. On the other hand, restorative justice theory builds on the empowerment model which provides approaches of resolving problems in societies and provides equal justice. People come first and norms come second. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation and reassurance.⁵⁴

⁵⁰ Zvi Gabbay, "Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices", *Journal of Justice Resolution*, vol. 2, 2005, pp. 349.

⁵¹ Charles Barton, "Theories of Restorative Justice", *Australian Journal of Professional and Applied Ethics*, vol. 2, no. 1, July 2000, pp. 44.

⁵² Charles Barton, *Restorative Justice: The Empowerment Model*, Hawkins Press, 2003, pp.32.

⁵³ *Ibid*, pp.33.

⁵⁴ Zvi Gabbay, "Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices", *Journal of Justice Resolution*, vol. 2, 2005, pp. 357.

Restorative justice principles can be addressed with four main theoretical explanations mentioned above. The use of reversal of moral disengagement is important from the observation point. When someone engages in the activities that are harmful to others, they will tend to silence their conscience by means of various internal mechanisms of moral disengagement.⁵⁵ Harmful act is being rationalized by denying its harmful effects, dehumanizing the victim and escaping the personal responsibility. From the point of restorative justice theory, moral disengagement is challenged and reversed when the offender faces the victim and its confession on the consequences of offender's acts. Such reversals of moral disengagement are important in criminal justice, not only for successful offender reintegration, but also from the point of view of victim restoration.⁵⁶ They form part of the healing experienced by victims because, as restorative justice experience shows, the sight of disengaged and unmoved offenders is aggravating and distressing to victims - even though good facilitation practice can overcome even this impediment in the path of successful victim restoration and healing.⁵⁷

In other words, even victims are facing disengagement because they are challenged to re-examine their own perceptions of the offenders. That is a step forward to forgiveness and healing for the both sides.

The other important theoretical explanation is social and moral development. Social constructivism explains moral as socially constructed reality of rights and wrongs in the society and human behaviour.⁵⁸ Hence, models of accepted moral behaviour are what keep society in harmony and peace. Individuals who fail to follow the patterns of morally accepted social norms in the society automatically face society's disapproval. For social and moral development it is important to learn from mistakes of others, but from one's own as well. In face to face interaction, offender and the victim learn about reasons of wrongful acts and why are those unacceptable in one's community.

Upon having responded in appropriate ways to repair the harm, the offender is welcomed back into the moral fold with a clearly articulated expectation that they will have learned from the incident and that they will do better in the future.⁵⁹ Restorative justice theory views

⁵⁵ Charles Barton, "Theories of Restorative Justice", *Australian Journal of Professional and Applied Ethics*, vol. 2, no. 1, July 2000, pp. 45.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid, pp .47.

this as an opportunity for the offender and the victim to grow stronger from harmful situation and moral misbehaviour. When offenders are faced with the consequences of their own acts, their moral perception is touched. Von Willigenburg⁶⁰ gives an explanation for this pattern in behaviour:

*“What is needed here may be a kind of converting experience. This is the type of experience that forcefully invades into one’s set of motivating reasons, because it is in some sense existentially moving. It is as if by shock one comes to see things one has never seen, one grasps the importance of reasons which one has never grasped.”*⁶¹

Facing with their own harmful acts, offenders have an option to choose to rehabilitate and to step on the side of belonging instead of isolation and alienation from the community.

The third theoretical explanation is emotional and moral psychological healing. According to restorative justice theory, there are two types of reparation, material and symbolic. The process of material reparation results in a final settlement between offender and victim and typically consists of specific agreements about compensating the victim, community service, etc.⁶² Process of symbolic reparation is less visible. It is composed of gestures and expressions of courtesy, respect, remorse, and forgiveness.⁶³ Justice is satisfied in material reparation, but restoration derives from symbolic nature of reparation when people are able to free themselves of emotional and psychological burden from harmful acts. According to restorative justice philosophy, closure and emotional healing for the key participants are the vital characteristics of restorative outcomes, and symbolic reparation plays a recognizably crucial role in their achievement.⁶⁴

Both offender and the victim have their path of emotional healing. For the offender, that path comes from self-protective attitude and fear to the shame, remorse and empathy for the victim. On the other hand, for the victim that path starts from anger and resentment to the acceptance of what happened and readiness to forgive. Through face to face interaction, emotional and psychological healing becomes an interdependent process and much easier to adopt.

⁶⁰ See in: Theo von Willigenburg, “Criminals and Moral Development: Towards a cognitive theory of moral change.” in Henry Tam (Ed.) *Punishment, Excuses, and Moral Development*. Brookfield: Ashgate Publishing Company. (127 – 141)

⁶¹ Charles Barton, “Theories of Restorative Justice”, *Australian Journal of Professional and Applied Ethics*, vol. 2, no. 1, July 2000, pp. 49.

⁶² *Ibid*, pp. 51.

⁶³ *Ibid*.

⁶⁴ *Ibid*.

The last theoretical explanation is reintegrative shaming. From the point of restorative justice theory, this tends to be the most effective tool. In the words of John Braithwaite, crime is best controlled when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them through concerted participation in ways of reintegrating the offender back into the community of law abiding citizens.⁶⁵

In the process of reintegrative shaming it is crucial to involve significant people for the offender. When important and respected people in the offender's life disapprove of the offender's behaviour while at the same time show clear signs of respect and acceptance towards the offender as a person, positive impact on the offender is maximal.⁶⁶ This becomes the breaking point for their reintegration. This theoretical explanation focuses more on the offender than on the victim. On public conferences like Gacaca courts, the word shaming doesn't mean stigmatizing offenders for their acts. It is more about hearing directly from the victim about emotional and psychological consequences from offender's act. Restorative justice experience shows that, with rare exceptions, a feeling of deep shame is evoked naturally and automatically in an offender as they are confronted with the harmful consequences of their actions.⁶⁷ At this point, reintegrative shaming is not about taking sides, but about social reintegration and creating sustainable coexistence in the community.

Outcome that derives from restorative justice theory is participation and acknowledgement. Gacaca courts, in their unique way, are example of a good practice of reconciling the parties in conflict because they provide the sense of closure. The fundamental aim and purpose in restorative justice is to bring that closure and healing of the effects of crime, especially the emotional harm, disconnectedness and social isolation experienced by those most seriously affected by the wrongdoing.⁶⁸ Since people are essentially different, the goal is to challenge the perception of justice from all ends.

Even though restorative justice is young in practice, it has been spread and with great influence, especially on African soil in indigenous mediation processes. The number of these processes is growing and legislative action has been opening up for restorative approach to justice as a principle around the world.

⁶⁵ Ibid, pp. 52.

⁶⁶ Ibid, pp. 53.

⁶⁷ Ibid, pp. 54.

⁶⁸ Charles Barton, *Restorative Justice: The Empowerment Model*, Hawkins Press, 2003, pp.35.

3. The concept of Gacaca as “justice on the grass”

When speaking of Gacaca as a response to genocide and crimes against humanity and its hybrid manifestation within Rwanda later on, we must first start analyzing the historical development of a traditional mechanism of conflict resolution and why is Gacaca so important on the state level. Gacaca practice, as traditional or village practice which is just a ritual set of ideas in rural communities, wasn't the first choice in dealing with such complex cases as genocide crimes. Even though a traditional system, Gacaca is evolving phenomenon widely spread among the population, and stands for a community service rooted in Rwanda's history.

3.1. The term Gacaca and its traditional role

The term gacaca, in language Kinyarwanda, means “grassy lawn” and was traditionally used to denominate a dispute settlement mechanism concerned primarily with land disputes, succession matters, small theft and other relatively small cases.⁶⁹ The majority of participants, in recorded cases, would be either family members or neighbours. And although they were often called together by the local authorities, typically once a week, the proceedings were both uncodified and informal in character.⁷⁰ At the turn of the twentieth century Gacaca did not exist as a permanent judicial institution but rather it was based on unwritten law and functioned as a body assembled whenever conflict arose within or between families, particularly in rural Rwanda.⁷¹ Gacaca hearings, usually held outdoors either on a patch of grass or in the village courtyard, were overseen by male heads of households, and women were forbidden from taking part, unless as claimants or defendants.⁷² The traditional aim of gacaca, according to Abbe Smaragde Mboniyintege, was to “*sanction the violation of rules that were shared by the community, with the sole objective of reconciliation.*”⁷³ As mentioned above, during early twentieth century Gacaca was a form of community service that was giving a certain social order all across Rwanda. The main cases were livestock,

⁶⁹ Maya Sosnov, “The Adjudication of Genocide: Gacaca and the Road to Reconciliation in Rwanda”, *Denver Journal of International Law and Policy*, 2008, vol. 36, no. 2, pp. 134.

⁷⁰ Barbara Oomen, “Rwanda's Gacaca: Objectives, Merits and their Relation to Supranational Criminal Law” in: R. Haveman and O. Olusanya (eds.), *Sentencing and Sanctioning in Supranational Criminal Law*, Antwerp, Oxword: Intersentia, 2006, pp. 7.

⁷¹ Phil Clark, “Hybridity, holism and “Traditional Justice”: The Case of the Gacaca Courts in Post-Genocide Rwanda”, *George Washington International Law Review*, December, 2007, pp. 13.

⁷² *Ibid*, pp. 13.

⁷³ *Ibid*, pp. 13.

damage to property, land use, marriage, basically everything that one society is consisted of. Methods that Gacaca used were very simple but yet effective for that matter. They brought conflicting parties before community elders to hear grievances, to allow defendants to respond to any charges and finally to pass judgements based on the evidence heard.⁷⁴

Those who were guilty would first confess the crime in front of the judges which lead to remorse and in the end they would ask for forgiveness from those whom they had injured.⁷⁵

Gacaca judges would then ask that guilty parties provide restitution for the victims which would have ended in sharing something to symbolize the reconciliation. During Belgian colonial era⁷⁶, which lasted from 1919 until Rwanda's independence in 1962, Gacaca courts have become more institutionalized mostly because colonial power gained greater control on the national level.⁷⁷ Belgians considered Tutsi as a superior race than Hutu, so they made Tutsi administrators on the local level to maintain the order in Gacaca's hearings. This system functioned by the power of local, unwritten law and all male members of the community were encouraged to participate. Historically, Gacaca courts were involved in the social construction and order in the society. They were used as an entry point for reconciliation, creating solidarity and unity among the community enabling them to step forward. Concrete activities that Gacaca used have encouraged population to take participation in overpowering mistrust between families with disputes. Traditional Gacaca didn't have as a goal establishing guilt or what the punishment was. Gacaca intended to "sanction the violation of rules that are shared by the community, with the sole objective of reconciliation" through restoring harmony and social order and reintegration of the person who was the source of disorder.⁷⁸ The importance of these courts was that they were just meetings, guided by the wise elders without any administrative component. It was a discussion until the acceptable settlement is reached for all parties involved. And it was working providing stability at some level. Additionally, the "modern distinction" between judges, parties and witnesses was not relevant in traditional Gacaca – as the issue affected all members of the society, they were all "parties" to the conflict.⁷⁹ Even though this practice was not institutionalized during the colonial era it describes that many African countries had

⁷⁴ Ibid, pp. 13.

⁷⁵ Ibid, pp. 14.

⁷⁶ Colonization of Rwanda started in 1884 when Germany took control over the region. In 1916 Belgium accepted to govern Rwanda as League of Nations Mandate and fully took over Rwanda 1919, when League of Nations partitioned German's territories after World War I.

⁷⁷ Phil Clark, "Hybridity, holism and "Traditional Justice": The Case of the Gacaca Courts in Post-Genocide Rwanda", *George Washington International Law Review*, December, 2007, pp. 14.

⁷⁸ Ibid, pp. 13.

⁷⁹ Ibid, pp. 14.

legally pluralistic societies. One reflects a set of “indigenous norms and mechanisms that determine the generally accepted standards of an individual’s and community’s behavior and the other reflects state laws, rule of law and all other westernized notions of separation of powers that was set up by the colonial power.

The development of Gacaca as judicial structure has begun in 1943, when Belgian administration recognized Gacaca’s role and existence along with national court system.⁸⁰ These two types coexisted from 1943 until the independence in 1962, giving people the choice which disputes will be solved on the local level, and which one will be brought up in front of the state level. Filip Reyntjens argues that Gacaca and the national courts each developed separate ‘clientele’ who engaged in a type of ‘forum shopping’.⁸¹ Farmers and others from rural part of the society tended to seek hearing at Gacaca because their cases were mostly about the land rights, debts, inheritance or some personal disputes.⁸² Urban dwellers that had more complex cases, such as work contacts, chose to take their disputes to the official courts.⁸³

The next period of Gacaca evolution started after Rwanda gained its independence from Belgium in 1962. In the past, hearings were merely assembled when parties in conflict wanted that, but after independence, administrators, mostly Tutsi, called for Gacaca hearings without any request from the community. According to historian Charles Ntampaka, Gacaca stopped to be a family-based forum of reflection for the renewal of social harmony and it became a forum in which locally elected judges from the official courts could collect evidence, particularly in civil matters, and hand down judgements based on the testimonies they heard.⁸⁴ Slowly, Gacaca courts started changing their role according to the social and political context in Rwanda.

The question that remains is, whether the emphasis on Gacaca as indigenous merely gives an illusion of restorative justice that masks a more divisive and political agenda.⁸⁵

⁸⁰ Ibid, pp. 14.

⁸¹ Ibid, pp. 14.

⁸² In his analysis of Gacaca in a largely agricultural region of Butare province in 1986 and 1987, Reyntjens calculates that over an eight-month period nearly 93% of the approximately 1200 judicial cases heard took place at Gacaca rather than in the formal courts.

⁸³ Phil Clark, “Hybridity, holism and “Traditional Justice”: The Case of the Gacaca Courts in Post-Genocide Rwanda”, *George Washington International Law Review*, December, 2007, pp. 14.

⁸⁴ Ibid, pp. 15.

⁸⁵ Ibid, pp. 15.

3.2. Modernizing Gacaca courts

The most radical evolution of Gacaca has begun after the genocide in 1994 when its hybridity opened a debate of potential mechanism after the end of genocide. As early as 1995, the Rwandan government and even the UN questioned whether Gacaca might be appropriate for prosecuting certain genocide crimes.⁸⁶ At an international conference in Kigali in October 1995, the government considered both a general amnesty and Gacaca as possible methods for dealing with genocide suspects.⁸⁷ These discussions were turbulent and it took time to turn them from questioning justice and reconciliation into revitalising Gacaca again. In June 1998, the proposal came from a group of provincial prefects such as Protais Musoni, Prefect of Kibungo and Minister of Local Government, Good Governance, Community Development and Social Affairs, who is described as ‘Father of Gacaca’.⁸⁸ He engaged himself in front of the government to revitalise Gacaca. In June 1999, Bizimungu’s commission launched a proposal of modern Gacaca courts and how should trials look like.⁸⁹

Modernised version of Gacaca has its roots in indigenous procedures. The courts remain true to their origins in their overriding restorative principles: trials will take place in local communities and try suspects in the areas where the crimes were committed.⁹⁰ Some of the decisions will reflect community’s desire for reintegration or compensation and they will prefer truth over punishment while respected members of the community will serve as elders in the courts.⁹¹ If these traditional values of Gacaca prevail in the modernised version then restorative justice will be valid and it will show its contribution to reconciliation.⁹² Modern version of Gacaca courts lies in the principles of the Organic Law.⁹³ Main principles of Organic Law that are reflecting in modernised Gacaca courts tribunals in order to get adjusted to prosecute genocide crimes are the following:

- “1. It will enable the truth to be revealed about Genocide and crimes against Humanity in Rwanda;*
- 2. It will speed up the trials of those accused of Genocide, Crimes against Humanity and other crimes;*

⁸⁶ Ibid, pp. 15.

⁸⁷ Ibid, pp. 15.

⁸⁸ Ibid, pp. 17.

⁸⁹ Ibid, pp. 18.

⁹⁰ Ibid, pp. 62.

⁹¹ Ibid, pp. 27.

⁹² Ibid, pp. 62.

⁹³ Rwandan Organic Law was conceived in 1996 to facilitate the prosecution of those suspected of committing acts of genocide. It applies both to the national courts and Gacaca courts.

3. *It will put an end to the culture of impunity in Rwanda;*
4. *It will reconcile the people of Rwanda and strengthen ties between them;*
5. *It revives traditional forms of dispensing justice based on Rwandese culture;*
6. *It demonstrates the ability of local communities to solve their own problems;*
7. *Helps solve some of the many problems caused by Genocide. ”*⁹⁴

Organic Law provides Gacaca courts with the administrative organization in Rwanda. These principles resulted in passing the new, Gacaca Law in January 2001, by the government and starting an educational campaign that will bring this new law and Gacaca's role to the population.⁹⁵ In modernized Gacaca legislation there were three fundamental principles implemented. Gacaca courts existed at cell level, sector level and Gacaca appeal courts. Suspects of committing genocide were judged at parallel courts. The first principle is that the 'leaders' and presumably responsible persons for organizing genocide action, are judged at the top level in the appeal courts. The others were judged by the Gacaca courts at cell and at sector level on 'their respective hills'. The second principle is the popularization or decentralization of justice by creating a large number of courts that will operate in every administrative unit in Rwanda.⁹⁶ This shows resemblance with the traditional Gacaca system where the elders were those to adjudicate about the case in front of the people. The third principle is the process of confession. Gacaca court doesn't hold the evidence and information unless they hear testimonies from perpetrators, victims and the crowd. It is the discursive encounter in the Gacaca sessions that functions as catalyst of the transitional justice process.⁹⁷

According to Gacaca Law, there is a sentencing mechanism that holds a combination of community service and prison sentences.

⁹⁴ Alana Erin Tiemessen, *After Arusha: Gacaca Justice in Post-Genocide Rwanda*, master thesis, University of British Columbia, The Faculty of Graduate Studies, 2003, pp. 46.

⁹⁵ Phil Clark, "Hybridity, holism and "Traditional Justice": The Case of the Gacaca Courts in Post-Genocide Rwanda", *George Washington International Law Review*, December, 2007, pp. 18.

⁹⁶ Bert Ingelaere, "From Model to Practice: Researching and Representing Rwanda's 'Modernized' Gacaca Courts", *Critique of Anthropology*, Vol.4. No. 32. 2012, pp. 392.

⁹⁷ *Ibid*, pp. 392.

Category/Judgement	Guilty with no confession	Guilty with confession during trial	Guilty with confession before trial	Minors (14-18 years old) when offence committed
Sub-categories 1 and 2 (Judged at sector level/appeals to sector level)	25-30 year prison term	12-15 year prison term/possibility of commuting half to community service	7-12 year prison term/possibility of commuting half to community service	8-10 year prison term if guilty without confession/otherwise, half of adult sentence/possibility of commuting half to community service, except when no confession is made
Sub-category 3 (Judged at sector level/appeals to sector level)	5-7 year prison term/possibility of commuting half to community service	3-5 year prison term/possibility of commuting half to community service	1-3 year prison term/possibility of commuting half to community service	Half of adult sentence/possibility of commuting half to community service
Judged at cell level/appeals to sector level	Reparations for damage caused or equivalent community service			

*Gacaca Sentencing Scheme*⁹⁸

There were two reasons for modernizing Gacaca – practical and ideological. After the genocide, the International Tribunal of Rwanda was dealing with the huge case load.⁹⁹

⁹⁸ Phil Clark, “Hybridity, holism and “Traditional Justice”: The Case of the Gacaca Courts in Post-Genocide Rwanda”, *George Washington International Law Review*, December, 2007, pp. 28.

Prisons in Rwanda were filled with more than 120.000 prisoners facing difficult conditions so the formal courts couldn't process all of them. The Gacaca was, therefore, a mechanism to decongest the country's prisons by speeding up trials at the community level.¹⁰⁰ Ideological reason was that Gacaca emphasizes the Rwandan government's need to promote culturally relevant approaches to reconciliation. Gacaca courts were resurrected in Rwanda as an indigenous form of restorative and transitional justice.¹⁰¹ Ideological standpoint also explains that Gacaca's role is truth telling. It is assumed that at Gacaca courts, the survivors, witnesses and presumed perpetrators all come together to witness "truth telling" and justice in action.¹⁰² The reward for those who confess their participation in genocide is cutting off prisons sentences in half. As a result, there were hundreds of thousands of confessions. In addition, the Gacaca process requires that all parties participate in a debate on what happened in order to establish the truth, draw up a list of victims and identify the guilty.¹⁰³

While Gacaca was established as an institution by the government, other unofficial types of Gacaca started appearing across the country. These unofficial types of Gacaca represented hybrid methods and goals that influenced community after the genocide. Population has recognised Gacaca not only as a space where they can solve land issues, but also crimes that were related to genocide. There were two types of Gacaca that evolved from government's acceptance of Gacaca as legal jurisdiction.

First, a form of non-state Gacaca emerged in a prison in Nyamata district of Kigali Ngali province in May 1998 and began in other prisons around the country between 1998 and 2001, at a time when the government was still debating the appropriateness of Gacaca for dealing with genocide crimes.¹⁰⁴ So in a way, the first unofficial projection of modern Gacaca was the "prison Gacaca". Detainees divided themselves into groups according to geographical areas and elected panels of "urumuri" (Kinyarwanda for "the light") to act effectively as

⁹⁹ Barbara Oomen, "Rwanda's Gacaca: Objectives, Merits and their Relation to Supranational Criminal Law" in: R. Haveman and O. Olusanya (eds.), *Sentencing and Sanctioning in Supranational Criminal Law*, Antwerp, Oxford: Intersentia, 2006, pp. 7.

¹⁰⁰ Ibid, pp. 7.

¹⁰¹ Tony Karbo, Martha Mutisi, *Psychological Aspects of Post-Conflict Reconstruction: Transforming Mindsets: The Case of the Gacaca in Rwanda*, Paper Prepared for the Ad Hoc Expert Group Meeting on Lessons Learned in the Post-Conflict State Capacity: Reconstructing Governance and Public Administration Capacities in Post-Conflict Societies, Accra, Ghana, 2008, Available from: <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN032152.pdf>, (Accessed 28 May 2017), pp. 8.

¹⁰² Ibid, pp. 9.

¹⁰³ Ibid, pp. 9.

¹⁰⁴ Phil Clark, "Hybridity, holism and "Traditional Justice": The Case of the Gacaca Courts in Post-Genocide Rwanda", *George Washington International Law Review*, December, 2007, pp. 19.

Gacaca judges.¹⁰⁵ In these discussions the perpetrators would confess their crimes to the urumuri and the crowd. The crowd was playing significant role in these hearings providing urumuri with additional details or evidences and all of the confessions were recorded so that outside of the prison, in front of the official Gacaca courts these records can be useful for the cases.

The other unofficial type of Gacaca was the religious one. “Gacaca nkiristu” or “Christian Gacaca” has occurred mainly in rural Catholic communities in the provinces of Butare, Kibungo, Cyangugu, Kigali Ngali and Ruhengeri.¹⁰⁶ In Christian Gacaca priests were acting in the role of judges. Parishioners were confessing their crimes, all sorts related in front of the congregation and they were asking for forgiveness in the eyes of God in front of the community. Observers like Alice Karekezi, a judge in Buhoma district of Ruhengeri province, report that embedded in Christian Gacaca is the notion that, once an individual has confessed to certain sins, it is the “divine obligation” of those personally injured and of the general congregation to forgive the confessor.¹⁰⁷ In the eyes of the population Gacaca is like a forum where everybody can discuss genocide from its legal and non-legal aspects. Alice Karekezi argued that *“Gacaca is important because it brings everyone together, to talk together. When we come together, we find unity. Sometimes there is even too much talking that I have to slow the people down.”*¹⁰⁸

Everything discussed above provides a whole picture of Gacaca’s dynamism. It has faced so many changes from traditional trials to modern version that deals with genocide and crimes against humanity that proves its evolution. Many features of Gacaca in its various incarnations, before and after colonisation, in religious and prison purposes, all stages leading to its current form and in its use for trials regarding genocide crimes have remain consistent.¹⁰⁹ Some of these features are outdoor hearings in communal spaces, the high value placed on public participation and a linkage of Gacaca and notions of social cohesion and reconciliation.¹¹⁰ Even though many of traditional characteristics have been changed over time in order to adapt Gacaca to deal with genocide cases the core of traditional practice of engaging judges chosen by communities in which hearings take place, still remains. During colonial period in the twentieth century colonial officials and members of the government

¹⁰⁵ Ibid, pp. 19.

¹⁰⁶ Ibid, pp. 19.

¹⁰⁷ Ibid, pp. 19.

¹⁰⁸ Ibid, pp. 35.

¹⁰⁹ Ibid, pp. 22.

¹¹⁰ Ibid, pp. 22.

had much more saying in who is going to be selected as a judge in Gacaca hearing, but, on that matter, modern Gacaca shares similarities with pre-colonial practices. Modern Gacaca, though, diverges from the traditional system by relying on written law, involving women both as judges and members of the General Assembly, displaying a more systematic organisation between the administrative divisions of local government, and imposing prison sentences on those found guilty.¹¹¹ Modern Gacaca was rebuilt in a way to use indigenous forms, but to also adjust them to new circumstances. Traditional conflict resolution process has been deeply rooted in modern practice. Even though, Gacaca was not the first choice for transitioning period of reconstructing society after genocide and Rwandan government did examined various other options, after a huge reform it was selected as a main model for post-genocide institution. What Gacaca Law eventually adopted was the result of a political compromise between different fractions, with an apparent division between lawyers and non-lawyers in the government, particularly over the issue of the popular participation in Gacaca.¹¹²

Eventually, in the eyes of the government, Gacaca was recognised as something that is evolving and growing from its indigenous roots. It has been accepted as hybrid process that will require ongoing monitoring and constant modifications in order to deal with the difficult cases. President Kagame states, “Gacaca does not give us everything we need (after genocide) but it gives us most things and certainly more than other potential processes.”¹¹³ Jean de Dieu Mucyo, former Minister of Justice and Institutional Relations and former Prosecutor General, argues, “Gacaca is not perfect (but) with time, patience, this very long process we have started will give us what we (are looking for).”¹¹⁴

Having seen how Gacaca went through its historical development meeting the needs of population and facing influences of local and colonial political elites during colonial period, there is not a doubt that similar influences affected Gacaca’s radical evolution after the genocide in 1994. The single greatest catalyst of this evolution, though, has been the government’s and the population’s need to respond holistically to the massive social, legal and economic challenges from the genocide.¹¹⁵

¹¹¹ Ibid, pp. 22.

¹¹² Ibid, pp. 22.

¹¹³ Ibid, pp. 23.

¹¹⁴ Ibid, pp. 23.

¹¹⁵ Ibid, pp. 23.

4. Gacaca's path to reconciliation

As it was previously mentioned, Gacaca tends to respond to the population needs in a holistic way. While material and pragmatic needs of the Rwandan population after the genocide are undoubtedly immense, the fractured state of inter-personal and communal relationships is also pressing because of the current depth of enmity and mistrust throughout the population.¹¹⁶

4.1. Engagement and participation

It is truly impossible to separate material, communal and psychological needs of the people because most of them, individuals and groups, suffered deprivation in all these areas.¹¹⁷ Hybrid methods that Gacaca uses in order to encourage engagement between different parties, are what makes it unique and different from other transitional mechanisms around the globe. What is argued as central component of Gacaca's *modus operandi* of popular participation is precisely that need to foster genuine engagement between parties previously in conflict to rebuild fractured and communal relationships.¹¹⁸ This view has come across a lot of criticism, mostly as being controversial for allowing the population to shape the institution of Gacaca. Many critics of Gacaca have questioned the wisdom of allowing a traumatised and still heavily ethnically-divided population to drive the country's main reconstructive institution through its electing judges, investigating cases, providing evidence, determining the guilt or innocence of suspects and engaging in open, wide-ranging dialogue.¹¹⁹ The main argument of this is that people that were caught up directly in violence are still in grief and suffering from extreme trauma, so they cannot be objective since they are personally inflicted and driven by their own experience. Therefore, according to this view, foreign parties and outside bodies should be engaged to plan the reconstruction.

Opposing to this view is the philosophy of modern Gacaca - recognising the community's ownership and direct involvement in the institution.¹²⁰ The government's interpretations of popular engagement in Gacaca are highlighting the importance of this method for facilitating relatively immediate goals, while also conveying a wider ideology concerning the roots of

¹¹⁶ Ibid, pp. 40.

¹¹⁷ Ibid, pp. 40.

¹¹⁸ Ibid, pp. 41.

¹¹⁹ Ibid, pp. 41.

¹²⁰ Ibid, pp. 42.

conflict in Rwanda and the needs for a stronger sense of national unity.¹²¹ Popular participation is rooted in traditional Gacaca in which local community would rather call a session like this when there was some sort of conflict than to go to seek justice from state institutions or lawyers. One primary way in which the government has encouraged popular participation in Gacaca has been to emphasize the population's ownership over a practice with which Rwandans are deeply familiar.¹²² The role of the judges is to encourage and moderate a "facilitated problem-solving".¹²³

The key argument that works in favour of popular participation is explained in Gacaca Law. The Gacaca Law stipulates, however, that the leaders charged with overseeing Gacaca must not include lawyers. Though the government rarely expresses its views directly on this matter, the primary rationale behind the exclusion of lawyers from all direct involvement in Gacaca, and of groups such as police officers and clergy from being judges, appears to be a desire to maintain the open, participatory spirit of Gacaca.¹²⁴ This argument also states that lawyers have specific expertise and ways of presentation that might intimidate the less-qualified that will just lead to lawyer's domination over the hearing and neglecting the whole point of it. The other, very important argument is that population's engagement in Gacaca is crucial because the local population knows better than anyone what crimes were committed during genocide and who is responsible for them.¹²⁵ Augustin Nkusi, chief legal advisor to the Gacaca Commission, argues, "*At Gacaca, the truth ultimately comes from the population. We know that people will tell who is responsible because they saw what perpetrators did. They stood there as it happened and they saw everything with their own eyes. There will be no confusion about who is responsible for these things.*"¹²⁶ In favour of this statement, communal participation should be maximised in Gacaca in order to reveal the truth. Popular participation in Gacaca is also important for "overcoming the conspiracy of silence"¹²⁷ that still prevails in Rwanda because victims of the crimes still refuse to discuss about their painful experience. The genocide might have stopped but animosity between Hutu and Tutsi is still silently ongoing. The useful outcome of public deliberation is being discussed by

¹²¹ Ibid, pp. 42.

¹²² Ibid, pp. 43.

¹²³ Expression is used by the former Ministry of Justice and Institutional Relations and former Prosecutor General, Jean de Dieu Mucyo. Ibid, pp. 43.

¹²⁴ Ibid, pp. 43.

¹²⁵ Ibid, pp. 43.

¹²⁶ Ibid, cit, pp. 43-44.

¹²⁷ Solomon Nsabiyera, coordinator of the Healing, Peace and Reconciliation Programme at the World Vision Rwanda, introduced this expression. Ibid, pp. 46.

Karekezi, who claims that participation in Gacaca opens a broader political realm by empowering previously disenfranchised citizens.¹²⁸ In her view, Gacaca stimulates democratisation, mobilising the population to engage with national issues in ways they never did before.¹²⁹ This is the breaking point where citizens start to think beyond their personal sphere and interact in a more political and social way of daily life. The positive outcome of engagement in modern Gacaca is also empowering women who have otherwise been excluded from the most important social, cultural and political spheres. In the past, women were excluded from being judges or providing testimony at Gacaca, but in modern Gacaca women play a key role both as leaders and general participants.¹³⁰ Based on all this, it is important to mention that participation in Gacaca is not unconditional. The government participates in numerous facets of the daily running of Gacaca, including providing judges with secret dossiers detailing suspects' crimes and confessions, and intervening when hearings are perceived to diverge from the statutes and norms of the Gacaca Law and Gacaca Manual.¹³¹ Putting this aside, Gacaca does provide the population with the rare opportunity to participate in rebuilding process.

Another underlying rhetoric is that in Rwandan's history main virtues were unity and social harmony. Those virtues were neglected by the state intelligentsia and manipulative governments of the colonial regime. By reactivating and revitalising Gacaca, the government argues that it will help the population rediscover these virtues.¹³² Fatuma Ndingiza, Member of East African Legislative Assembly, describes that Rwandans need to rebuild the sense of national unity within themselves, such thing cannot derive from a third party that has never experienced the genocide. She also claims that Rwandan nationality was deformed by the external forces. To overcome the divisions created by outsiders, the government argues, Rwandans must look to their own history and culture for solutions.¹³³ The government also views communal involvement in Gacaca as a remedy to the failures of another group of outsiders: leaders of international institutions such as the International Criminal Tribunal for

¹²⁸ Ibid, pp. 46.

¹²⁹ Ibid, pp. 46.

¹³⁰ Ibid, pp. 46.

¹³¹ Ibid, pp. 47.

¹³² Ibid, pp. 48.

¹³³ Ibid, pp. 49.

Rwanda¹³⁴, which are often run by the same foreign governments perceived to have abandoned Rwanda during the genocide.¹³⁵

Gacaca practice relates Rwandans to “family”. Therefore, it is believed that greater unity can only come from this form of dialogue that Gacaca provides. Many Rwandans argue that parties at Gacaca will carry this dialogue and the peaceful methods of conflict resolution embodied in the hearings into their everyday lives, leading to a greater sense of cohesion in previously fragmented communities.¹³⁶

Popular participation in Gacaca shows that human rights critics are wrong to criticise Gacaca for failing to provide for impartial decision-making and to protect individual rights.¹³⁷ The core spirit of Gacaca demonstrates that for internal problems there must be internal solutions. The majority of Rwandans are considering Gacaca as “a legitimate remedy to the legacies of the genocide”, hence, this view has to be maintained.

Another crucial element of Gacaca is engagement. In this particular process, engagement can be described as critical part of Gacaca because the dynamics of its development cannot always be predicted. It happens in two different ways: engagement in public discussions about who is going to be elected as a judge in the process, to hearings themselves. In the case of hearings, engagement is consisted of antagonistic parties that are discussing the root causes of their conflict. In the words of Norman Porter, who was analysing reconciliation in Northern Ireland, the main importance is creating fora for public discourse and debate, in which a vital element is open and fair engagement between previously antagonistic parties.¹³⁸ “In these settings, individuals make themselves vulnerable to others and the most important result is that through these practices others are opened up to us and we to them, others are permitted to be heard in their terms and we in ours.”¹³⁹ Engagement is particularly risky because it involves groups with deep-seated animosity, especially after genocide conflict that Rwanda had. Engagement in a dialogue between conflicting parties is very difficult, on

¹³⁴ President Kagame has highly criticised International Criminal Tribunal for Rwanda for their poor performance in the case of Rwanda. He often claimed that the tribunal was collecting a huge amount of resources but did very little.

¹³⁵ Phil Clark, “Hybridity, holism and “Traditional Justice”: The Case of the Gacaca Courts in Post-Genocide Rwanda”, *George Washington International Law Review*, December, 2007, pp. 49.

¹³⁶ Ibid, pp. 50.

¹³⁷ Ibid, pp. 58.

¹³⁸ Ibid, pp. 58.

¹³⁹ Norman Porter was using this explanation in the case of potential reconciliation in Northern Ireland. Ibid, pp. 59.

individual and group level, and dedication to rebuild society must exist on each side. Trust in the process and in the mediation has to exist and that requires a lot of effort.

The formal, legal constraints central to Gacaca's hybrid methods are designed to help mediators direct forms of engagement to productive ends.¹⁴⁰ The ways how Gacaca moderates engagement distinguishes it from institutions like war tribunals, that don't allow open interaction between victims and perpetrators and are restricted to legal rather than emotional dimension.

Phil Clark is one of the researches who engaged very closely with the role of Gacaca courts and he has interviewed many participants in order to provide the illustrative account of the difficult process of engagement. In 2003 and 2006 he has interviewed Alphonse, a merchant from Nyamata district in Kigali Ngali province. The following story is just one example, but valuable for understanding the core of Gacaca process.¹⁴¹

Alphonse was one of the participants in genocide, confessing that he killed several people which placed him in Category 2 of crimes. He claimed that he was forced to kill, but in his Catholic belief he had to confess. Alphonse said that he had encouraged many detainees who had already confessed to confess to other crimes which they had hidden from prison and camp officials. "It is better for people to tell the truth now," Alphonse said. "Gacaca is only worrying for those who have hidden the truth." Alphonse claimed that he personally had no fear of Gacaca. "I'm innocent of all crimes," he said, "and my neighbours know me. I'm sure they will pardon me." After Alphonse is released from Gashora camp, he was still optimistic. He claimed to have met many survivors in Nyamata: "I sought them out and we talked for a very long time," he said, "and they bought me drinks." He claimed that solidarity camp gave him the ability and knowledge that will encourage him to cohabit with survivors. In his words, if they respect the process and leaders they will manage to live in peace.

In 2006, Alphonse's confession was extremely difficult.

"When I came back from Gashora, I returned to a different hill. I moved in beside a large family of genocide survivors. They were very scared by the return of the prisoners. They were worried there could be more violence. Many of us who came back from the camps were also

¹⁴⁰ Ibid, pp. 59.

¹⁴¹ The story is an insert from the author's book (Phil Clark), taken in order to explain and elaborate Gacaca's work better.

very worried. These survivors had new houses that the government built for them but we had nothing. My father and brother died in 2003, not long after I came back, so it was a difficult time for my family. Government soldiers killed my father and brother. Those responsible are still in the military. They come back to the village sometimes and show no emotion whatsoever. Some survivors started seeking revenge. There were always stories about revenge killings. Some perpetrators saw their families killed by group of survivors. Why aren't these people in jail now? Gacaca started fully here in 2005. The inyangamugayo asked me to come to Gacaca and tell the truth about my crimes in 1994. I did that willingly because I had already confessed in prison to what I did. At Gacaca everyone was fearful. You could feel it immediately. People were scared that Gacaca was going to restart the conflict. Gacaca is necessary for us because perpetrators and survivors can sit together and talk, but it still brings a lot of fear. I know some of these survivors don't want Hutu on the hills. It is likely there will be new problems between groups here."¹⁴²

Alphonse's story shows that Gacaca is dynamic and ever-evolving enterprise with a lot of interactions a lot of modifications along the way because new challenges and new needs never stop. There is always a level of risk when you allow members of conflicting parties to interact and engage closely with one another. Instances of acrimony are unavoidable.¹⁴³ In instances like this, mediators have a crucial role to direct engagement in Gacaca towards the most beneficial end for all the participants. Mediators, employing formal means within Gacaca's hybrid processes, must contain antagonisms during hearings and direct the population's engagement toward reconciliatory ends.¹⁴⁴

¹⁴² Phil Clark, "Hybridity, holism and "Traditional Justice": The Case of the Gacaca Courts in Post-Genocide Rwanda", *George Washington International Law Review*, December, 2007, cit, pp. 60-61.

¹⁴³ Ibid, pp. 61.

¹⁴⁴ Ibid, pp. 61.

4.2. Trials and the truth

One of the first and biggest concerns in Rwanda was that after the genocide prisons were overpopulated. It was very difficult to tackle down each and every crime and at the same time start rebuilding the country on social, political and economic level. In 2001, approximately 120,000 genocide suspects were detained in festering jails in Rwanda at a cost of US\$20 million a year.¹⁴⁵ More than 10,000 people had died in detention since 1994.¹⁴⁶ To put all those people through trials on the court was difficult from the simple fact that only few judges and lawyers were actually left in the country.

For lacking legal and financial resources, Gacaca was established with a dual aim. The first was to prosecute every individual suspect regardless of seniority or social standing, and the second was to start rebuilding and reconstructing the Rwandan society.¹⁴⁷ Local population was to elect respectful individuals that can lead the process of trials. That is why in June 2002, Gacaca was launched as “justice without lawyers”.¹⁴⁸

The process of trials in Gacaca created a space for recovery of truth by collecting the facts about the genocide. When individuals speak their truths they heal emotionally and psychologically. On the other hand, all these hearings present a big historical material about genocide crimes that is very rare in the world. All testimonies are archived in Gacaca Documentation Centre in Kigali.¹⁴⁹

Throughout the process of Gacaca trials there were three functions of the truth: truth-telling, truth-hearing and truth-shaping. *Truth-telling* is important from the point that Gacaca gives the people an open space, arena where their side of the story gets to be heard. They can share their personal and collective experience. Truth-telling constitutes a means to retributive justice, healing and reconciliation. *Truth-hearing* is at the other end. It is mostly about how truth is received and how people respond to it. It involves the effects of reactions to one's truth and it is closely linked to the concept of acknowledgement discussed in relation to healing.¹⁵⁰ *Truth-shaping*, or truth as mediated outcome, occurs when external parties

¹⁴⁵ Phil Clark, *How Rwanda Judged Its Genocide*, Africa Research Institute, 2012, pp. 3.

¹⁴⁶ Ibid, pp. 3.

¹⁴⁷ Ibid, pp. 3.

¹⁴⁸ Ibid, pp. 4.

¹⁴⁹ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, Cambridge University Press, 2010. pp. 192.

¹⁵⁰ Ibid, pp. 191-192.

rearticulate the personal testimony of the participants at Gacaca in order to create a historical record about the genocide.¹⁵¹

Gacaca trials themselves have a role to get restorative justice. Restorative justice sets as a main purpose to rebuild fractured community relations. Therefore, trials in Gacaca work with the main task to involve the community in the process of nurturing justice by holding the offenders accountable to the victims of the crime directly and by creating the ground for peaceful coexistence after the tribunal. This addresses the implicit community needs for peace, safety, and community healing in a holistic manner that comes across the critics of external factors. Some critics are judging Gacaca by taking a stand from their own methods and objectives, but they also ignore the benefits that Gacaca trials delivered.¹⁵² One cannot deny that the truth said at the trial has an enormous impact on everyday life in society. Gacaca has been far from perfect, and it shouldn't be glorified by internal and external observers. Among its main shortcomings have been numerous cases of corruption, bribery of judges and intimidation of witnesses, syndicates of liars who colluded to hide evidence, and re-traumatised survivors.¹⁵³ These negative aspects have not been more widespread than could reasonably be expected of a decade-long process involving as many as one million cases in 11,000 jurisdictions.¹⁵⁴ In the terms of what was set as a goal from Rwandan government's perspective, Gacaca has been more than successful. Confessions in Gacaca are delivering more truth than traditional judicial systems. Delivering justice without overcrowding jails was the point of the process, so it has been far from "mob" or "vigilante" justice as many critics are pointing out. Many sentences have been commuted to community service, thereby facilitating the reintegration of detainees into society.¹⁵⁵

In order to get close to the very model of a trial and its process one must be introduced to a construction of how it looked like. Since the Gacaca process involves the whole country, every village or neighbourhood they needed to establish Gacaca court on their local level. Participation was mandatory by every villager. On the day of Gacaca, scheduled once every week, the 9 elected judges, the villagers, the accused and the witnesses assemble for the trial.¹⁵⁶ The witness gives testimony, the accused gives his or her account, and the audience

¹⁵¹ Ibid, pp. 188.

¹⁵² Phil Clark, *How Rwanda Judged Its Genocide*, Africa Research Institute, 2012, pp. 6.

¹⁵³ Ibid, pp. 6.

¹⁵⁴ Ibid, pp. 6.

¹⁵⁵ Ibid, pp. 7.

¹⁵⁶ Karen Brouneus, "Truth-Telling as Taking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts" *Security Dialogue*, Vol. 39. No. 1. 2008, pp. 57.

also has the right to speak. The judges ask and listen. They determine the verdict of the accused.¹⁵⁷ Every week there is another painful story for the judges to adjudicate, more claims and counter-claims and more decisions to be made. Having this scenario in mind, scepticism is quite understandable. A lot of critics are claiming that these “truths” can come problematic because the ratio between Hutu and Tutsi is not equal. From the other side, the whole story in post-genocide Rwanda represents an unprecedented challenge that cannot follow the traditional model of bringing justice. In the words of Phil Clark, Gacaca was acceptable and much needed model not only from the side that it is culturally acceptable for Rwandans, but also from the financial side because it released the funds needed for reconstructing the country.

*“A vast genocide caseload-as many as one million cases-has been handled by Gacaca in a decade. In fifteen years the International Criminal Tribunal for Rwanda (ICTR), based in Arusha, has completed 69 trials. Gacaca has cost about US\$40 million, the ICTR more than US\$1 billion. The financial and social cost of sustaining a huge number of suspects in jail-with no prospect of trial of any kind-was a crucial consideration in deliberations about the creation of Gacaca.”*¹⁵⁸

Going back to the main aims of Gacaca, it has to be stressed out the importance of truth-telling and truth-hearing at Gacaca as forms of personal closure for many people. Beyond the main goal, justice, Gacaca also presented a physical setting where survivors can publicly describe their experiences during and after genocide.¹⁵⁹ This kind of truth-telling can be described as therapeutic because people get recognition from the audience. As the Gacaca Manual states, “To help facilitate the emergence of the truth of what happened during the genocide and other massacres; to recognise the victims and the nature of the damages inflicted on them...these are the tasks of the Gacaca Jurisdictions.”¹⁶⁰ Besides tackling justice from legal ends, truth-telling and truth-hearing also bring sense of belonging to the community that has suffered as a whole. It is true that the audience can judge you, but it can also give you empathy much needed for healing.

Official interpretation of truth through Gacaca gives an emphasis on non-legal functions as well as on the legal ones. On that ground, truth-shaping is important from the side of the

¹⁵⁷ Ibid, pp. 57.

¹⁵⁸ Phil Clark, *How Rwanda Judged Its Genocide*, Africa Research Institute, 2012, pp. 7.

¹⁵⁹ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, Cambridge University Press, 2010. pp. 191.

¹⁶⁰ Ibid, pp. 191.

judges in Gacaca. They claim that shaping the truth delivered at hearings is important teaching moment that provides moral lessons for Rwandan citizens. The truth in the trials has three dimensions that impact the population: legal, therapeutic and restorative. They are well accepted by the population. Revealing the truth also has an impact on conception of human identity as largely constructed by the narratives of an individual's life.¹⁶¹ Human life is a construction of narratives and if a big part of life and one's experience is left unknown there will be a struggle to overcome the pain of the past and reconstruct the order and the unity not only in community, but in each and every person's life as individual. Another significant view that judges interpret is that truth-shaping involves community leaders' attempts to produce the narratives of the genocide, based on the evidence exposed at Gacaca. Judges tend to produce a foundation for moral and pedagogical pursuits based on truth said.

Faustin, a judge in a Gacaca jurisdiction in Nyamata district of Kigali Ngali province said, *"All Gacaca judges must help the population learn lessons from the genocide. We are the moral teachers of the people."*¹⁶²

In the table bellow is presented how Phil Clark sees the various processes and functions of the truth through Gacaca.¹⁶³

¹⁶¹ Ibid, pp. 192.

¹⁶² Ibid, cit, pp. 200.

¹⁶³ Ibid, pp. 206.

Function process	Legal (truth as a means to retributive justice)	Therapeutic (truth as a means to healing)	Restorative (truth as a means to reconciliation)
Truth-telling (truth as action)	Punishment of criminals through public shaming as a result of their confessions and apologies during Gacaca hearings.	Individuals' pursuit of healing through public disclosure of traumatic experiences stemming from the genocide, usually seeking empathy and public acknowledgement of their pain and loss.	Creation of dialogical space (for truth-telling and truth-hearing) to encourage discussion, debate and engagement, with the eventual aim of restoring fractured individual and group relationships.
Truth-hearing (truth as immediate outcome)	Use of confessions, eye witnesses, testimony and the public weighing of evidence in judging genocide cases.	(a) Survivors discovery of historical facts concerning their personal experiences of the genocide, which contribute to healing through their overcoming ignorance about the past. (b) Public acknowledgement of individuals' trauma, which contributes to their healing (especially healing as belonging).	Creation of dialogical space (for truth-telling and truth-hearing) to encourage discussion, debate and engagement, with the eventual aim of restoring fractured individual and group relationships.
Truth-shaping (truth as mediate outcome)	External parties' use of evidence gathered at Gacaca for legal cases either in the national court system or the ICTR.	Post-gacaca councillors' (such as those provided by Ministry of Health) assistance to individuals who have engaged in truth-telling and truth-hearing at Gacaca in order to aid their long-term healing.	(a) Creation, from evidence heard at Gacaca, of a historical record of the genocide for the purpose of encouraging further dialogue, engagement and reconciliation. (b) Distillation of lessons from Gacaca hearings to inculcate civic virtues in the population and thus overcome negative values and beliefs that fuel conflict.

*Processes and functions of truth through Gacaca*¹⁶⁴

¹⁶⁴ Table was taken from Phil Clarks's book. Ibid, pp. 207.

From the point of judges and the participants in trials, the dialogical space that Gacaca creates has to expand beyond the trials into everyday life of Rwandans. The goal is to establish communal dialogue that will continue its existence in the long run.

While challenges to truth-telling, truth-hearing and particularly truth-shaping have emerged over time, Gacaca has provided a forum for collective discussions that have not occurred elsewhere in the Rwandan society.¹⁶⁵

Bearing this in mind, Gacaca has provided a model for revealing the truth and creating the collective memory that can be a lesson for others. It has shown that tensions and balance between restorative and retributive justice should be surpassed by the truth and fulfilment of personal and collective needs.

¹⁶⁵ Ibid, pp. 213.

4.3. Healing and forgiveness as rationality of peace

Considering the holistic approach of Gacaca trials, Rwandan society connects it with healing and forgiveness bearing that rebuilding a society also means rebuilding life as individual. Forgiveness and healing are merits for achieving peace and they are based on Christian values such as mercy, grace, redemption and atonement. According to Phil Clark, there are two main forms of healing through Gacaca. The first one is “healing as liberation”, which is connected with individuals’ sense of freedom. It is emotional and psychological inner moment that every individual experiences after the truth has been revealed.¹⁶⁶ The second form is “healing as belonging” when individuals feel ready to reconnect with their community after surpassing psychological and emotional trauma.¹⁶⁷ Even though Gacaca can definitely provide this kind of healing, one must have in mind what kind of trauma is hidden behind the story of genocide. Viewing the trauma of the population from all angles, Gacaca should be considered as the beginning of a protracted process of healing that will continue long after Gacaca is over.¹⁶⁸

In theory and theology, revealing the truth as a part of healing process is the right path to follow, but in practice is, in fact, much harder and much more psychologically challenged to face the truth in order to achieve the form of positive peace. In restorative justice programs, in which the crime is seen as a violation of relationships and the offender and victim meet to mend this relation, it can be effective only when the safety of the victim and other potential victims has already been secured.¹⁶⁹ The same needs to occur in Gacaca processes. As long as the intimidation of participants exists, even in the background of everything, the positive peace will still stand as a challenge in the long run.

It is important to focus on the experiences of both women and men in the years after the genocide mostly because these experiences are different. It doesn’t need to be necessarily like that, but conflicts strike men and women differently. More men are killed, while women are subjected to nonlethal violence and far more vulnerable to sexual violence and predation.¹⁷⁰ Nonlethal violence such as sexual violence can have long-term lethal consequences due to

¹⁶⁶ Ibid, pp. 258.

¹⁶⁷ Ibid, pp. 258.

¹⁶⁸ Ibid, pp. 259.

¹⁶⁹ Karen Brouneus, “Truth-Telling as Taking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts” *Security Dialogue*, Vol. 39. No. 1. 2008, pp. 59.

¹⁷⁰ Ibid, pp. 59.

stigmatization and the consequential loss of security, or to sexually transmitted diseases, such as HIV/AIDS.¹⁷¹

In order to address psychological healing in the background of the truth and engagement as path to reconciliation and peace, there is a gap that has to be filled with different facts and angles of experiences. Sexual violence against women and girls was a part of genocidal strategy in Rwanda. The sexual atrocities committed were ruthless.¹⁷² Women experienced violence as gang-rape, rape with guns, beer bottles, or other objects, sexual slavery, and sexual mutilation.¹⁷³ Several women were raped after having witnessed their families being killed.¹⁷⁴ Every third women was infected with HIV and every second has child from rape. It has been estimated that between 250,000 and 500,000 rapes were committed during the genocide.¹⁷⁵ What has been used as a tool in the process of healing was so called one-session psychological debriefing, a type of an early psychological intervention after a traumatic experience like rape.¹⁷⁶ The aim was to prevent subsequent psychological ill-health. In Gacaca testimonies, women speak about these experiences and they face the perpetrators which is risky for psychological health of these women. In the truth-telling as healing, these women didn't feel secured. As a matter of fact, for most of them insecurity began with the Gacaca which is much deeper psychological problem that needs to be handled in the long run.

On the opposite side of this, there is an assumption that the country is at peace and thereby safe for the population.¹⁷⁷ As Galtung elaborated, physical security is just one part of negative peace. On these foundations, positive peace is yet to be achieved.¹⁷⁸ Back in 1994, when Arusha agreement was signed, genocidal behaviour didn't immediately change to collegial. Although security has been the top priority of the new Rwandan government, poor infrastructure in rural areas and an extremely dense population have led to a concentration of security forces in the capital of Kigali, and much is left to be done in the provinces.¹⁷⁹ When speaking of psychological healing in the process of Gacaca, it is assumed that physical

¹⁷¹ Ibid, pp. 59.

¹⁷² Ibid, pp. 60.

¹⁷³ Ibid, pp. 60.

¹⁷⁴ Ibid, pp. 60.

¹⁷⁵ Ibid, pp. 60.

¹⁷⁶ Ibid, pp. 62.

¹⁷⁷ Ibid, pp. 71.

¹⁷⁸ Johang Galtung is considered to be the father of peace studies. He refers to negative peace as the absence of the violence, while positive peace is the creation of social systems that fulfill the needs of the whole population and has the positive outcome as restoration of relationships.

¹⁷⁹ Karen Brouneus, "Truth-Telling as Taking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts" *Security Dialogue*, Vol. 39. No. 1. 2008, pp. 72.

security is handled. In the Gacaca hearings, both victims and perpetrators are surrounded by one another and their families. If in these hearings physical security is not met, it could lead to a number of outcomes apart from psychological anxiety and ill-health, but to increase of violence in order to silence the truth, acts of revenge from either group, or skewed testimonies leading to a distorted picture of the past that may lay the grounds for renewed conflict.¹⁸⁰ This is just one side of the risk that Gacaca hearing could bring. That is why it is culturally appropriate to have support before, during and after the proceedings. The truth is hard, it doesn't necessarily heal once is heard, but it is a path to go through in order to fill in the gaps of the big picture and achieve forgiveness for providing peaceful coexistence. On this soil, living together was not a personal choice, but more of necessity after the genocide. The country was in shackles, so no matter what, people needed to reconstruct and restart life together.

The cohabitation was initially marked by mutual fear, diminishing progressively with the passing of time.¹⁸¹ All tensions were kept in the shadows because villagers, survivors and released perpetrators were co-dependent. They shared daily activities in fight for survival since the living conditions were not great. Cohabitation-*kubana*- is a matter of necessity, which may become less intimidating for those directly involved as time passes, but interpersonal reconciliation-*ubwiyunge*- is a matter of the heart and a state of feeling in a social relation.¹⁸² In the context of Rwandan culture the heart is used to describe the force that unifies humans. As they claim, after the genocide their hearts have changed and the forces that are interconnected in the emotions are different, marked by the violence, but the heart is still where the truth lies. Stover and Weinstein explain, that psychodynamic and emotional burden let out at Gacaca will somehow "heal" survivors.¹⁸³ The assumption is that after a sufficient number of survivors have testified, a collective conscience will change and a society will be healed.¹⁸⁴ The process of psychological healing would be more and more effective as more people give their testimony and contribute to collective healing by narrating

¹⁸⁰ Ibid, pp. 72.

¹⁸¹ Bert Ingelaere, "Does the Truth Pass Across the Fire without Burning?" *Transitional Justice and its Discontents in Rwanda's Gacaca Courts*, Discussion Paper, Institute of Development Policy and Management, Antwerpen, 2007, pp. 514.

¹⁸² Ibid, pp. 514.

¹⁸³ Laura Eramian, "Representing Suffering: Testimony at Rwanda's Gacaca Courts" *InTensions Journal*, Issue 1, 2008, York University, Toronto, pp. 8.

¹⁸⁴ Ibid, pp. 8.

their own stories. Rwanda's National Service of Gacaca Jurisdictions has picked up the slogan-*"the truth heals."*¹⁸⁵

Healing through Gacaca for survivors is described as healing as belonging. Through sharing their experiences they feel acknowledgement for their suffering. By telling their stories they feel less alone in their pain. Talking about the consequences of mass conflict like this is difficult even when survivors share these experiences, mostly because of the immense guilt they feel that they have survived while their loved ones are dead. Therefore, a key component of healing as belonging is the opening of empathetic dialogue and support necessary for reintegration. In the post-genocide context, the concept of reintegration is most often associated with suspects who return to their home communities after years in jail.¹⁸⁶ Nevertheless, survivors also need reintegration into their communities in order to overcome the estrangement and anomie that result from violence-induced trauma.¹⁸⁷

For survivors, Gacaca is a forum where they can start viewing the community as a form of living that they can get back to. For them, public engagement is important for healing and communal element is on the top over here. Therefore, healing as belonging is an action of future-enables survivors to become productive members of society again. Survivors also interpret healing in more internalised ways, focusing on their need to overcome personal, emotional and psychological trauma.¹⁸⁸ In this case, healing is liberation where survivors are trying hard to recover the sense of "peace of mind" or to get freed from mental anguish.¹⁸⁹

Healing as belonging and healing as liberation actually go hand in hand. If survivors gain enough mental and emotional support the bigger the chances are that they will reintegrate in the community. Another important form of supporting survivors is providing a form of memorial for deceased. Remembering lost friends and relatives, typically through forms of communal mourning, often prove cathartic for the individuals involved and integrative for the parties who share in the remembrance.¹⁹⁰ Remembering the deceased of genocide, especially those whose bodies were dumped into mass graves and pit latrines or thrown into rivers, making it impossible for survivors to recover their remains, is crucial sign of support.¹⁹¹

¹⁸⁵ Ibid, pp. 9.

¹⁸⁶ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, Cambridge University Press, 2010, pp. 263.

¹⁸⁷ Ibid, pp. 263.

¹⁸⁸ Ibid, pp. 263.

¹⁸⁹ Ibid, pp. 264.

¹⁹⁰ Ibid, pp. 264.

¹⁹¹ Ibid, pp. 265.

Gacaca will not bring back the dead, but at least collective memory will help those who survived to deal with the loss. Opening wounds to the public eye at Gacaca is a complicated, often fraught process that risks re-traumatizing many participants.¹⁹² Dauge-Roth described communal support and understanding in the Rwandan context as highly important:

*“By refusing to remain silent or silenced, survivors aim not only to keep the memory of those died alive, but to also gain social recognition and legitimacy within the ongoing dialogues through which social memory and belonging are shaped. Their testimony, then, aims not only to represent the past as it has been witnessed, but at the same time symbolises a social performance of the survivors’ agency within their community...The testimonial impulse...signals a desire for connectedness that requires survivors to forge the social recognition of their disconnection so that their alterity does not amount to their exclusion.”*¹⁹³

As can be concluded, healing is a long-term process that cannot be completed only within Gacaca hearings. For many Rwandans it is going to be a life-long goal.

At the end of healing lies forgiveness. It is quite understandable why forgiveness is not openly discussed in post-genocide societies-it mostly colludes with religious beliefs.

Government stated that forgiveness should happen through Gacaca, but as well that it is an interpersonal process between the perpetrator and the victim, and to forgive takes a lot of courage. Forgiveness is a two way street: perpetrators must confess their crimes and ask to be forgiven, and from the other side, survivors must be willing to give forgiveness. In this part, Gacaca’s role is to simply encourage forgiveness, suggesting that it is an arduous process that may begin at Gacaca but is likely to involve ongoing discussions between perpetrators and survivors long afterwards.¹⁹⁴ It is necessary to forgive as a sense of Christian duty, but it is not essential. As previously mentioned, for most of the genocide suspects’ religious context is highly relevant, hence, the most important form of forgiveness comes not from their victims but from God. In their understanding, the community may refuse to forgive but God always forgives.¹⁹⁵ Besides the victims and God, perpetrators also seek forgiveness from the state.

¹⁹² Ibid, pp. 272.

¹⁹³ Ibid, cit, pp. 273.

¹⁹⁴ Ibid, pp. 281.

¹⁹⁵ Ibid, pp. 283.

The same as healing, forgiveness is also a long-term process and an ongoing dialogue between victims and perpetrators that continues long after Gacaca is complete.¹⁹⁶ Gacaca is indeed creating a ground for confession, apology and asking for forgiveness, but many survivors will possibly never find the courage needed to forgive there at the spot. The most common explanation from both survivors and detainees of why forgiveness is necessary after the genocide is that, because God has forgiven his children for the sins that they have confessed, they must ask for forgiveness from, and be willing to forgive, each other. Forgiveness therefore is a sign of gratitude for the grace and mercy believers have received from God.¹⁹⁷

A lot of Rwandans find forgiveness at Gacaca as a process with optimistic results much needed to create a new, shared life, where both survivors and perpetrators can find a way to coexist and move forward by not forgetting monstrosity of genocide, but by recognising what happened and rise above. Forgiveness is immensely costly pursuit, particularly after an event as divisive and violently destructive as genocide, and many survivors may justifiably decide that they are unwilling to forgive.¹⁹⁸

Forgiveness, the same as healing will continue long after Gacaca is completed, because they both include deeply emotional and complex interactions. They are rationality of peace because a society that cannot forgive and that cannot heal is openly vulnerable for new conflicts.

¹⁹⁶ Ibid, pp. 285.

¹⁹⁷ Ibid, pp. 287.

¹⁹⁸ Ibid, pp. 307.

5. Gacaca and restoring justice-perspectives for reconciliation

First of all, reconciliation as phenomena is not exact and constant but a very dynamic and changeable process. The point is on the *process* because it doesn't exist only in particular moment in time. It runs with societal dynamics of changing previous destructive behaviours into constructive relationships towards sustainable peace.¹⁹⁹ Reconciliation has two perspectives: societal and practical. It doesn't mean that accountability should be avoided in the favour of truth, or that there should be a collective amnesia in order to avoid the dangers of truth telling. It means finding a way to balance truth and justice so that a gradual change of behaviours, attitudes and emotions can take place between former enemies.²⁰⁰ It requires a lot of patience and pragmatic work in order to build up the relations between groups again.

Many Rwandans believe that Gacaca nurture reconciliation after the genocide and that is why they are willing to participate. Reconciliation is at best a distant result in most parts of the country, although Gacaca constitutes an important starting point in this process.²⁰¹ Rwandan government faced with the very term of reconciliation for the first time after the genocide. The introduction to the Gacaca Law marks "justice and reconciliation in Rwanda" as one of Gacaca's main goals, and Gacaca Manual gives an explanation that a primary objective of Gacaca is to facilitate "the reconciliation of the Rwandan people and the reinforcing of their unity through creation of an environment favourable to dialogue and to collaboration in the search for a concerted solution to the problems of justice."²⁰² The purpose of reconciliation in the terms of Rwandan society was to mend relationships between survivors and perpetrators because they did live together in some form of unity before the conflict escalated. Because the government banned the use of ethnic labels on national identity cards in 2003 and has often used laws criminalising "divisionism" to curtail public discussions of ethnicity, the groups involved in this process were never characterised as Tutsi or Hutu but always as victims and suspects or survivors and perpetrators.²⁰³ Government also worked with the view that social cohesion in Rwanda can be restored through reconciliation, and that the unity was simply lost because of the genocide but can be regained through Gacaca. In the words of government, Gacaca calls for collaboration and main agent is population itself. Through popular

¹⁹⁹ Karen Brouneus, *Rethinking Reconciliation. Concepts, Methods, and an Empirical Study of Truth Telling and Psychological Health in Rwanda*, PhD thesis, Uppsala University, 2008, pp. 12.

²⁰⁰ Ibid, pp. 13.

²⁰¹ Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers*, Cambridge University Press, 2010, pp. 309.

²⁰² Ibid, pp. 309.

²⁰³ Ibid, pp. 310.

participation in Gacaca where people work close together to overcome difficulties and rebuild their relations, reconciliation in group-to-group sense will replicate outside of Gacaca too. Therefore, Gacaca is considered to be a test run of reconciliation, a chance for different groups to collaborate together and to experience harmony that can be achieved in daily life.²⁰⁴

In the opinion of Augustin Nkusi, the former chief adviser to Gacaca Commission, Gacaca will help people to experience reconciliation very quickly.²⁰⁵ Everything happens in community. Community gets to say who is responsible for crimes and gets perpetrators to commit to what they did. Since in Gacaca silence is broken, the reconciliation wouldn't come far beyond. From the other side, Fatuma Ndagiza claims that Gacaca gave great contribution to justice but not as much for reconciliation. In her general opinion Gacaca is more of a beginning of a long process of reconciliation. The biggest part of the population shares their view with Ndagiza claiming that Gacaca would need to introduce new interactions between groups that were previously in conflict to achieve reconciliation. Genocide suspects, survivors, Gacaca leaders and the general population speak about reconciliation on individual level. It is much deeper process that opens emotional and personal issues. In Gacaca hearings these issues are being triggered in the nature of face-to-face interactions between perpetrators and victims. Based on this, reconciliation will have to come in the future in its own time.

Survivors and *inyangamugayo* also emphasize the importance of reconciliation between individuals, stressing the need to rebuild fractured relationships on a personal rather than a group basis.²⁰⁶ That is the biggest obstacle and a great challenge because it takes courage to regain the trust in those accused of committing genocide crimes. Many of the survivors and suspects share the same fear and that is that only peaceful cohabitation is possible. In their view, there may be cohabitation first, then a period of detente. It will probably take several generations for reconciliation to be possible.²⁰⁷

There are two other forms of reconciliation: between different groups and between individual and a group. Reconciliation between groups is the one that government desires; where perpetrators and victims as opposing groups can infiltrate together in the society with the help of Gacaca, and form peaceful coexistence. Gacaca is vital because it helps them live together again. This view expresses a fundamentally community-oriented perspective of

²⁰⁴ Ibid, pp. 311.

²⁰⁵ Ibid, pp. 311.

²⁰⁶ Ibid, pp. 314.

²⁰⁷ Ibid, pp. 315.

reconciliation, founded on the assumption that the community previously displayed a sense of wholeness that the genocide destroyed but Gacaca can restore.²⁰⁸

The view that is more familiar to the suspects is that individuals first need to reconcile with a group where they committed a crime in order to even start the process of reconciliation. Suspects have the fear that they wouldn't be able to reintegrate peacefully in their previous communities, more than they fear of rebuilding broken strings with individuals. As they claim, it is survivors right not to forgive them, but they hope that in community family will be brought together again.

Most of survivors, Gacaca leaders and the wider population don't actually speak of restoring unity and approach to this government rhetoric with scepticism. They express the view that Gacaca must facilitate the creation of a new dynamic between groups previously in conflict.²⁰⁹ They are more turned to future and how is reconciliation going to establish new way of living for them, because the social cohesion they had in the past is not possible. It can only reappear in a form of tradition and culture. Many survivors express a pragmatic view of reconciliation as peaceful cohabitation, in which deep engagement between genocide perpetrators and survivors may not be possible but where nonetheless Gacaca may help facilitate a more peaceful coexistence between groups.²¹⁰

Most of the Gacaca judges are quite optimistic about forward looking reconciliation through Gacaca by claiming that participation in the process will bring up a new form of dialogue and culture of addressing issues across the society that will stay even after Gacaca is completed. It will recreate a new form of conflict resolution. A new social dynamics that appears in Gacaca will bring more open, collaborative discussions where the stories heard will help construct the basis of future life and not destroy it.

Although different groups in Rwandan society interpret the degree of reconciliation through Gacaca in very different ways, their interpretations draw on a similar understanding of the types of reconciliation processes employed in Gacaca.²¹¹ In the contrary to the governments opinion, suspects, survivors and Gacaca leaders share the common ground that reconciliation will happen in a long run, and as a process, it will require protracted dialogue.

²⁰⁸ Ibid, pp. 315.

²⁰⁹ Ibid, pp. 317.

²¹⁰ Ibid, pp. 317.

²¹¹ Ibid, pp. 318.

Another important term that affects reconciliation is populations' religious belief. People who follow the terms of religion, especially Christian terms, are more positive about reconciliation through Gacaca. Gacaca will produce so called "chain of revelation" and guilty will get their justice, after what, in good Christian fate, they will also receive forgiveness. Because God has forgiven, and reconciled with them after they have sinned, many Christian believers argue that they must be willing to display grace and mercy to genocide perpetrators as a sign of gratitude for the mercy they have received from God.²¹²

Aside with religious narrative, suspects can show real remorse when they publicly confess their crimes and ask for apologize in Gacaca. In that environment, victims can get the feeling of security when they see that attacker won't repeat the crime again. That deepens the ground for further reconciliation between the two. Another reason that goes in favour of reconciliation is the plan of retribution. Using the community service as a way of retribution is a good method that contributes to social rehabilitation of perpetrators and for promoting reconciliation. By engaging those found guilty of genocide crimes in activities that provide material benefits for survivors has a big potential to reconcile the suspect with the larger community.²¹³ Leading the reconciliation process in a way that individual contributes to the group as doing its punishment through community service is much more effective than just elaborating that individual would peacefully integrate in community after a confession of crimes. The distinction between just reintegrating the suspect in the community and the reconciliation of suspects and survivors by taking a course of action is especially important for questions concerning the degree to which reconciliation may occur through Gacaca.²¹⁴ These actions of confessions and sentence for the suspects through different forms of retribution for the society is, in the words of Kerekezi, constant element of the Gacaca process toward the restoration of social equilibrium.²¹⁵ Encouragement for the form of reconciliation that Gacaca promotes is a key virtue of popular interpretation. Providing reconciliation on a community level is equally important as providing reconciliation on the individual because they are interconnected. Humans function within different layers of identity, viewing themselves as individuals who have crucial relations with other individuals around them, while all the time feeling embedded within deep communal identities.²¹⁶

²¹² Ibid, pp. 320.

²¹³ Ibid, pp. 328.

²¹⁴ Ibid, pp. 328.

²¹⁵ Ibid, pp. 329.

²¹⁶ Ibid, pp. 333-334.

For reconciliation to be successful it has to go through two stages. At first, things have to be out in the open so that each party can get to the root cause of conflict and address it, and the second, where parties together generate mutual activities in order to create meaningful future. The first stage is one of conflict resolution and the second of relationship transformation. Both phases are requiring commitment and a lot of time but the result should be a deeper and significant long-term engagement.

In this commitment people's religious beliefs have a lot of impact as well because they shape their views on reconciliation and on Gacaca process. Gacaca, sincere as it is, is working in danger that people will consider it just as a duty to the state, but as a duty to religious beliefs too. Since religion claims that people should forgive and reconcile there is a danger that people will just go through the process because of their religious sense of duty and not by their sincere dedication to it. In order to avoid these dangers, it is better to take advantage of them. Since people are always having certain beliefs or they feel dedicated to state or religion, reconciliation should then be taught based on the concepts of religion and duty.

General opinion exposed in this works is that when topics such genocide crimes and rebuilding relations are being discussed, Gacaca creates, as previously mentioned, a platform for learning and applying the virtues and knowledge that population has based on their beliefs. When the right conditions are met and after enough time and effort, survivors would feel less resentment in engaging with suspects. Given the public setting of Gacaca and its cacophony of voices, individuals may find that the most crucial discourse between them will occur outside of Gacaca, in a more private space.²¹⁷

That is why throughout the analysis Gacaca is defended and elaborated as a good starting point. Because of its very open nature, besides the participants, whole community can benefit from it and get the bigger picture without taking sides. Based on all the evidence, Gacaca has at it best assisted both, groups and individuals towards the road of reconciliation.

²¹⁷ Ibid, pp. 340.

Conclusion

To summarize all presented, Gacaca is holistic, hybrid and dynamic institution and process based on high ideas and necessity of political and social situation after 1994. It went on a long, evolutionary path throughout history and ended as a highly complex form run by popular and state actors.

Gacaca is crucial for addressing and treating the legacy of genocide from solving the backlog of genocide cases, developing economically and politically, improving and solving the situation in prisons across the country, and getting in touch with peace, justice, truth, healing and forgiveness on the path to reconciliation. In order to create the fertile ground for reconciliation and bring the justice for perpetrators and the victims, an enormous number of cases have been processed in the past decades by the National Service of Gacaca Jurisdictions. Evidence from these jurisdictions testify in favour of Gacaca's success. In the period after genocide Gacaca was formal and informal, state and community product, traditional and modern, punitive and restorative. It has been criticised and praised. Inevitably it did facilitated truth-telling, truth-hearing and truth-shaping and created a dialogical space for people in a long run. It initiated the process of reconciliation in a slow emotional and interpersonal dynamic within community and between individuals.

Gacaca courts present a home product of Rwanda by mixing traditional and modern practices and punitive and restorative justice, but they also present a new model for pursuing justice around the world where applicable. It is most certainly a model for other social contexts and an encouragement for future innovations on the terms of justice, because it tackled the genocide which is considered as crime of all crimes. The process cannot be observed only through legal lenses because the main goal was not the punishment in its classical terms but reconciliation and reconstruction of the Rwandan society that was left completely destroyed by bad leaders. Gacaca Law pointed out as key roles of Gacaca courts reconciliation and restorative justice. Hence, it can be concluded that the dominant discourse can be selective for different angles of view and analysis. Gacaca as a process can be criticised as inadequate from the legal basis or defended from communitarian and societal basis, where in this occasion, the latter was selected and presented.

The religious, dominantly Christian principles of redemption, mercy, grace and atonement intertwine with the concepts of truth, forgiveness and healing and reconciliation in the populations' understanding of Gacaca. That is why besides the official, formal version of

Gacaca there is also traditional, pre-prison, prison and Christian Gacaca that only contributed to the official one and, in a way, trained people to choose the path to reconciliation for the future. The expectation from Gacaca process will still remain open, but the use of community-based transitional processes originating in traditional mechanisms of conflict resolution will definitely become more used in societies around the world that are recovering from different forms of mass atrocity. Divided societies around the globe need more dynamic mechanisms and models, similar to Gacaca process that will find a way to avoid and prevent conflicts on their path to democratic change. Gacaca has proven that it should be more about the people and human security because those kinds of processes lead to solving societal issues, building a peaceful neighborhood and, in the end give the ingredient for functioning democracy. Its capacity to foster an open debate and dialogue emphasizes democratic potential. Thus, the experience of Gacaca is an important lesson for localized traditional justice studies and practices, although the challenges that Gacaca faced due to its hybridity are there to be surpassed.

Gacaca can definitely be looked as the heart of Rwanda's personal and communal attempts for reconstruction after the genocide and most certainly like a revolution of transitional justice approaches. Rwandans created, patiently guided and participated in Gacaca in most occasions. Rwanda had to take the risk of highly uncertain future of its own innovation concerning the shambles in which the country was left and the enormous societal impact that genocide had on the nation.

If establishing Gacaca courts was a successful story or not is yet to be discovered, but concerning the tremendous courage that was needed, and bravery that a small country underwent to facilitate pragmatic and profound outcomes, with certain limitations, it is already successful.

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