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# The Legacy of the *Gacaca* Courts in Rwanda: Survivors' Views

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## Abstract

*Gacaca*, the local courts in Rwanda, officially closed on 18 June 2012. In this contribution, the legacy of the *gacaca* courts is studied by looking at what the *gacaca* courts have achieved or may not have achieved against the objectives it was set up for in the first place from the perspective of genocide survivors. Twenty-eight interviews with genocide survivors provide insight into how changing circumstances (*e.g.* passing of time, better understanding of the workings of the *gacaca* courts, improved security situation, increased level of the most basic (material and psychological) needs, and role of teachings about forgiveness on individual and societal reconciliation) may influence the way survivors of international crimes evaluate *gacaca*. In the second part of this article, the question of how to move on now that *gacaca* courts have officially closed down is discussed, including the still unresolved issue of reparation to genocide survivors.

## Keywords

*gacaca*; victims/survivors; genocide; Rwanda; reparation

## Introduction

*Gacaca*, the local courts in Rwanda, officially closed on 18 June 2012. Launched in 2001 and after some ten years of existence, a little over 1 million *genocidaires* have

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been prosecuted before more than 11,000 *gacaca* courts for crimes committed during the Rwandan 1994 genocide, such as killings, rapes, torture and property crimes (e.g. looting, killing cattle and destroying houses).<sup>2</sup> On a population of about seven million in 1994, about half of them adult, with about one million people being killed, it is a huge number of cases.<sup>3</sup> It shows the magnitude of the genocide in Rwanda in which a large majority of the population participated. In this contribution we will look at the legacy of the *gacaca* courts: Courts which, *inter alia*, not only aimed at contributing to justice, but also reconciliation. The legacy of the *gacaca* courts will here be studied by looking at what the *gacaca* courts have achieved or may not have achieved against the objectives it was set up for in the first place. This will be done in five sections. The first section will briefly deal with the establishment, mandate and procedure of the *gacaca* courts against the backdrop of the reality Rwandans had to live with post-genocide. The second section will go into some methodology issues related to conducting the interviews with genocide survivors. In the third section, we will look at what *gacaca* has (not) achieved measured against the goals for which it was set up for. For this, the results based on the interviews conducted with survivors of the genocide about their views on *gacaca* have been incorporated. The fourth section will deal with the issue of what legacy *gacaca* leaves behind and how to move on from there. Finally, in section five, we will outline what lessons can potentially be drawn from the use of *gacaca* in the post-conflict situation of Rwanda.

## 1. The *Gacaca* Courts: Set Up, Mandate and Procedure

In the 100 days of genocide that ravaged Rwanda from April to July 1994, an estimated 1 million Tutsi and moderate Hutu were killed, and 250,000 to 500,000 girls and women – mostly Tutsi – as well as boys and men, were raped by Hutu extremists.<sup>4</sup> Many people were also tortured and mutilated during the genocide, and their possessions looted or destroyed. Of those who survived, many lost family members during the genocide. Hundreds of thousands of children were orphaned. The country's economy, its judicial institutions and social services were completely destroyed. Over 1 million people had been involved in the genocide.

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<sup>2</sup> See Eric Didier Karinganire, 'Gacaca Courts to Close by Next June', *The Rwanda Focus*, 22 March 2012.

<sup>3</sup> See Roelof Haveman, 'Editorial', 7(1) *Newsletter Criminology and International Crimes* (2012) 1.

<sup>4</sup> For a better understanding of the causes leading to the genocide, the crimes committed during the genocide, and the aftermath of the genocide, see e.g., UN Commission on Human Rights, *Report on the Situation of Human Rights in Rwanda Submitted by Mr René Degni-Ségui Special Rapporteur of the Commission on Human Rights, under Paragraph 20 of Resolution S-3/1 of 25 May 1994* (E/CN.4/1996/68), 29 January 1996; African Rights, *Rwanda: Death, Despair and Defiance* (1994).

Yet, post-genocide, in the small country of Rwanda, Rwandans were bound to live side by side again.

It soon became obvious that the ordinary courts in Rwanda – dealing with the genocide cases in specialised chambers, established under a law of 1996<sup>5</sup> – were not capable of dealing with the many cases resulting from the genocide. By 2001, only 6,000 persons out of 120,000 detainees had been tried before the ordinary courts.<sup>6</sup> Nor could the International Criminal Tribunal for Rwanda (ICTR) in Tanzania, established in 1994, try all the cases of genocide suspects. The Rwanda Tribunal was, at the time, expected to try only about 50 of the most senior people responsible for the genocide.<sup>7</sup> Therefore, at this working speed, it would have taken the ordinary courts in Rwanda hundreds of years to try all the detainees, by which time all the people involved in the genocide would have died. This would have resulted in “justice delayed, justice denied” for both survivors and perpetrators. Furthermore, in 2001 the number of suspects was even expected to increase. At that time, many suspects were still living in their community or in exile, but could not be arrested due to a lack of space in the existing prisons (which were severely overcrowded since they were built to house about 20,000 persons only) and insufficient prosecution resources.<sup>8</sup> Hence, the *gacaca* courts, as a new alternative and innovative mechanism to deal with the genocide cases, was thought of and resurrected in 2001. *Gacaca* courts are traditional Rwandan courts in which the community historically came together to deal with family or neighbourly disputes. Now these courts were adapted as a mix of both customary law and classical penal state justice to deal with cases of genocide.<sup>9</sup> The *gacaca* courts were meant to be around eleven thousand and proceedings would be held in each cell (*cellule*) and sector (*secteur*) (cells were organised in sectors which were subsequently organised into districts). This stands in contrast to the ordinary courts where the prosecution of crimes committed during the genocide was being dealt with by twelve specialised chambers. Therefore, many more trials could take place before *gacaca*,

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<sup>5</sup> Organic Law No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes against Humanity Committed Since October 1, 1990, J.O., 1996, No. 17.

<sup>6</sup> National Service for *Gacaca* Courts, Context or Historical Background of *Gacaca* Courts, <[www.inkiko-gacaca.gov.rw/En/Generaties.htm](http://www.inkiko-gacaca.gov.rw/En/Generaties.htm)>, 20 March 2012.

<sup>7</sup> By the end of 2012 all ICTR (trial phase) cases were concluded. Some 72 high level accused have come before this international criminal tribunal. See <[www.unictr.org/Cases/tabid/204/Default.aspx](http://www.unictr.org/Cases/tabid/204/Default.aspx)>, 22 January 2013.

<sup>8</sup> National Service for *Gacaca* Courts, Context or Historical Background of *Gacaca* Courts, <[www.inkiko-gacaca.gov.rw/En/Generaties.htm](http://www.inkiko-gacaca.gov.rw/En/Generaties.htm)>, 20 March 2012. See also: CNN, Interview with President Paul Kagame on Reconciliation 15 Years After the Genocide, <[www.youtube.com/watch?v=3SaVF2sGxCK](http://www.youtube.com/watch?v=3SaVF2sGxCK)>, 22 January 2013.

<sup>9</sup> See further e.g., Roelof Haveman, ‘Gacaca in Rwanda: Customary Law in Case of Genocide’, in J. Fenrich, P. Galizzi and T. Higgins, (eds.), *The Future of Customary Laws in Africa* (Cambridge University Press, Cambridge, 2011) pp. 387–422; Karan Lahiri, ‘Rwanda’s ‘Gacaca’ Courts A Possible Model for Local Justice in International Crime?’, 9 *International Criminal Law Review* (2009) 321–332.

in which trials the whole population could participate. These trials were held in the communities where they lived (or used to live) and therefore, in most cases, easily accessible as well. Only the cases involving the so-called ‘category one’ crimes, i.e. the most severe genocidal crimes – being about 10,000 identified planners of the genocide (2,000) and rapists (8,000) – remained with the ordinary courts. However, by 2008, the sexual violence cases were brought under the jurisdiction of the *gacaca* as well.<sup>10</sup> In light of the slow pace of the ordinary courts, expediting the trials of alleged *genocidaires* was therefore one of the motivations for setting up the *gacaca*. There is thus no doubt that *gacaca* solved the problem of the overload of genocide cases in the ordinary courts. Through *gacaca* almost 2 million cases (involving some 1 million *genocidaires*) were handled within practically ten years’ time, which can be seen as an enormous achievement. Other important aims of *gacaca* were to: (1) uncover the truth of what happened during the genocide; (2) address a culture of impunity by prosecuting the genocide’s perpetrators; (3) reconcile Rwandans and support their unity; and (4) prove that Rwandans had the capacity to settle their own problems through a system of justice based on Rwandan custom.<sup>11</sup>

These goals of *gacaca* were at the heart of how the *gacaca* proceedings were subsequently organised. The *gacaca* courts involved the whole community; everyone from a certain community during the genocide was eligible to be present and to participate during proceedings in which alleged *genocidaires* of that community were tried for ‘category two’ (killings, torture) and ‘category three’ crimes (property crimes).<sup>12</sup> The people who were involved in the genocide were not only government officials, but also a very huge percentage of the population, which has made the Rwandan genocide so notorious in comparison to other genocides. The citizens who were not targeted were, in most cases, either perpetrators (e.g. killers, rapists, looters, or accomplices thereto) or eye witnesses. The latter category of people either stood by and did nothing or, despite being aware of what was

<sup>10</sup> In a bid to expedite the remaining trials and to provide justice long overdue for survivors of sexual violence (many of whom were very ill) together with resource constraints, an amendment to the genocide law in 2008 provided for the transfer of these cases from ordinary courts to *gacaca*. The amendment also incorporated several procedural rules that were meant to protect survivors of sexual violence and their families. See further on this issue, Anne-Marie de Brouwer and Sandra Ka Hon Chu, ‘*Gacaca* Courts in Rwanda: 18 Years After the Genocide, Is There Justice and Reconciliation for Survivors of Sexual Violence?’, *IntLawGrrls*, 7/8/9 April 2012, <[www.intlawgrrls.com/2012/04/gacaca-courts-in-rwanda-18-years-after.html](http://www.intlawgrrls.com/2012/04/gacaca-courts-in-rwanda-18-years-after.html)>, 22 January 2013.

<sup>11</sup> See e.g., the Preamble of the Organic Law No. 40/2000 of 26/01/2001 Setting Up “*Gacaca* Jurisdictions” and Organizing Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994, and as amended several times thereafter (in 2001, 2004, 2006, 2007 and 2008) to adapt to new and changing realities and difficulties during trial (hereafter *Gacaca* Law of [year]). See also: National Service for *Gacaca* Jurisdictions, The Objectives of the *Gacaca* Courts, <[www.inkiko-gacaca.gov.rw/En/EnObjectives.htm](http://www.inkiko-gacaca.gov.rw/En/EnObjectives.htm)>, 11 July 2012.

<sup>12</sup> For a full elaboration on which kind of perpetrator fitted which category, see Article 2 of the *Gacaca* Law of 2004.

going on, actually helped one or more Tutsi's by saving their lives.<sup>13</sup> Another category of citizens is the survivors. Sometimes they were on the run or hiding (for instance, in the ceilings of houses or in bushes and swamps) and could therefore not know who killed who and where the bodies were thrown. Other times they were seriously wounded by people they did know. Yet, at times the attackers were unknown to the survivors as both groups were moving through the country during the genocide and came across people they had not previously met. This latter situation has, for instance, been the case for many of the interviewed survivors of sexual violence. Concretely, this means that among the population in Rwanda at the time there were perpetrators, witnesses and victims who, for some cases, could also be witnesses. Therefore since the genocide was committed so openly before the very eyes of the population, the law insisted that the population would play a big role in establishing the truth of the genocide through active participation in *gacaca*.

With most of Rwanda's lawyers having been killed during the genocide, *gacaca* judges were lay people of integrity appointed from the local community (in Kinyarwanda referred to as *Inyangamugayo*). This was a common occurrence pre-genocide when only about 5 per cent of judges had formal legal training.<sup>14</sup> By the end of 2001, more than 254,000 judges had been elected by the population.<sup>15</sup> Nevertheless, a high percentage of judges (some 40 per cent) turned out to have been involved in the genocide themselves and were, as soon as this was found out, replaced.<sup>16</sup> Confessions, guilty pleas, repentance and apology played an important role in *gacaca* proceedings and could lead to community service and significant reductions in the length of a sentence.<sup>17</sup> Community service could in fact replace up to half the prison sentence for perpetrators who voluntarily confessed to their actions. Community service intended to be an opportunity for perpetrators to,

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<sup>13</sup> Note that perpetrators, while killing Tutsi and moderate Hutu, at the same time, also sometimes saved their lives and that the distinction between perpetrators and victims cannot always be clearly made, especially in those cases where perpetrators were, for instance, forced to commit crimes under duress of having their family members killed otherwise.

<sup>14</sup> Usta Kaitesi and Roelof Haveman, 'Prosecution of Genocidal Rape and Sexual Torture before the Gacaca Tribunals in Rwanda', in Rianne Letschert *et al.*, (eds.), *Victimological Approaches to International Crimes: Africa* (Intersentia, Cambridge, 2011) p. 394. See furthermore their chapter for a more in depth discussion of the legal framework of the *gacaca* proceedings.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 395.

<sup>17</sup> Although a confession, guilty plea, repentance and apology could lead to a substantial reduction of one's sentence, persons accused of 'category one' crimes could only benefit from such a reduction if they confessed *before* the list of offenders was compiled at the end of the *gacaca* information gathering phase. In addition, persons convicted of 'category one' crimes did not benefit from community service as alternative sentences and they lost all their civic rights for life (including the right to vote, the right to engage in public or military service, and the right to be a teacher or work in the medical profession). See Chapter II of the *Gacaca* Law of 2004.

for example, provide practical assistance to victims and their families (e.g. by constructing houses for them) and society at large (e.g. constructing roads). It was therefore introduced in order to encourage reconciliation and peaceful cohabitation. This required the genocide's perpetrators to provide a detailed description of their crime, including where it was committed, who was victimised and – if there were any – where corpses were discarded, as well as revealing co-perpetrators and publicly apologizing to survivors and to Rwandan society. Thus in order to contribute to the process of truth finding – faced with the reality in which the truth would in particular need to come from the perpetrators as many of the victims had died and survivors were few and had not witnessed most of what had happened – this incentive was partly introduced. Finally, appealing the *gacaca* courts' decisions was furthermore an option for both the accused and the victims.

The *gacaca* courts were thus set up to allow the population of the same community to work together in order to judge those who had participated in the genocide, to identify the victims and to rehabilitate the innocent.<sup>18</sup> The *gacaca* court system was therefore to be at the basis of collaboration, reconciliation and unity among Rwandans. On the one hand, the *gacaca* courts would allow for *genocidaires* to be on trial, which would aid in the victims' feeling of being more relieved by either finding out the whereabouts of the people they lost and/or seeing the perpetrators convicted and punished. It would also take away suspicion amongst each other on people's role during the genocide. On the other hand, since this system introduced the procedure of confession, plea of guilt, repentance and apologies, this would not only release the hearts of offenders, it also commuted their punishment and helped in their reintegration in society. In this respect, the preamble to the Organic laws stated that "it is important to provide for penalties allowing convicted prisoners to amend themselves and to favour their reintegration into the Rwandese society without hindrance to the people's normal life." By giving the suspects the chance to speak before the community, they could seek the indulgence from their families who might have been ashamed by the heinous crimes committed by them. Likewise they would ask for forgiveness from the survivor(s) and this would be a way to improve the relationship between the perpetrator and the survivor(s) and the divided and deeply affected society as a whole. In the wake of the post-genocide period, and therefore unavailability of legal and psychological expertise available, both accused and survivors did not have legal representation before *gacaca*. Neither did they, oftentimes, have psychological support, features commonly found before classical penal systems.<sup>19</sup> It was nevertheless felt that, despite such absence, prosecuting the *genocidaires*

<sup>18</sup>) National Service for *Gacaca* Jurisdictions, The Objectives of the *Gacaca* Courts, <[www.inkiko-gacaca.gov.rw/En/EnObjectives.htm](http://www.inkiko-gacaca.gov.rw/En/EnObjectives.htm)>, 12 July 2012.

<sup>19</sup>) In this contribution we do not purport to discuss such criticism on *gacaca* in depth; rather we are focusing on the results of the interviews with the 28 genocide survivors. For an overview of the criticism on *gacaca*, where the issue of fair trial rights of the accused is often raised, and

through *gacaca* with the help of the whole population would contribute to justice and reconciliation and unity of Rwandans.

To summarise, the *gacaca* courts in Rwanda were set up to: (1) establish the truth on the genocide; (2) speed up the trials; (3) eradicate the culture of impunity; (4) reconcile and unite Rwandans; and (5) have Rwandans solve their own problems. As mentioned, we will study the legacy of the *gacaca* courts by looking at what the *gacaca* courts have achieved or may not have achieved against the objectives it was set up for in the first place from the perspective of genocide survivors.

## 2. Methods

In order to find an answer to the question of the achievements of *gacaca* in light of its objectives, semi-structured interviews were conducted with 28 genocide survivors in January 2012.<sup>20</sup> By the time of the interviews most *gacaca* proceedings, nationwide, had finished and interviewees were invited to respond to questions concerning their participation in *gacaca* specifically. Such questions centred around issues such as their understanding of justice and reconciliation in relation to *gacaca*; the goals, procedure and outcome of the *gacaca* proceedings; the importance of participation in *gacaca*; the workings of *gacaca* on an individual and societal level; and the influence of time, the security level and other factors on their thinking of *gacaca*.

The survivors interviewed had taken part in *gacaca* in different parts of the country on one to more occasions in between the years 2002 until 2010. With the help of a person who translated from English to Kinyarwanda and vice versa, the interviews were conducted at Solace Ministries in Kigali over a period of two and a half weeks' time. Solace Ministries is a Christian (ecumenical) survivor-run organization that supports genocide survivors in many different ways (physically,

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the abundance of literature on this topic, see Felix Ndahinda and Alphonse Muleefu, 'Revisiting the Legal, Socio-Political Foundations and (Western) Criticisms of *Gacaca* Courts', in Tom Bennett *et al.*, (eds.), *African Perspectives on Tradition and Justice* (Intersentia, Antwerp, 2012) pp. 149–173. See furthermore: Gerald Gahima, *Transitional Justice in Rwanda: Accountability for Atrocity* (Routledge, Oxon, 2013); Roelof Haveman, 'Doing Justice to *Gacaca*', in Alette Smeulders and Roelof Haveman, (eds.), *Supranational Criminology* (Intersentia, Antwerp, 2008, Vol. 6) pp. 359–400; Roelof Haveman and Alphonse Muleefu, 'Gacaca and Fair Trial', in Dawn Rothe *et al.*, (eds.), *State Crimes* (Rutgers University Press, New Brunswick, NJ, 2010) pp. 219–244.

<sup>20</sup> The semi-structured interviews were conducted by Anne-Marie de Brouwer. All interviews are on file with the authors. The survivors' ages that are mentioned in the main text are their ages at the time of the interviews. The authors of this article have furthermore been in the position to attend several *gacaca* hearings over the past few years, which provided them with a better grasp of the workings of *gacaca*. None of these hearings were related to any of the 28 persons interviewed for this study.



psychologically, materially, socio-economically, and spiritually).<sup>21</sup> Twenty-seven out of the 28 genocide survivors interviewed are beneficiaries of this organization. The other person, who is not a beneficiary of Solace Ministries but who was at the time in the government's witness and protection programme, preferred to stay anonymous. In total 24 women and 4 men, who were in between 25 to 63 years old at the time of the interviews, were interviewed. The fact that the majority of interviewees are females has to do with the reality that many of the genocide survivors are women, often widows. Furthermore, all persons interviewed were targeted by Hutu-extremist during the genocide because they were either Tutsi or Hutu sympathizing with Tutsi. There was not a deliberate selection of interviewees based on such factors as age, ethnicity and gender before the interviews were conducted. The interviews were rather done based on the willingness of survivors to talk about their experiences in *gacaca*. Time constraints did not allow the interviewer to conduct more interviews, even though more survivors were willing and interested to talk about their experiences in *gacaca*. We believe that this group of 28 survivors interviewed is a representative group to draw some conclusions from and that we need in particular to hear their voices in order to better understand the legacy of the *gacaca* courts. It is also precisely their voices that set this contribution aside from most other publications on this topic.

Each interview was done with the full consent of the interviewee. Although all agreed to have their names included in this research, many of the survivors, in fact, specifically requested this. They expressed the wish for others to hear what happened to them during the genocide and how they experienced *gacaca* in the aftermath of the genocide. The interviews usually ranged from one hour to three hours per person. The interview technique chosen for this research consisted of a semi-structured (qualitative) research methodology. Such interview techniques provide far more space to survivors of international crimes to talk about their experiences, thoughts and feelings than quantitative research methodologies do. Since victims are a diverse group of individuals with differing expectations and experiences, qualitative research, despite time-consuming, is arguably the best type of research that will be able to take this into account more adequately. In addition, such a methodology will also be able to take into account differences in time (between experiencing the crime, appearing in *gacaca* court and being interviewed) and nature of the crime (e.g. rape, torture) as well as possible cultural, ethical or linguistic barriers since the interviewer will be able to give more attention and time to these issues.

The interviewees had all suffered from different crimes committed against them, including rape, torture and the taking away of their property or destruction

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<sup>21</sup> Note that in Rwanda religion plays an important role in society, where a large part of the population are Christians (93,6 per cent according to The World Factbook, <[www.cia.gov/library/publications/the-world-factbook/geos/rw.html](http://www.cia.gov/library/publications/the-world-factbook/geos/rw.html)>, 22 January 2013).

of their houses. Many had lost most or all of their family members during the genocide; husbands, wives, fathers, mothers, daughters, sons, brothers, sisters, uncles, aunts, and cousins, but also neighbours, friends and acquaintances. In *gacaca*, the survivors were able to testify against those who had tortured and killed their loved ones (in those cases where they had witnessed the crimes committed against them) and/or were able to participate in *gacaca* in order to find out what had happened to them by hearing others (perpetrators and eyewitnesses) testifying about their fate. There have also been many instances though, where they were not able to testify against (several of) the perpetrators as the latter ones had died or fled the country or were (and remained) unknown to the survivors. In addition, some survivors, in particular those who survived sexual violence, opted not to testify at *gacaca* at all, because they felt it was too traumatizing for them.<sup>22</sup> As a consequence of the genocide, the survivors interviewed for this research nowadays, by and large, still live in poverty and find it difficult to make a good and sustainable living. In addition, many suffer from trauma and diseases such as HIV/AIDS.

### 3. *Gacaca's Goals: What Has (Not) Been Achieved?*

In this section, we will elaborate on how the 28 interviewed genocide survivors view *gacaca* in light of the goals these courts were set up in the first place. Their views will be supported or complemented by literature and other reports, where available.

#### 3.1. *To Establish the Truth on the Genocide*

It can generally be said that, through the participatory nature of the *gacaca* and the numerous *gacaca* proceedings all over Rwanda, the truth of what happened during the genocide that would otherwise – before ordinary courts – by and large not have been revealed became known through the *gacaca* hearings. Pascal Nshimiye (63 years old) from Kibuye, who was in Kigali at the time the genocide started and hiding in the Church Sainte Famille, for example, said:

when perpetrators confessed and survivors and others in the congregation testified against them, we [survivors] discovered how, where and when family members were killed and the places where their bodies had been dumped, which allowed us to give our relatives a decent burial. At some point, perpetrators would even give the names of other perpetrators we did not know about. By attending *gacaca* I learned that my wife had fled to the church of Kibuye in order to seek shelter. She was pregnant at the time and the killers had cut her womb open 'to see if the baby was a Tutsi'. My wife and four of my six children were all killed in that church. Their bodies, and those of others, were thrown in a

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<sup>22</sup> See e.g., interviews with Clementine Nyinawumuntu on 11 January 2012 and Béatrice Mukandahunga on 23 January 2012. They did participate in *gacaca* though.

big pit latrine and now their remains have been found and laid to rest in a memorial site, which I think is a beautiful thing.<sup>23</sup>

For many of the survivors interviewed, knowing the truth, even sometimes only partly, in regard to what happened to their loved ones (how they were killed, where, when and by whom) and where they were buried was a very important result from *gacaca*, whereby locating the bones gave them the opportunity to rebury their relatives in dignity.<sup>24</sup> Not only perpetrators could reveal the truth on what they did during the genocide in *gacaca* and survivors could hear this truth, but also survivors were given an opportunity in *gacaca* to clarify the truth on what happened during the genocide themselves. Survivors were able to describe their own suffering and that of their beloved ones (to the extent they were aware), which gave them a sense of recognition for the harms they experienced because they had an audience before *gacaca*.<sup>25</sup> Several times, but not always, the people in the congregation – oftentimes Hutu, as Tutsi survivors were few – would support the accusations made by survivors against the attackers or accuse perpetrators themselves.<sup>26</sup> In this way, the truth on the genocide could be known by the community members and documented so as to enable even future generations to know what happened to them and their families. In some cases, the truth that came out opened the eyes of the wives and children of the male perpetrators, who had not known the full truth of the crimes their husbands and fathers had committed in the genocide.<sup>27</sup> In some cases the wives left their husbands after they

<sup>23</sup> See interview with Pascal Nshimiye on 25 January 2012.

<sup>24</sup> This view finds further support in literature; e.g., African Rights and Redress, *Survivors and Post-Genocide Justice in Rwanda, Their Experiences, Perspectives and Hopes*, November 2008, p. 31, <[www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf](http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf)>, 22 January 2013; Samuel Totten and Rafiki Ubaldo, *We Cannot Forget: Interviews with Survivors of the 1994 Genocide in Rwanda* (Rutgers University Press, New Brunswick/New Jersey/London, 2011) p. 18; Martien Schotsmans, 'Justice at the Doorstep: Victims of International Crimes in Formal Versus Tradition-Based Justice Mechanisms in Sierra Leone, Rwanda and Uganda', in Letschert *et al.*, *supra* note 14, p. 373 (Schotsmans points out that the survivors she spoke to and who did not find out the location of their relatives' bodies feel frustrated and cannot find closure); Etienne Ruwebana, 'Victims of the Genocide Against the Tutsi in Rwanda', in Letschert *et al.*, *supra* note 14, pp. 106–107; and National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, pp. 54 and 183 (the CMM submitted written questionnaires to 3,780 persons; 83.5 per cent of interviewees expressed that the goal of truth finding was achieved through *gacaca*).

<sup>25</sup> See e.g., interviews with Adela Mukamasonera on 11 January 2012, Pascasie Mukasakindi and Hyacintha Nirere on 12 January 2012, Françoise Mukeshimana on 16 January 2012, Petronella Hakurinka on 19 January 2012, Beata Bazizane on 20 January 2012, and Pascal Nshimiye and Olivier Bigirimana on 25 January 2012.

<sup>26</sup> See e.g., interviews with Martha Mukandutiye on 18 January 2012, Beatrice Bazayirwa on 19 January 2012, Jean Pierre Ruvumbuka and Beata Bazizane on 20 January 2012, and – differently – Immaculée Nyirambarubukeye on 24 January 2012 (who did not receive support from the perpetrators' side in the congregation).

<sup>27</sup> See e.g., interview with Venerande Mukashyaka on 20 January 2012. Beata Mukarubuga, also known as Mama Lambert, a counselor with Solace Ministries and a genocide survivor herself,

found out what they had done. Other information that was previously not known by many survivors and which came out through the *gacaca* hearings included learning that some of the people, including the perpetrators, also had had the capacity to help Tutsi survive during the genocide; that there were Hutu who testified against fellow Hutu who had committed crimes during the genocide; that there were Hutu who survivors believed had killed, but had not;<sup>28</sup> and that some survivors felt they were able to better understand why fellow Rwandans committed the crimes they did during the genocide (referring to the bad government policy at the time). Such information helped them to understand the bigger picture of the genocidal policy and the reasons why their fellow citizens had been driven to commit the crimes they had.

Yet, although it can be said that the *gacaca* system contributed in revealing the truth about what happened during the genocide, it cannot be said that through the proceedings of *gacaca* the whole truth on the genocide overall and in each individual case was always exposed. The reasons for this were manifold. The genocide survivors interviewed mentioned that, for example, the perpetrators died or fled the country; the perpetrators did not confess to their crimes or lied and there are no other people who know about their involvement in the genocide (e.g. all victims died or the survivors don't know the perpetrators) or they – co-perpetrators, witnesses and survivors – do not dare or want to implicate them (e.g. afraid (threats), bribed, family bonds); and sometimes perpetrators only confessed to a part of the crimes they committed, but not all of them, in order to receive a lighter sentence.<sup>29</sup> Not confessing to all of the crimes committed happened especially in cases of sexual violence where, at some point in the proceedings, a confession of the accused would result in life imprisonment.<sup>30</sup> Especially the fact that survivors were few, as many of their relatives had died,

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explained that many women whose husbands had participated in the genocide were overwhelmed by what their men had done when they found out later, often through *gacaca*. Their men would go out during the day to do their “work” which included raping Tutsi women and during the night they would come home and sleep with their wives. See interview with Beata Mukarubuga on 18 and 19 January 2012 (on file with the authors).

<sup>28</sup> See also Schotsmans: “(...) the process of establishing individual guilt made it more comfortable for them [survivors] to interact with those not accused or convicted, since they would previously suspect all Hutu to be guilty.” See Martien Schotsmans, ‘Justice at the Doorstep: Victims of International Crimes in Formal Versus Tradition-Based Justice Mechanisms in Sierra Leone, Rwanda and Uganda’, in Letschert *et al.*, *supra* note 14, p. 373.

<sup>29</sup> See also: e.g., Jean Hatzfeld, *Machete Season: The Killers in Rwanda Speak* (Picador, US, 2006); African Rights and Redress, *supra* note 24, p. 34; ‘Ibuka Report: 167 Genocide Survivors Murdered since 1995’, *Hirondelle News Agency*, 15 July 2008 (according to this source, 167 genocide survivors were murdered between 1995 and mid-2008, including victims, witnesses and *gacaca* judges, to prevent them from implicating the perpetrators); and Phil Clark, *How Rwanda Judged its Genocide*, Africa Research Institute, April 2012, p. 6.

<sup>30</sup> See e.g., interview with Marie Mukabatsinda on 12 January 2012. Marie Mukabatsinda, both a survivor of sexual violence and having been a judge in *gacaca* dealing with sexual violence cases, thought that perhaps the designation of sexual violence as a ‘category one’ crime,

made it – without no one or few people to support them – difficult to testify in front of their former neighbours. In addition, this situation made *gacaca* largely dependent on the goodwill of the perpetrators and witnesses to open up on what they had done and witnessed in the genocide.

Despite all of this, survivors interviewed recalled that although it was difficult when *gacaca* had just started to have people expose in *gacaca* their crimes or the ones endured or witnessed (due to e.g. feelings of anxiety, hostility, suspicion, being afraid of the consequences), after some time this attitude changed (due to e.g. feelings of guilt, incentives for lighter sentences, a better security situation, and a better understanding of the workings of *gacaca* and trust in its proceedings) and people started to talk more openly and reveal what happened during the genocide. For most of the survivors interviewed finding out the truth was very important and only by having the truth exposed, their sense of justice and reconciliation as well as their ability to heal and forgive the perpetrators was felt to be positively impacted.<sup>31</sup>

### 3.2. *To Speed Up the Trials*

When asking the interviewees about the goals of *gacaca* and its impact overall, almost all survivors referred to the capability of *gacaca* to speed up the trials (in comparison to ordinary courts) while upholding standards of fair trial.<sup>32</sup> Most survivors commended the procedure in *gacaca*, in which judges from both Hutu and Tutsi ethnicity displayed professionalism, came from the place where the crimes were committed and therefore knew the people in the congregation well, and allowed survivors to regain their composure when testifying became too traumatizing. Furthermore, the population in the congregation were overall attentive to their stories and at times backed up the stories of the survivors. In this way, survivors generally felt that the truth about what had happened during the genocide came out, by adhering to standards of fair trial at the same time. Despite this overall view, three survivors were dissatisfied with the professionalism exposed by the

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coupled with the shame of being labelled a rapist in Rwanda, likely had the counterproductive effect of deterring perpetrators from confessing to these crimes.

<sup>31</sup> See also: Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (Cambridge University Press, Cambridge, 2010) p. 219: “Evidence from a wide range of communities indicates that *gacaca* provides a vital dialogical space in which Rwandans tell and hear narratives about the events and effects of the genocide. While challenges (...) have emerged over time, *gacaca* has provided a forum for collective decisions that has not occurred elsewhere in Rwandan society. In doing so, *gacaca* has fulfilled a vital truth function in pursuit of justice, healing and reconciliation.”

<sup>32</sup> See also: National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, p. 184 (“(...) 87% of the respondents believe that the *Gacaca* courts held speedier hearing while at the same time observing the principle of fair trial”).

judges in their cases, and two said that they would have preferred to have their cases dealt with in front of professional judges trained in the field of law.<sup>33</sup>

Marie Therese Umutarutwa (39 years old), who was severely raped during the genocide and lost many of her relatives, said that the judges in her case had misunderstood her claim. Marie Therese testified against a woman whom she said had handed her over to her rapists and wanted to see this lady on trial for aiding the perpetrators to rape her. Yet, the judges did not pursue her case as they argued that a woman cannot sexually abuse another woman. The other survivor, who testified against the killers of her brothers, said that one of the judges in her case was bribed by the person she had accused of killing her brothers. This judge subsequently helped the perpetrator to escape the country and from there he is still trying to attack and kill her with the help of people in Rwanda, she said.

Pascasie Mukasakindi (52 years old), on the other hand, recalled how she testified in closed session due to the rapes she endured during the genocide. While this was going on, people from the community were able to listen and make disparaging remarks to her from the courtroom windows, which the entire panel of (Hutu) judges did nothing to address.<sup>34</sup>

Although it could be held that procedures in *gacaca* were overall conducted in a fair manner, there have indeed been reports of serious procedural errors. For example, situations in which: judges were bribed by relatives of the suspects to acquit or pass lenient sentences; judges were found out to be former *genocidaires*; survivors were mocked or called liars when they testified; witnesses were bribed not to implicate perpetrators or to falsely accuse persons, and were threatened or even killed.<sup>35</sup> However, as Phil Clark noted “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.”<sup>36</sup>

### 3.3. *To Eradicate the Culture of Impunity*

The *gacaca* were introduced to fulfil the international law dogma that has been in existence for several decades, that is, in the words of M. Cherif Bassiouni:

(...) individuals who commit genocide, crimes against humanity, and war crimes are to be treated as *hostis humani generis* (enemy of all humankind). (...) This preclusion [from

<sup>33</sup> See interviews with Marie Therese Umutarutwa on 19 January 2012 and Anonymous (this lady prefers to stay anonymous; she is not a beneficiary of Solace Ministries) on 24 January 2012.

<sup>34</sup> Interview with Pascasie Mukasakindi on 12 January 2012.

<sup>35</sup> See e.g., Human Rights Watch, *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*, 31 May 2011, <[www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf](http://www.hrw.org/sites/default/files/reports/rwanda0511webwcover.pdf)>, 22 January 2013; Redress, *Testifying to Genocide: Victim and Witness Protection in Rwanda*, 2012, <[www.redress.org/downloads/publications/TestifyingtoGenocide.pdf](http://www.redress.org/downloads/publications/TestifyingtoGenocide.pdf)>, 22 January 2013.

<sup>36</sup> Clark, *supra* note 29, p. 6.

impunity] extends from the most junior soldier acting under the orders of a superior to the most senior government officials, including diplomats and heads of states.<sup>37</sup>

Although the possibility of amnesty – for example, in the form of a truth and reconciliation commission, coupled with some forms of amnesty mechanisms – had also been discussed as a valid option to deal with the genocide cases post-genocide, the prosecution of all *genocidaires* was felt to be more appropriate for the crimes committed in Rwanda.<sup>38</sup> By establishing the *gacaca*, the government of Rwanda felt it contributed to the fight against impunity for international crimes, by holding all suspects of the genocide – a crime prohibited under international and Rwandan law – accountable for their conduct.<sup>39</sup>

It certainly did that and, with it, became the first post-conflict country ever to seriously follow up on the maxim that there should not be impunity for perpetrators of international crimes. Through its participatory nature and having the hearings at the locations where the crimes had taken place and where eyewitnesses were largely available, *gacaca* made it possible to have trials of people whose participation in the genocide would not have been easily known if the (lengthly and costly) rules of procedure and evidence of (the for most people far way) ordinary courts would have been applied. By June 2012, a total of 1,958,634 cases involving 1,003,227 people (90 per cent men and 10 per cent women) were judged through *gacaca*, of which 60,552 cases fell in the first category, 577,528 in the second category and 1,320,554 in the third category.<sup>40</sup> Of the total number of cases tried, 277,066 resulted in acquittals (14 per cent), while of the cases resulting in convictions (1,681,648 or 86 per cent), 225,012 (or 13 per cent) were based on guilty pleas and confessions of the accused. On appeal, 178,741 cases were tried (with 45,839 or 26 per cent resulting in acquittals), representing 9 per cent of the total number of cases tried by *gacaca*.

<sup>37</sup> M. Cherif Bassiouni, *Post-Conflict Justice* (Brill Academic Publishing, Dordrecht, 2002) pp. 257–258. Note that the Rwandan genocide not only included government officials committing international crimes, but also many civilians.

<sup>38</sup> William Schabas, 'The Rwandan Courts in Quest of Accountability', 3 *Journal of International Criminal Justice* (2005) 884.

<sup>39</sup> See, however, Gerald Gahima, *Transitional Justice in Rwanda: Accountability for Atrocity* (Routledge, Oxon, 2013). Gahima argues that in a post-conflict situation a maximal approach to accountability for genocide may undermine the promotion of core objectives of transitional justice, including the process of rule of law reform and the process of democratic transition. It is, furthermore, very interesting to note that Richard Ashby Wilson in his book *Writing History in International Criminal Trials* (Cambridge University Press, New York, 2011) writes that providing justice to the apartheid victims through legal mechanisms was a missed opportunity in South Africa, as the Truth and Reconciliation Commission by providing amnesties to the perpetrators did not work well from a justice and reconciliation perspective.

<sup>40</sup> Summary of the Report Presented at the Closing of *Gacaca* Courts Activities, 18 June 2012, < inkiko-gacaca.gov.rw/English/?page\_id=528 >, 11 July 2012 (note that there were more cases than individuals tried since there were often more cases against one accused). See also: 'Rwandan Gacaca Genocide Courts Considered a Success', *Rwanda Express*, 19 June 2012 (reporting that over 75,000 suspects were tried and convicted in absentia); and Bosco R. Asiimwe, 'Rwanda: Locals Reflect On Gacaca As Trials Come to an End', *New Times Rwanda*, 19 June 2012.

The views of the interviewed survivors on the sentences handed down to the *genocidaires* are mixed. Some of the interviewed genocide survivors mentioned that they are happy with the sentences that were given to the convicted persons, while several others felt that the sentences handed to the perpetrators did not reflect the gravity of the crimes they had committed. Survivors were overall more pleased with the sentence when perpetrators had also confessed to their crimes and had genuinely asked for forgiveness. Some survivors also recounted that convicted persons had either died in prison (often due to sickness) or had managed to escape from prison. Marie Therese Umutarutwa, for instance, said that the government should have kept a better eye on one of the men who raped her, since he had been able to escape prison.<sup>41</sup> Although *gacaca* has sometimes been accused for the leniency of its sentences, especially by survivors, it is still valid to say that even in those cases perpetrators were convicted and punished. Given the cruelty with which the genocide was committed, it is even difficult to imagine any punishment which can make perpetrators pay for the sufferings they caused to the victims of the genocide. Of course, no penalty will ever make up for the consequences of the crimes the survivors have to live with and will never bring back the people they lost. Naturally, lenient sentences do not fit the gravity of the crimes most *genocidaires* committed; rather lenient sentences were provided in light of practical difficulties (e.g. no prison facilities available), and one of the other objectives *gacaca* aimed at, the reconciliation and unity of Rwandans, as discussed next. Olivier Bigirimana, a 25 years old man who lost his parents and three brothers and survived with his younger sister only, phrased it as follows:

I do not think the sentences [14 years in prison] were genuine punishments for the three perpetrators of my family members. However, due to the need to look at the future I chose to accept it, to forgive and to reconcile with them.<sup>42</sup>

Holding the *genocidaires* accountable for their crimes was nevertheless felt by many of the interviewed survivors as an important contribution of *gacaca*.<sup>43</sup>

### 3.4. *To Reconcile and Unite Rwandans*

On the question for which goals *gacaca* was set up for, reconciliation was almost always mentioned as one of its key objectives by the survivors interviewed.<sup>44</sup> Most

<sup>41</sup> Interview with Marie Therese Umutarutwa on 19 January 2012.

<sup>42</sup> Interview with Olivier Bigirimana on 25 January 2012.

<sup>43</sup> See also: Martien Schotsmans, 'Justice at the Doorstep: Victims of International Crimes in Formal Versus Tradition-Based Justice Mechanisms in Sierra Leone, Rwanda and Uganda', in Letschert *et al.*, *supra* note 14, p. 373; and National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, p. 184 (" (...) 86.4% of the respondents stated that the *Gacaca* process allowed for the trial of thousands of people while observing the principles of a fair trial").

<sup>44</sup> When survivors did not mention it specifically for this question, they often mentioned it in their answers to one of the other questions.



survivors felt that participating and testifying in *gacaca* had contributed to reconciling with the perpetrators and society at large, or at least partly. Their understanding of the term “reconciliation” varied from “coming or living together again”, “finding out the truth” to “being asked for forgiveness by, and forgiving, those who had harmed you”, or a combination of all three. Before *gacaca* was introduced in 2001, the survivors said that Hutu and Tutsi could not even greet each other on the streets without feelings of anger, fear and suspicion. Yet, nowadays they could greet one another again, come to each other’s rescue in times of need, invite each other in each other’s homes, attend the same meetings and also intermarry.<sup>45</sup> It is not uncommon to find places in Rwanda where survivors of the genocide live together with members of the families of the killers of their loved ones. It is also unsurprising to find places where perpetrators who have served their punishment living (again) next to survivors of the genocide. This also has to do with the fact that Rwanda is a small country and yet the most populated one in the whole of Africa. Nevertheless, there are instances in which survivors and (families of the) perpetrators do not live in harmony with each other today. In other cases, despite ownership of land, survivors choose to abandon their place of origin after the genocide, because they were afraid to live among the former *genocidaires*. Where survivors still live in the place where they lived during the genocide and where they are surrounded by former *genocidaires*, every day is an even more constant reminder of what happened in 1994 and the people they lost. Although they may prefer to leave the place and live in a community in which there are more survivors like themselves, or in the capital where they can live more of an anonymous life, due to poverty this is usually not a real possibility.<sup>46</sup> Ernestine Nyirangendahayo (30 years old), for example, said that she is still stigmatised by her neighbours due to her HIV/AIDS status as a result of the rapes she endured during the genocide.<sup>47</sup> Her neighbours, the majority having been involved in the genocide, call her names and do not help her when she is feeling ill, afraid they themselves might become infected. Despite all of this, she is resilient and continues to live next door to former *genocidaires*.

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<sup>45</sup> Clementine Nyinawumuntu, for example, explained how she helped the family of the perpetrator who was responsible for the killing of some of her own relatives by financially helping out the killer’s wife who was about to give birth. See interview with Clementine Nyinawumuntu on 11 January 2012.

<sup>46</sup> See e.g., Mary K. Blewitt Obe, *You Alone May Live: One Woman’s Journey Through the Aftermath of the Rwandan Genocide* (Dialogue, London, 2010) pp. 298–299. Blewitt makes the comparison with the survivors of the Holocaust, some of whom had the opportunity to leave their country after the Second World War to live in Palestine. Going to such an ancestral homeland is, however, not a possibility for the Tutsi in Rwanda, she states.

<sup>47</sup> Interview with Ernestine Nyirangendahayo on 16 January 2012. See similarly the interview with Marie Jeanne Murekatete on 13 January 2012 (she mentions that the government has set up programs to take away the stigma that surrounds HIV/AIDS, but that one can never take out what is in an individual’s heart and mind).

### 3.4.1. *The Issue of Security*

One important objective of *gacaca* was, as said, that it was expected to help in the process of reconciling and uniting all Rwandans again. Through participation in the *gacaca* courts, survivors, witnesses and perpetrators came together and testified about what they saw happening during the genocide. In this way, the truth would be known and animosities amongst and resentment against each other would be reduced. Nevertheless, especially in the early years of *gacaca*, security issues severely plagued the *gacaca* and reconciliation process. For example, Beatrice Bazayirwa (49 years old), who lost her husband and three children and other relatives during the genocide, testified that “when *gacaca* was just starting, the perpetrators of my relatives would come to my house at night and try to stone me, but nothing seriously happened fortunately, and later the police stepped in.”<sup>48</sup> Besides intimidations and threats, there have also been reports of survivors and witnesses who were killed prior or after giving testimony before *gacaca* because of their (anticipated) statements implicating the *genocidaires*.<sup>49</sup> Although several of the survivors interviewed mentioned that they did not feel safe testifying in *gacaca*,<sup>50</sup> by the end of 2008, with better security put in place by Rwandan authorities and the truth about what happened and who did what having been more exposed and accepted, most could participate in *gacaca* without being afraid of the (families of the) former *genocidaires* who often still live there.<sup>51</sup>

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<sup>48</sup> Interview with Beatrice Bazayirwa on 19 January 2012. See also: Karen Brounéus, ‘Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’, 39(1) *Security Dialogue* (2008) 70.

<sup>49</sup> Between 1995 and mid-2008, about 167 genocide survivors were killed. Witnesses, judges and members of the *gacaca* courts were also targeted. See ‘Rwanda Ibuka Report – 167 Genocide Survivors Murdered Since 1995’, *Hirondelle News Agency*, 15 July 2008. See further e.g., ‘Ibuka Perplexed by Ongoing Killings’, *The Rwanda Focus*, 1 October 2007; ‘Ibuka Calls for Action against Killing of Genocide Survivors’, *Hirondelle News Agency*, 23 March 2010.

<sup>50</sup> Some of the survivors interviewed in January 2012 mentioned that they would travel from their current place of living to the place where they lived during the genocide to attend *gacaca* on one single day to avoid being among their former neighbours for a longer period of time than necessary. Some also explained that they took a different route each time they went for *gacaca*, in order to avoid any security issues. Others mentioned they spent the night in a town not too far from the place where *gacaca* was held, but not in the place where they used to live during the genocide, because of being afraid of or anxious about being close to their former neighbours. Some also mentioned that they experienced no security problems at all and in case they did that the police was able to intervene.

<sup>51</sup> See also: Karen Brounéus, ‘Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’, 39(1) *Security Dialogue* (2008) 55–76. In 2006, Karen Brounéus interviewed 16 Rwandan women who testified in *gacaca*, for whom testifying in *gacaca* resulted in psychological and security problems (e.g., intimidation, threats). Although this was also the case with all the survivors interviewed in 2008 and profiled in “The Men Who Killed Me”, they said in 2012 that the security issue had been largely resolved by the end of 2008 and that they had generally felt safe since. See further: De Brouwer and Ka Hon Chu, *supra* note 10.

### 3.4.2. *The Issue of Forgiveness*

In those cases where perpetrators would ask the survivors for forgiveness for the crimes they had committed and, sometimes were able to point out where the remains of their relatives could be found, many of the survivors interviewed said that they had been able to forgive them. Marie Mukabatsinda, a 55 years old survivor of sexual violence who lost her husband, two of her three children and many of her family members in the genocide, for example, said:

*Gacaca* was good, because it made people who committed the crimes to stand before the people they tried to kill and they narrated everything they did. If they did it sincerely it would make the survivors' hearts set free. Sometimes a *genocidaire* would confess and apologise with a sincere heart. Some of them kneeled down and you felt you can again be free in your heart.<sup>52</sup>

Martha Mukandutiye (58 years old) said: "I testified against one of the men who raped me and his family members were rejecting what I said. The rapist, however, admitted the crime and apologised genuinely and I forgave him."<sup>53</sup> Esmerita Ntambabazi, a 54 years old lady who was severely raped and who lost all of her family members, said:

Reconciliation to me is when a person comes to apologise to you and then you are able to forgive him. A man who was among the perpetrators who came to attack me, came to me and apologised to me. I forgave him and I feel that I even love him and his family as well. Reconciliation brings love. Unfortunately though, other people reported him for other crimes and he was a given a life sentence.<sup>54</sup>

For many, forgiving those who had harmed them and their loved ones was an important step to enable them to continue with their lives, though a very difficult step to take.<sup>55</sup> Yet, in order to do so it was generally felt that such confessions and

<sup>52</sup> Interview with Marie Mukabatsinda on 12 January 2012.

<sup>53</sup> Interview with Martha Mukandutiye on 18 January 2012.

<sup>54</sup> Interview with Esmerita Ntambabazi on 24 January 2012.

<sup>55</sup> Beata Bazizane explained how, for her, reconciliation comes in two steps: "First, a person needs to reconcile with him or herself. Once that step is taken, the second step for a person is to reconcile with others." On the question asked how she was able to do this, she answered: "I reconciled with myself by admitting what had happened to me in 1994, seeing that the justice that I received was done, and that I was living in security. Therefore, I should not continue living in the history of what had happened to me. Then, after realising and accepting all of this, I realised that I also needed the former perpetrators (to talk to them, to see them in case of problems, etc.) and that it was therefore not wise to keep my anger towards them. So, I took the step of accepting them and now we greet each other and talk to each other. In addition to all of this, also the word of God teaches me about forgiveness and fellowship." See interview with Beata Bazizane on 20 January 2012. In Koen Peeters' book on Rwanda "*Duizend Hewels* [*A Thousand Hills*]" (De Bezige Bij, Antwerp, 2012, p. 245) the difference between reconciliation and forgiving is explained as follows: "reconciliation has to be done between two individuals, but when the suffering is very big, it is very hard. (...) Forgiving, on the other hand, is something that a person can do on his or her own. You offer it to another person. You turn the page and you are able to start your life again. You mostly cure yourself [*own translation*]."

apologies also had to be genuinely made by the perpetrators. Marie Claire Uwera, a 41 years old genocide survivor, said:

To me reconciliation means that the person who wronged you, approaches you and asks for genuine forgiveness. The man who killed my father only confessed to this crime by the end of the day and didn't come to me to ask for forgiveness. In fact, he denied he had killed my father till the very last minute and when he finally confessed, it didn't look like a sincere confession.<sup>56</sup>

For this reason, Marie Claire was unable to reconcile with her father's killer. As seen above, of the 1,681,648 cases leading to convictions before *gacaca*, only a relatively small number of cases resulted in perpetrators pleading guilty and apologizing for their crimes (13 per cent or 225,012),<sup>57</sup> of which some apologies may have been sincere and others not. Marie Odette Kayitesi (42 years old), for instance, said:

I think that many perpetrators confess and repent for the sake of being set free, but in many cases the confession is not sincere. Because of the terrible things the *genocidaires* did, I don't think the apologies are genuine. Yet, maybe some of the confessions are.<sup>58</sup>

Although many of the interviewed survivors spoke about their ability to forgive as this helped themselves therapeutically to go on with their lives and that of others (often children and orphans they were caring for), surely not all survivors have been able to forgive, nor is this something that can be forced on them. Marie Louise Niyobuhungiro (36 years old), for example, said that she did not believe that *gacaca* brought her justice and reconciliation. On the issue of forgiveness she said: "I cannot forgive them [my rapists], because I have grief that will never end until I die".<sup>59</sup> Especially in cases where the survivors were the only ones left in their entire families, or where they suffered extremely brutal and cruel forms of violence, survivors may feel they cannot forgive.<sup>60</sup> In addition, in those cases where the perpetrators did not admit to (all of) the crimes they had committed or did not sincerely apologise for their crimes and tell the survivors what happened to their relatives and where to find their remains, survivors said that they were not able to forgive and reconcile with them.<sup>61</sup> Sometimes this meant that survivors

<sup>56</sup> Interview with Marie Claire Uwera on 10 January 2012.

<sup>57</sup> Perhaps the number of guilty pleas is relatively low, because confessions could only be made before the end of the information gathering phase, whereas most of the convicts became known only later in the proceedings, when others implicated them.

<sup>58</sup> Interview with Marie Odette Kayitesi on 10 January 2012. See also: Jean Hatzfeld, *Machete Season: The Killers in Rwanda Speak* (Picador, US, 2006). Hatzfeld found that, based on his interviews with perpetrators, most of the confessions were not sincerely made. Most of the killers claimed they were bystanders or were coerced to kill by others.

<sup>59</sup> Interview with Marie Louise Niyobuhungiro on 13 January 2012.

<sup>60</sup> Interview with Olivier Bigirimana on 25 January 2012.

<sup>61</sup> See e.g., interview with Marie Therese Umutarutwa on 19 January 2012 and interview with Anonymous on 24 January 2012.

felt that *gacaca* had brought them partial reconciliation, namely for those crimes that the accused confessed to and apologised for, but not to the crimes he or she was believed to be responsible for, but did not confess to and ask forgiveness for. In the words of Jean Pierre Ruvumbuka (38 years old):

I have forgiven the person who was given a 12 years sentence for the crimes he apologised for [having killed one of my sisters and my parents], but not for the other crimes he did not apologise for [having killed another sister and having raped a third sister and having taken her to Tanzania as his “wife”].<sup>62</sup>

Yet, if the perpetrators would have told the truth and asked the survivors to forgive them, they would have done so, some said.<sup>63</sup> Although it has been very important for survivors in order for them to be able to live with the perpetrators again, that the latter told them the truth and asked for forgiveness, a high number of survivors expressed the point that even without having been asked for forgiveness, and even in cases where the perpetrators were unknown to the victims, they have forgiven them. Immaculée Nyirambarubukeye (49 years old) said: “I have forgiven them, even though they didn’t ask for it. I was able to forgive them as the government was encouraging them to kill us. It was not completely their fault.”<sup>64</sup>

Many of those interviewed expressed that they felt it was better to forgive the perpetrators, often agreeing with teachings about forgiveness in some of the Churches and NGOs that supported them.<sup>65</sup> For example, Petronella Hakurinka (50 years old), said: “I forgave the perpetrators after accepting Christ in my life.”<sup>66</sup>

<sup>62</sup> Interview with Jean Pierre Ruvumbuka on 20 January 2012.

<sup>63</sup> See e.g., interview with Marie Therese Umutarutwa on 19 January 2012, interview with Marie Mukabatsinda on 12 January 2012, and interview with Anonymous on 24 January 2012 (“I cannot forgive a person who has not accepted what he did. Reconciliation is when a person comes to you and asks you for forgiveness, you reconcile. If they would have come to ask me for forgiveness, I would have forgiven them. If no one comes, you feel as if he is proud and minimizing you. Yet, we can live together these days.”).

<sup>64</sup> Interview with Immaculée Nyirambarubukeye on 24 January 2012. Beata Bazizane said: “The perpetrators did not confess to their crimes. I had five children and only remained with one child. I have forgiven them though, because you cannot keep being angry on people, they will not bring them back. God is going to revenge for us, but I have forgiven.” See interview with Beata Bazizane on 20 January 2012.

<sup>65</sup> Note again that in Rwanda religion plays an important role in society, where a large part of the population are Christians (93,6 per cent according to The World Factbook, <[www.cia.gov/library/publications/the-world-factbook/geos/rw.html](http://www.cia.gov/library/publications/the-world-factbook/geos/rw.html)>, 22 January 2013). It is also important to note that the impact of religion on the justice and reconciliation process in Rwanda and post-conflict situations in general is an understudied phenomenon and would need further study.

<sup>66</sup> Interview with Petronella Hakurinka on 19 January 2012. In addition, Marie Therese Umutarutwa (19 January 2012) said: “If they would have apologised, I would have forgiven them, because I got to know from the bible that if a person has forgiven, that person will also be forgiven.” Olivier Bigirimana (25 January 2012) said: “In the beginning I did not think it would be possible to forgive, but because of continuous teachings at Solace Ministries about forgiveness, I was able to feel to do that. (...) Also having talked to other survivors at Solace Ministries, made me realise I was not the only one with such problems, and this helped me to feel that I could

In addition, many mentioned that they simply feel they have no other option having lost everyone and life continuing. Françoise Mukeshimana, another genocide survivor (43 years old), said: “Those who killed our people can never bring them back to life. For us to have a relationship with them is to forgive them. I have to forgive them, because they cannot bring back our people.”<sup>67</sup>

Another woman, Jeanette Uwimana (39 years old), said: “I just forgave them, so that I would feel relief in my heart, because there is nothing else I can do.”<sup>68</sup> It has been – rightly – held that forgiveness can never be forced upon a person for personal healing or reconciliation purposes, and may even create further trauma if done so.<sup>69</sup> Nevertheless, it seems that the survivors who had forgiven the perpetrators were able to continue their lives in a more harmonious way than before having taken that decision. Also in comparison to those who had not forgiven and were still holding severe grudges towards the perpetrators and living their lives more in the past than in the present and future. It seems that reconciliation can take place on two levels; on that of the individual and that of society at large.

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start forgiving and so I did.” Anastasia Mukarugwiza (19 January 2012) said: “Reconciliation means to me forgiving those who wronged you. I have not forgiven them, but when I am in church, I feel that I should forgive them. In my heart I feel that I should forgive them and live together again. I will forgive them. From now onwards, I have forgiven them. I go and plead for them and tell the government that I have forgiven them. I will do this because of the good words about forgiveness Solace Ministries has told us and then they will be set free from prison. They will do TIG [community service] and then go to their homes forever.” Glorioso Mushimiyimana (23 January 2012) stated: “The men who had killed my elder brother did not confess to their crime, but I was able to forgive them, because if you don’t forgive, God will also not forgive you.”

<sup>67</sup> Interview with Françoise Mukeshimana on 16 January 2012.

<sup>68</sup> Interview with Jeanette Uwimana on 25 January 2012.

<sup>69</sup> Rebecca Saunders, ‘Questionable Associations: The Role of Forgiveness in Transitional Justice’, 5 *The International Journal of Transitional Justice* (2011) 119–141. Phil Clark warns for the view sometimes upheld that requires survivors to have a Christian obligation to unconditionally forgive perpetrators. He argues that the notion “that individuals ‘must forgive because God forgives’, with its implication of an unconditional obligation to forgive perpetrators, is problematic on both theological and practical grounds.” He argues that within Christianity, “forgiveness is still conditional upon the spirit of sincerity in which individuals confess and express remorse.” In addition, “if survivors feel that they are being coerced to forgive, their feelings of anger and resentment towards those whom they forgive and those who force them to forgive will increase.” See Clark, *supra* note 31, pp. 303–304. Jean Gakwandi, the director of Solace Ministries (and whose beneficiaries are included in this study) said on this issue: “Regarding forgiveness, our policy at Solace Ministries is to never force any person to forgive or reconcile herself with somebody. We believe it is a process that can take time. Sometimes a lifetime. Our role is to comfort the hurting and the traumatised who eventually will come up to deal with resentment and anger and with forgiveness *from within* as a kind of liberation. We have seen this in action. It is even more lasting. In our terms, it is the work of the Holy Spirit. Remember the woman who came to tell me that if I wanted her to tell me her story, I must not ask her to love neither God, nor the Bahutu, nor the child born out of rape. I did not ask her either of these. Eventually, her opinion changed completely towards all these people and God. We therefore promote healing; other things come as a result. We know it makes good psychologically not to be under the weight of resentment and bitterness. We of course encourage forgiveness, but do not force it.”

Immaculée Ilibagiza is, for instance, a shining example of a genocide survivor able to reconcile with the perpetrators as to the deaths of her family members with the help of her Christian values on forgiveness.<sup>70</sup> Venerande Mukashyaka (49 years old) explained how religion helped her and others in the process of forgiving as opposed to others who were not so active in their faith: “people who are able to pray, to get closer to God, they were able to understand *gacaca* quickly, but those who did not, who did their own things, for them it was not easy to understand *gacaca*.”<sup>71</sup> Mary K. Blewitt, who lost many of her relatives in the genocide and founded an organisation in the UK to support genocide survivors, however, expressed that:

whereas national reconciliation may be possible, expecting individual survivors to reconcile is unfair. (...) I will personally never forgive the killers of my family. Forgiveness is a Christian notion I subscribe to, but in this case, forgiveness without justice is a betrayal of my family. Forgiveness is between me and my God; it's not a matter of national policy. Individuals should not feel pressure and live under scrutiny because they don't want to forgive.<sup>72</sup>

Blewitt refers to the many difficult circumstances survivors who live in Rwanda still live with today due to the genocide and calls for more attention to survivors' social, economic and political needs, before reconciliation for individual survivors could ever be reached. Indeed, interviews with the same group of genocide survivors in 2008 and 2012 showed that the growth in their material status and mental well-being – influenced by support and teachings of the government, NGOs and churches – had contributed to their increasingly positive evaluation of justice and reconciliation processes such as *gacaca*.<sup>73</sup>

### 3.4.3. *The Issue of Retraumatization and Healing*

Without denying the positive impact of the *gacaca* process on the reconciliation process overall, it cannot be ignored that for all survivors interviewed, the process of truth-telling and truth-hearing caused severe retraumatization. The genocide survivors could hardly bear to hear the terrible things that had happened to their beloved ones. Faustin Kayihura, a 31 years old genocide survivor of sexual

<sup>70</sup> Immaculée Ilibagiza became well known through her book *Left to Tell: Discovering God Amidst the Rwandan Genocide* (Hay House, US, 2006) in which she explains that through prayer, she eventually found it possible, and in fact imperative, to forgive her tormentors and her family's murderers. Since 1998 she lives in the US.

<sup>71</sup> Interview with Venerande Mukashyaka on 20 January 2012.

<sup>72</sup> Mary K. Blewitt, *You Alone May Live: One Woman's Journey Through the Aftermath of the Rwandan Genocide* (Dialogue, London, 2010) pp. 304–305. Mary K. Blewitt is the founder of the organisation called Survivors Fund (SURF) in the UK supporting Rwandan genocide survivors. She did not live in Rwanda during the genocide herself.

<sup>73</sup> See De Brouwer and Ka Hon Chu, *supra* note 10. Note that fifteen of the interviewees interviewed both in 2008 and 2012 are part of the 28 interviewees for this contribution.

violence, for instance, recounted how he participated in *gacaca*, where he heard how his aunt's arm was chopped off by the killers, who subsequently forced her to eat her own arm and later killed her.<sup>74</sup> All were disturbed by recounting and reliving their own terrible testimonials. This could often be found for, but not limited to, cases of sexual violence. During the genocide, after having sometimes witnessed their families being killed, many women (but also men) were raped, often numerous times by different perpetrators. Despite many victims begged their attackers to be killed, they were often times left alive in order to prolong their sufferings (facing HIV/AIDS and other physical and psychological consequences, children of the rapists and stigma).<sup>75</sup> For many of the interviewed women, testifying about the sexual violence they endured during the genocide, felt like re-experiencing their traumas of 1994 as though they were re-living those times again.<sup>76</sup> Many broke down in the process and were taken home (to sometimes appear again later), but others – when testifying – continued speaking after judges gave them time to regain their composure. As Marie Mukabatsinda, a survivor of sexual violence with first-hand experience in *gacaca* – both as a victim testifying against those who had raped her and as a *gacaca* judge presiding over cases of sexual violence – said: “Especially the cases dealing with sexual violence I found very difficult to deal with.”<sup>77</sup> That the sexual violence cases were among the most difficult cases for judges to try and potentially very traumatizing for the victims involved was in fact also recognised on governmental level. Therefore it was decided in early 2008 that the *gacaca* judges were to receive training – with legal and psychological components – about how to deal with cases of rape and sexual torture that would come before them.<sup>78</sup>

In spite of how difficult it was to participate and testify in *gacaca* for all those who survived the genocide, many of the survivors interviewed also felt that doing so had unburdened their hearts, healed and empowered them. This could sometimes already be felt during the *gacaca* proceedings or (quite) sometime after having giving testimony. For instance, Adela Mukamusonera (45 years old), who lost

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<sup>74</sup> Anne-Marie de Brouwer and Sandra Ka Hon Chu, *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre, Vancouver, 2009) p. 97.

<sup>75</sup> *Ibid.*

<sup>76</sup> See also: Karen Brounéus, ‘Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’, 39(1) *Security Dialogue* (2008) 70. Among the 28 people interviewed there was one Tutsi man who was raped by a Hutu woman during the genocide. Since she had died during the genocide, the man did not testify in *gacaca* against her. We don't know how many men ultimately testified before *gacaca* about sexual violence they had endured, although the number is likely not high in light of the stigma surrounding this crime, in particular for Rwandan men.

<sup>77</sup> Interview with Marie Mukabatsinda on 12 January 2012.

<sup>78</sup> See more in depth: Usta Kaitesi and Roelof Haveman, ‘Prosecution of Genocidal Rape and Sexual Torture before the *Gacaca* Tribunals in Rwanda’, in Letschert *et al.*, *supra* note 14, pp. 385–409 (Usta Kaitesi was one of the trainers in the field of law).



her fiancée and many other family members and was raped several times during the genocide, said:

Testifying in *gacaca* was empowering my heart. I was able to tell people what I went through. It made me feel pleased and stronger. Although it was traumatizing within me, later on it made me feel stronger. When I spoke at *gacaca* I fell down because of a nerve break; I would raise my voice because of all the emotions; but then I would be able to continue. In total, I spent three hours testifying in *gacaca*. After testifying, I went for psychological support.<sup>79</sup>

So, although the survivors interviewed oftentimes mentioned trauma as a negative effect of participating in *gacaca* on their lives,<sup>80</sup> they also felt that it had unburdened their hearts and had opened the way for personal and societal healing. Yet, due to limited resources and counsellors available, many survivors interviewed – who often, but not always, went to *gacaca* on their own as most or all of their relatives had died – had no counsellors to support them in the process.<sup>81</sup> Providing counselling and other forms of psychological support to survivors due to the retraumatization of reliving and finding out what happened in 1994 in *gacaca* – but also generally speaking as there is a lot of trauma among survivors irrespective of *gacaca* – is still one of the most important needs of survivors today. Yet, at the same time, it is also one of the least available services in Rwanda.<sup>82</sup>

#### 3.4.4. *The Issue of Reparation*<sup>83</sup>

Jean Pierre Ruvumbuka said:

What *gacaca* did not consider is something which is traditionally seen as important in our life, namely the issue of compensation. When you lose a person, normally people come to you and give you something – often money – to cover expenses, to compensate you. However, this was not considered in *gacaca* for people who lost their relatives. *Gacaca* only provided for reparation in cases concerning property crimes.<sup>84</sup>

<sup>79</sup> Interview with Adela Mukamasonera on 11 January 2012.

<sup>80</sup> See also: Clark, *supra* note 29, p. 6; Karen Brounéus, 'Truth-telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts', 39(1) *Security Dialogue* (2008) 70.

<sup>81</sup> In 2008 more counselling became available for survivors who were raped and went to testify about that in *gacaca* in closed session. See also Article 6 of the *Gacaca* Law of 2008.

<sup>82</sup> According to Ibuka: "It is important that a mechanism is put in place that enables survivors to access counselling services at no cost. Such services are currently only provided to a limited extent through the funding that FARG makes available to AVEGA to retain a team of 36 counsellors to provide psychosocial support to the most vulnerable survivors. Yet, with just one counsellor for each district, this support is not accessible to the vast majority of survivors." See IBUKA (together with Survivors Fund (SURF) and Redress), *Submission to Parliament of Rwanda on Draft Organic Law Terminating Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994*, submitted 26 March 2012, p. 5, < survivors-fund.org.uk/news/what-we-do/legislation >, 22 January 2013.

<sup>83</sup> Note that from a legal perspective the term "reparation" usually includes different forms of reparation, such as restitution, compensation and rehabilitation.

<sup>84</sup> Interview with Jean Pierre Ruvumbuka on 20 January 2012.

The fact that reparation was only provided for in regard to property crime cases and furthermore proved to be largely unavailable makes the reconciliation process difficult to some extent. Despite *gacaca* court orders, many survivors did not receive any reparation for their material losses during the genocide or only partly, in most cases because the perpetrators are too poor to pay the survivors back. Olivier Bigirimana, for instance, said: “*Gacaca* did not work well for 100 per cent. This is due, in part, to the fact that reparation to survivors was often not paid.”<sup>85</sup> For most survivors, the issue of reparation is very important, not only from the perspective of recognition of their harms, but also because many still live in poverty today as a consequence of the genocide. Olivier Bigirimana mentioned that he had to work part-time jobs in order for him and his younger sister to survive. Although Olivier was able to finish primary school (which is free of charge in Rwanda), he wasn’t able to attend secondary school; his small income only allowed his sister to do so. At the same time, a few survivors said that, despite their poverty, they were not overly concerned with the issue of compensation because it could never bring their families back. The issue of reparation is one of the issues left to deal with now that *gacaca* has come to a closure and will be discussed further in section 4.3 below.

### 3.4.5. *Interim Observations on Reconciliation*

To conclude it could be said that *gacaca* contributed to the process of national reconciliation and was a good starting point in that process as it “relieved the frustration of the survivors” (it separated the truth from lies and clarified the circumstances of death of the victims and where their remains could be found) and “lifted suspicion and consequently restored good social relations between families of the survivors and their innocent neighbours”.<sup>86</sup> Yet, from what has been said above, it can be concluded that the interviewed survivors also have mixed feelings about *gacaca*’s contribution to reconciliation, in particular when it comes to reconciliation on the individual level.<sup>87</sup> It seems that reconciliation on the level of society at large – where survivors see reconciliation in a broader perspective; not just vis-à-vis the perpetrators who committed crimes against them and their family members – may be more easily attained, understood by and expected from individuals than the former. Much depends on the circumstances of the individuals concerned, including their experiences in the genocide, personal

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<sup>85</sup> Interview with Olivier Bigirimana on 25 January 2012.

<sup>86</sup> National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, pp. 184–185 (“87.3% of the respondents stated that *Gacaca* courts have contributed to the reconciliation process”). See also: Republic of Rwanda, National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*, October 2010, pp. 60–71 (the survey consisted of face-to-face interviews with approximately three thousand Rwandans), <[www.nurc.gov.rw/fileadmin/templates/Documents/RWANDA\\_RECONCILIATION\\_BAROMETER.pdf](http://www.nurc.gov.rw/fileadmin/templates/Documents/RWANDA_RECONCILIATION_BAROMETER.pdf)>, 22 January 2013.

<sup>87</sup> See also e.g., Totten and Ubaldo, *supra* note 24, p. 19.

characteristics, living conditions and support available. Looking at the issue of reconciliation from the point of view of the perpetrators, one also wonders to what extent *gacaca* has contributed to reconciliation, since, as mentioned above, only a small portion of the perpetrators confessed and asked for forgiveness, and of those it can be assumed that not all did so sincerely. When asking the survivors interviewed about what they assumed perpetrators thought of the *gacaca* process and its results, many said that they had the impression that those who were in prison were probably not very pleased, but that those who had confessed and were forgiven seemed to be better off.<sup>88</sup>

*Gacaca* can, however, be seen as one of the initiatives that contributed to the reconciliation process, and there are many other initiatives in Rwanda that aimed – and continue to aim – to achieve just that.<sup>89</sup> Above all, reconciliation is a long time and continuous process, which does not happen overnight, and will probably take some generations to come.<sup>90</sup> Marie Odette Kayitesi for instance said:

To say we got reconciled is a lie, but we try. I believe that reconciliation through *gacaca* has been achieved to some extent as we are now able to share things. For example, the house I am living in was built by perpetrators.<sup>91</sup>

So, *gacaca* would seem to have provided the opportunity for people in Rwanda to start the reconciliation process, but it is by no means the final stop. It should also be remembered that the international community has been closely monitoring and criticizing the justice and reconciliation process of *gacaca* in Rwanda in the past ten years. Such a call (and expectation) was, on the contrary, never made by the international community for the reconciliation between Jewish survivors of the Holocaust and their German persecutors so soon after the Second World War.<sup>92</sup> Perhaps living peacefully side by side in light of everything that has happened in 1994 is the most what can be hoped for 19 years later and should be considered to be a miracle on its own.<sup>93</sup>

<sup>88</sup> See e.g., interview with Pascal Nshimiye on 25 January 2012. More research with perpetrators is needed in order to find out what the views of those accused and/or convicted before the *gacaca* proceedings are.

<sup>89</sup> One can think of meetings held in churches and organisations with the aim of bringing back together both survivors and perpetrators. See for examples e.g., Callum Henderson, *Beauty from Ashes* (Authentic Media, Colorado Springs, 2007). For initiatives specifically directed towards survivors, see Alphonse Muleefu, 'The Role of Civil Society in Addressing Problems Faced by Victims in Post-Genocide Rwanda', in Letschert *et al.*, *supra* note 14, pp. 411–436.

<sup>90</sup> See Clark, *supra* note 31, pp. 309, 341.

<sup>91</sup> Interview with Marie Odette Kayitesi on 10 January 2012.

<sup>92</sup> Mary K. Blewitt, *supra* note 72, p. 301.

<sup>93</sup> See e.g., Totten and Ubaldo, *supra* note 24, p. 19.

### 3.5. *To Have Rwandans Solve their Own Problems*

“Considering the necessity for the Rwandan Society to find by itself, solutions to the genocide problems and its consequences”, the preamble to the 2004 Organic law reads. This phrase was motivated by the thought that the genocide in Rwanda was committed by Rwandans against Rwandans and therefore had to be dealt with by the Rwandan people for the Rwandan people. Although it cannot be said that Rwandans had a burden of proving their capacity to solve their own problems, *gacaca*, it was felt, would be an innovative way of dealing with the genocide crimes by involving all those who had experienced the genocide, as a large majority of the population had. For this reason, Rwanda chose not to make use of the assistance of foreign judges who had offered in helping to deal with the case load.<sup>94</sup>

The decisions and judgments of the ICTR in Tanzania have, by far and large, not reached the majority of Rwandans. The ordinary courts in Rwanda would not have been able to deal with all genocide cases and would, for many, have been too far and costly to attend as well. Thus the *gacaca* proceedings were clearly a response to dealing with the problems emanating from the 1994 genocide. By choosing *gacaca*, the Rwandan government did not only aim for justice by prosecuting the perpetrators, but also for reconciliation and unity among Rwandans, as the country was in ruins and people were afraid of and hostile towards each other. *Gacaca* therefore offered “an opportunity for all levels of the Rwandan population to participate in finding solutions to the problems that resulted from the genocide” which provided ownership to its citizens and empowered them.<sup>95</sup> According to Phil Clark, it was rightly because the *gacaca* courts were run by its citizens at the local level, that citizens had substantial freedom to run the courts free from political or legal interference or any other direction from

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<sup>94</sup> See Haveman, *supra* note 3, pp. 1–2. According to Haveman: “Call it frustration about having been abandoned by the foreigners when the genocide started, call it pride, whatever, but a fact is that we cannot deny a country the right to try its own criminals if it wishes to do so.” Outside donors – the Netherlands, Belgium, the European Union, Austria, UNDP, Switzerland, and Norwegian Church Aid – provided funding for the implementation of the *gacaca* courts. See Summary of the Report Presented at the Closing of *Gacaca* Courts Activities, 18 June 2012, < [inkiko-gacaca.gov.rw/English/?page\\_id=528](http://inkiko-gacaca.gov.rw/English/?page_id=528) >, 11 July 2012; and Martien Schotsmans, ‘But We Also Support Monitoring’: INGO Monitoring and Donor Support to *Gacaca* Justice in Rwanda’, 5(3) *International Journal of Transitional Justice* (2011) 390–411, on the interplay between donors and international nongovernmental organizations (INGOs) – the latter have been pushing the Rwandan government to improve the *gacaca* process – with regard to the monitoring of the *gacaca* courts in Rwanda.

<sup>95</sup> National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, p. 185. See also: Speech by President Paul Kagame who Officially Closed the *Gacaca* Courts, Kigali, 18 June 2012, < [www.paulkagame.tv/podcast/?p=episode&name=2012-06-18\\_kagamegacaca.mp3](http://www.paulkagame.tv/podcast/?p=episode&name=2012-06-18_kagamegacaca.mp3) >, 11 July 2012.

Kigali.<sup>96</sup> Therefore, although the *gacaca* had initially been implemented by the government in a top-down approach, the *gacaca* were overall run by the population in a bottom-up-approach. In fact, due to this approach, some important unforeseen side-effects emerged, including that it “empowered many who had otherwise been marginalised in national life [before the genocide], especially women, who have played central roles as judges, participants and witnesses. This fact has generally been ignored entirely.”<sup>97</sup>

On the question posed to the survivors interviewed whether they could think of a better or alternative method to deal with the genocide crimes than *gacaca*, all said that they could not have thought of any better alternative. This, despite some of its flaws and initial hesitations on its impact, and cited one to several of the objectives *gacaca* was initially set up for as among *gacaca*’s achievements.<sup>98</sup> As Martha Mukandutiye, whose husband was killed and son never to be seen again and who is now living with aids due to the many rapes, put it: “people outside Rwanda cannot judge the situation in Rwanda. They did not live with the genocide and they are not the ones who participated in *gacaca*. *Gacaca* was good.”<sup>99</sup> Beatrice Bazayirwa asked at the end of the interview:

Are there people who are going to read this? I am asking you, because there are some people abroad who deny or underestimate the workings of *gacaca*. You, however, have been able to visit us in Rwanda and to get the real truth from us survivors. You should make it clear to others that *gacaca* was very important to Rwandans; it brought us from one level to the other.<sup>100</sup>

#### 4. *Gacaca*’s Closure: How to Move On?

Three issues of importance directly related to the *gacaca* proceedings and its closure are highlighted in this section: (1) new genocide cases; (2) archiving the *gacaca* files; and (3) reparation to genocide survivors.

##### 4.1. *New Cases Related to the Genocide*

Although *gacaca* was officially closed on 18 June 2012, new cases related to the genocide might still come up when new information is revealed. This could, for

<sup>96</sup> See Gerald Caplan, ‘Gacaca Courts, Justice and Reconciliation: Challenges for Rwanda’, *Pambazuka News*, Issue 526, 21 April 2011. According to Caplan, who reviewed Clark’s book on *gacaca*, Clark found that the further the courts from Kigali, the more real this freedom was, and that there was even scope for local communities to direct *gacaca* in ways that directly contested government policy.

<sup>97</sup> *Ibid.*

<sup>98</sup> See also: National University of Rwanda / Center for Conflict Management (CMM), *Evaluation of Gacaca Process: Achieved Results Per Objective*, 2012, p. 185 (“95% of the respondents believed that the *Gacaca* process was the only adequate way to manage the genocide trials”).

<sup>99</sup> Interview with Martha Mukandutiye on 18 January 2012.

<sup>100</sup> Interview with Beatrice Bazayirwa on 19 January 2012.

instance, be the case in situations where the perpetrator is living in exile and is tracked down or has returned home and is recognised by survivors and witnesses. How to deal with new cases after the closure of *gacaca* is foreseen in the 2012 law on the termination of the *gacaca* courts.<sup>101</sup> The law aims to solve pending issues that were under the *gacaca* jurisdiction and any issues which may rise after the *gacaca*'s closure. In this law it is spelled out which category of perpetrators (i.e., in short, those in leadership positions; mid-level positions and perpetrators of sexual violence; looters and those who damaged property; soldiers or gendarmes) will appear for which court (i.e. the Intermediate Court, Primary Court, Mediation Committee (also referred to as "Abunzi"), Military Tribunal, respectively).<sup>102</sup> The laws to be applied before these courts are the criminal (procedural) laws, except for the Mediation Committee which applies laws governing these committees.<sup>103</sup> In addition, a review of a final judgment rendered by a *gacaca* court (before June 2012) is possible under certain prescribed circumstances, such as where it is established that the judges were corrupt.<sup>104</sup> Given the fact that the penal codes provide for higher sentences than the *gacaca* laws did, it has to be awaited to what extent the sentences in genocide cases before the ordinary and military courts will result in much higher sentences than those provided in *gacaca*. What is clear from this law though, is that even after the closure of *gacaca*, the possibility still exists that genocide related cases can be brought to trial.

#### 4.2. *Building an Archive on the Genocide*

The Organic *Gacaca* laws did not mention anything about the aftermath of *gacaca* in relation to the archives of the *gacaca* court proceedings. Yet, this issue was resolved by Article 4(2) of the 2007 Law on the National Commission for the Fight against Genocide (CNLG).<sup>105</sup> This provision provides for the initiation and creation of a national research and documentation centre on genocide. Although this provision does not mention the *gacaca* archives *per se*, it is not conceivable to imagine a research and documentation centre on genocide in Rwanda without any documents of the *gacaca* proceedings. Indeed, in 2009 the Rwandan government chose the CNLG – an organization set up to prevent and fight genocide, its ideology and to handle its consequences – to inherit the archives of the National *Gacaca* Courts Service (SNJG) after the closure of the *gacaca* courts, of which the

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<sup>101</sup> Organic Law No. 04/2012/OL of 15/06/2012 Terminating Gacaca Courts and Determining Mechanisms for Solving Issues which Were under their Jurisdiction, Official Gazette n° Special of 15/06/2012.

<sup>102</sup> *Ibid.*, Articles 4-7.

<sup>103</sup> *Ibid.*, Articles 3 and 6.

<sup>104</sup> *Ibid.*, Article 10.

<sup>105</sup> Law No. 09/2007 of 16/02/2007 on the Attributions, Organization and Functioning of the National Commission for the Fight against Genocide.

official handing over took already place on 26 July 2010.<sup>106</sup> By mid-2012 a law was furthermore adopted on the termination of the *gacaca* courts which also clearly provided in Article 19 that “Documents, audios, videos and others means used during the hearings of Gacaca Courts shall be transferred to the National Commission to fight against Genocide.”<sup>107</sup>

Out of security concerns the national research and documentation centre on genocide was by the end of 2012 relocated to the police headquarters at Kacyiru in Kigali.<sup>108</sup> This centre should not only be fully operationalized soon and be well protected,<sup>109</sup> but also be given much weight as the archives on *gacaca* – more than 20,000 boxes full of documents of some 2 million cases<sup>110</sup> – will serve as an important historical source and educational tool, not only for Rwandans, but also for the international community at large. The documents provide, amongst other things, insight into the roots of the genocide and will therefore serve as an important source on how to prevent such crimes from happening in the future. They may also provide further insight into what the genocide in Rwanda entailed and how a country post-conflict may be able to deal with the consequences thereof by using a mechanism such as *gacaca*. For similar reasons, it would be preferable that the archives of the genocide cases that came before the ordinary courts and the ICTR should also be taken up by the national research and documentation centre in Rwanda. This would more or less complete the “genocidal story” of Rwanda.<sup>111</sup> Arguably, the legacy of the *gacaca* in Rwanda can only become fully known once the archives of the *gacaca* courts are fully studied in its totality.

<sup>106</sup> See e.g., ‘Rwandan Cabinet Resolves to Entrust *Gacaca* Archives to Commission’, *Hirondelle News Agency*, 17 April 2009; Edwin Musoni, ‘Rwanda Senate Raises Concerns Over *Gacaca* Archives’, *The New Times*, 30 March 2010; and Bosco R. Asiimwe, ‘CNLG Takes over *Gacaca* Documentation Centre’, *The New Times*, 27 July 2010.

<sup>107</sup> Organic Law No. 04/2012/OL of 15/06/2012 Terminating *Gacaca* Courts and Determining Mechanisms for Solving Issues which Were under their Jurisdiction, Official Gazette n° Special of 15/06/2012.

<sup>108</sup> Thijs Bouwknecht, *Op Bezoek in Rwanda – 7* [“Visiting Rwanda”], 12 July 2012, < niodbiblio.theek.blogspot.nl/2012/07/op-bezoek-in-rwanda-7.html >, 22 January 2013; ‘Rwanda/*Gacaca* – *Gacaca* Archives “in Precarious Conditions”’, *Hirondelle News Agency*, 1 November 2012.

<sup>109</sup> Since mid-2010, several initiatives started to develop the archive, including scanning of the *gacaca* documents, filing them in a way that makes the database easy to search, and looking out for a secure building where the documents could be kept safe. See Bosco R. Asiimwe, ‘CNLG takes over *Gacaca* Documentation Centre’, *The New Times*, 27 July 2010. However, according to CNLG officials, the current location at the Police Headquarters are precarious: “Boxes are piled on ground, in very hot rooms without air conditioning and precautions to fight against pests”. See ‘Rwanda/*Gacaca* – *Gacaca* Archives “in Precarious Conditions”’, *Hirondelle News Agency*, 1 November 2012.

<sup>110</sup> Bouwknecht, *supra* note 108.

<sup>111</sup> In the case of the ICTR, it is unclear whether this will indeed happen in the long run – although the UN Security Council can decide so – as a building is being constructed in Arusha (Tanzania) to house the ICTR archives at least for the coming four years. See ‘UN to Construct New Structure in Tanzania for ICTR Archives’, *Hirondelle News Agency*, 24 May 2012; ‘ICTR Archives – UN Security Council to Decide Fate of Rwanda Tribunal Archives, Says Official’, *Hirondelle News Agency*, 5 September 2012.

### 4.3. *Remaining Concern of Survivors: Reparation*

A major concern that the interviewed survivors have raised over the closure of *gacaca* relates to the issue of reparation and the enforcement thereof.<sup>112</sup> Survivors who are entitled to reparation from the offender worry that they may never see their right to reparation enforced. Many survivors were awarded compensation/restitution through *gacaca* for their loss or destruction of property during the genocide (i.e. category 3 offences), but in many cases they did not receive such reparation from the convicted perpetrators of the genocide or only partly.<sup>113</sup> A study conducted by the Legal Aid Forum (Rwanda) with over 2,700 claimants showed that *gacaca* court judgments on reparation are the “hardest to enforce, with 92 per cent of all genocide-related judgments yet to be enforced.”<sup>114</sup> In most cases, the survivors did not receive the reparation that they were entitled to, because the convicts did not have the means or were unwilling to compensate them. In other cases, convicted persons bribed those in charge of the execution of judgments to avoid payment. With some 1.2 million cases related to property crimes, this means that many survivors did not receive or only partly received reparation from those who wronged them. Although a “Compensation Fund for Victims of the Genocide and Crimes against Humanity” was initially to be set up by the government to deal with cases beyond property related reparation – e.g. also for victims of category one or two offences – in case convicts had no means to compensate victims or where it was not possible to trace convicts, this Fund was never materialised due to a lack of funding available.<sup>115</sup>

It has been held that “the failure to enforce reparation orders has had a significant adverse impact upon survivors’ lives and their perceptions of justice.”<sup>116</sup> Although it would simply be impossible to compensate the survivors’ losses due to the genocide, reparation could support survivors in restoring their dignity, building their lives up again and providing some form of acknowledgement of their

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<sup>112</sup> See also: e.g., Bosco R. Asiimwe, ‘Rwanda: Locals Reflect On *Gacaca* As Trials Come to an End’, *The New Times*, 19 June 2012; Clive Muhenga, ‘Rwanda: *Gacaca* Courts Close but Genocide Wounds Still Open’, *Radio Netherlands Worldwide*, 21 June 2012; and Nick Ashdown, ‘*Gacaca* Wound Up: What Legacy Does it Leave?’, *The Chronicles*, June 2012.

<sup>113</sup> Article 71 of the *Gacaca* Law of 2004 addresses the issue of reparation to be paid by convicted persons to survivors in the case of damages caused to property only. Furthermore, note that in some cases victims were not given court orders on compensation at all, while they should have had, and the question is how their claims will be dealt with now *gacaca* proceedings have ended. See Bosco R. Asiimwe, ‘Rwanda: Locals Reflect On *Gacaca* As Trials Come to an End’, *The New Times*, 19 June 2012.

<sup>114</sup> Cited in: ‘Survivors’ Concerns Over Closure of *Gacaca* Courts Need to be Addressed’, *Survivors Fund (SURF) and Redress*, 15 June 2012.

<sup>115</sup> See Articles 90 and 91 of the *Gacaca* Law of 2004. For further reading on the issue of reparation and *gacaca*, see e.g., Felix Ndahinda, ‘Survivors of the Rwandan Genocide under Domestic and International Legal Procedures’, in Letschert et al., *supra* note 14, pp. 463–492.

<sup>116</sup> ‘Survivors’ Concerns Over Closure of *Gacaca* Courts Need to be Addressed’, *Survivors Fund (SURF) and Redress*, 15 June 2012.



suffering. In the 2012 law on the termination of the *gacaca* courts, the issue of reparation is also addressed. In Article 12 of this law it is held that compensation shall be paid by the offender him/herself or through his/her property.<sup>117</sup> In the latter case, the property of the offender can be subjected to an auction and the money resulting there from shall be distributed among the beneficiaries.<sup>118</sup> In case of insolvency, the offender shall be subjected to community services as alternative penalty to imprisonment.<sup>119</sup> Furthermore, in the case of a genocide trial before any of the courts substituting *gacaca* as of June 2012, (again) only where the proceedings are related to looting and damaging of property the offenders shall be ordered to pay compensation.<sup>120</sup> It is questionable whether this new law will be able to deal with the outstanding issue of reparation to victims adequately, especially in light of the poverty situation many of the convicts are in. It has, for instance, been held that the law should also have foreseen in the payment of compensation by the successors to the offender, in cases where the offender is not present (e.g. he fled) or otherwise unwilling or unable to pay.<sup>121</sup> In addition, it has been argued that community service in case of insolvency of the offender is not in the direct interest of the survivors, but rather of society at large. It has therefore been recommended that the value equivalent to the community service shall be given to the survivors.<sup>122</sup>

What is certain is that the concern of survivors related to the issue of reparation will not automatically disappear. The right of crime victims to reparation is, in fact, universally recognised and encompasses restitution, compensation, and rehabilitation.<sup>123</sup> It is generally the individuals or states responsible for the

<sup>117</sup>) Organic Law No. 04/2012/OL of 15/06/2012 Terminating *Gacaca* Courts and Determining Mechanisms for Solving Issues Which Were Under Their Jurisdiction (published in the Official Gazette n° Special of 15/06/2012). According to Article 13 (“Requirements for execution of judgements related to property”): “The decisions rendered by *Gacaca* Courts on the damaged or looted property must, prior to their execution, be affixed with an executory formula by the Primary Court of the place where the decision judgement was rendered upon approval by the Executive Secretary of the Cell where the case was adjudicated through a written document submitted to the President of that Court.”

<sup>118</sup>) Articles 14–17 of the *Gacaca* Law of 2012.

<sup>119</sup>) Articles 12 and 18 (a Presidential Order shall define and determine modalities for the execution of the penalty of community services) of the *Gacaca* Law of 2012.

<sup>120</sup>) Article 6 of the *Gacaca* Law of 2012.

<sup>121</sup>) IBUKA (together with Survivors Fund (SURF) and Redress), *Submission to Parliament of Rwanda on Draft Organic Law Terminating Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes against Humanity, Committed Between October 1, 1990 and December 31, 1994*, submitted 26 March 2012, p. 5, < survivors-fund.org.uk/news/what-we-do/legislation >, 22 January 2013.

<sup>122</sup>) *Ibid.*, p. 6.

<sup>123</sup>) See e.g., the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Doc. A/RES/60/147), 16 December 2005, Principles 19, 20 and 21; and the Declaration of Basic Principles of Justice for Victims of

victimization that should provide victims with reparations.<sup>124</sup> Yet, at the same time, of all victims' rights (e.g. participation, protection, reparation), financial reparation has proven to be the most difficult part of domestic legal reforms aimed at improving the position of victims, in particular due to insolvency of the accused.<sup>125</sup> In situations of mass victimization, the right to reparation for victims is often even more difficult to enforce in light of the post-conflict situation the accused and State usually are in. In the case of Rwanda, the government chose to establish the *Fonds National pour l'Assistance aux Rescapés du Génocide* (FARG) (or "Fund for Assistance to Genocide Survivors"), which is composed of contributions by the government, Rwandans, associations, business and a few foreign donors. Since its establishment in 1998, FARG spent over RWF 130 billion (approximately €172 billion) towards the welfare of survivors, in particular on education (which accounts for 75 per cent), health, shelter and income-generating activities.<sup>126</sup> Approximately 6 per cent of the government's annual budget went to the most vulnerable survivors and the government held that it lacks funding to do more.<sup>127</sup> Although the assistance provided through FARG to survivors is extremely important, it only benefits a small minority of survivors – in particular youth/orphans and elderly women – and is not similar to reparation in a legal sense, therefore "failing to recognise that repairing the injuries suffered [directly via the perpetrators] is integral to justice".<sup>128</sup>

In order to address the pending issue of reparation, Ibuka, Survivors Fund (SURF) and Redress have proposed to establish a "Task Force on Reparations".<sup>129</sup> Such a mechanism could further identify the number of compensation awards that have yet to be implemented and also consult closely with survivors and

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Crime and Abuse of Power (UN Doc. A/RES/40/34), 29 November 1985, paras. 8, 12, and 14 in particular.

<sup>124</sup> See e.g., Pablo de Greiff and Marieke Wierda, 'The Trust Fund for Victims of the International Criminal Court: Between Possibilities and Constraints', in K. de Feyter et al., (eds.), *Out of the Ashes – Reparations for Victims of Gross and Systematic Human Rights Violations* (Intersentia, Antwerp, 2005) p. 228.

<sup>125</sup> Marc Groenhuijsen, 'Victims' Rights and the International Criminal Court: The Model of the Rome Statute and Its Operation', in Willem van Genugten et al., (eds.), *Criminal Jurisdiction 100 Years after the 1907 Hague Peace Conference* (T.M.C. Asser Press, The Hague, 2009) p. 302; and Marion E.I. Brien and Ernestine H. Hoegen, *Victims of Crime in 22 European Criminal Justice Systems* (Wolf Legal Publishers, Nijmegen, 2000).

<sup>126</sup> See e.g., Edwin Musoni, 'Rwanda: Has FARG Achieved Its Mission?', *The New Times*, 16 April 2012. See also: 'Rwanda: Over Rwf100 Billion Spent On Survivors Welfare', *The New Times*, 30 September 2011.

<sup>127</sup> David Russell and Juergen Schurr, Rwanda: No Justice Without Reparation: What Will Be the Legacy of Local and International Justice for the 1994 Genocide Survivors?, *Pambazuka News*, Issue 592, 5 July 2012.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.* See also IBUKA, SURF and Redress, *Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi*, Discussion Paper, October 2012.

survivors' organisations in Rwanda to identify survivors' needs and determine adequate reparation measures. They propose that the reparation programme should also cover medical and psychological support, in particular following *gacaca*, where hundreds of thousands of survivors testified and relived traumatic events. The reparation programme could be funded from the state budget as well as contributions from third countries, the international community, and assets of convicted perpetrators. Indeed, the UN could also consider contributing to such a national reparation mechanism or, alternatively, it could establish an international or UN Trust Fund for Rwandan survivors of the genocide on its own.<sup>130</sup> Despite numerous calls by the UN to implement projects aimed at supporting survivors of the genocide (in particular orphans, widows and survivors of sexual violence), via the ICTR or UN Resolutions, no such initiatives have been taken up adequately to date.<sup>131</sup> However, some recent news reports seem to indicate that new developments to solving the reparation issue for survivors are underway, which would entail executing the remaining outstanding *gacaca* reparation claims, increasing the FARG allowance for survivors and extending its mandate to also cover children born from genocidal rape, and the establishment of an international trust fund.<sup>132</sup>

<sup>130</sup> See e.g., Noam Schimmel, 'The Moral Case for Restorative Justice as a Corollary of the Responsibility to Protect: A Rwandan Case Study of the Insufficiency of Impact of Retributive Justice on the Rights and Well-Being of Genocide Survivors', 11 *Journal of Human Rights* (2012) 161–188.

<sup>131</sup> See e.g., Statement by the President of the ICTR to the United Nations General Assembly by Judge Navanethem Pillay, 28 October 2002 (Pillay called for reparation to be provided to survivors of the genocide through the ICTR); UN General Assembly (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/59/137), 17 February 2005; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/60/225), 22 March 2006; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/64/313), 20 August 2009; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/64/226), 2 March 2010; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/66/331), 1 September 2011; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/66/L.31), 14 December 2011; UN Secretary-General (report submitted to the General Assembly), *Assistance to Survivors of the 1994 Genocide in Rwanda, Particularly Orphans, Widows and Victims of Sexual Violence* (A/RES/66/228), 15 March 2012.

<sup>132</sup> 'FARG Increases Allowance for Genocide Survivors', *The Rwanda Focus*, 2 June 2013; Jean de la Croix Tabaro, 'New Impetus in Genocide Reparation Cases', *The New Times Rwanda*, 6 June 2013; Edwin Musoni, 'Genocide Survivors to Set Up Trust Fund', *The New Times Rwanda*, 1 July 2013; Jean D. Niyitegeka, 'Rwanda: Children From Genocide Rape to Get FARG Assistance', *All Africa*, 12 August 2013.

## 5. Conclusion

“The difficult is what takes a little time, the impossible is what takes a little longer.”<sup>133</sup>

*Gacaca* courts were set up in the wake of one of the most horrific genocides the world has ever witnessed. Since the genocide impacted all Rwandans, the *gacaca*'s approach was to also involve all Rwandans in the trials. This meant that everyone was a lawyer, witness and prosecutor at the same time. In ten years' time, just over 1 million persons accused of their participation in the genocide came before these courts involving a total of almost 2 million cases. No country has ever so vigorously applied the no impunity rule for international crimes than Rwanda did.

The survivors interviewed for this contribution generally felt that recounting and reliving what had happened to them or hearing what had happened to their loved ones in *gacaca* was very traumatizing. Many broke down in the process, but – when testifying – continued speaking after judges gave them time to regain their composure. In spite of how difficult it was to participate and testify in *gacaca*, many also felt that doing so had unburdened their hearts, healed and empowered them. Many felt that participating and testifying in *gacaca* had been very important to them, for a diversity of reasons: some felt that it was an opportunity for the truth to be uncovered, including learning how their families were murdered and where their remains lay; some felt it brought them emotional relief and enabled them to forgive (whereby religion sometimes played an important role); some felt a sense of recognition for the harms they experienced because they had an audience before *gacaca*; some felt that some perpetrators sincerely apologised and asked for forgiveness; some learned that the genocide's perpetrators also had the capacity to help Tutsi survive during the genocide and that there were Hutu who testified against fellow Hutu who had committed crimes during the genocide; some felt they were able to better understand why fellow Rwandans committed the crimes they did during the genocide; some were relieved to see perpetrators sentenced; and several felt they were able to face perpetrators and to live together with them again. Most survivors felt that participating and testifying in *gacaca* provided them – and Rwandans generally – justice and reconciliation. Their understanding of these terms varied from being able to judge and punish the genocide's perpetrators and exposing “the truth” (justice) to “coming together

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<sup>133</sup>) This was said by Fridjof Nansen, cited in the *Listener* of 14 December 1939, p. 1153, and recited by William Schabas, ‘The Rwandan Courts in Quest of Accountability’, 3 *Journal of International Criminal Justice* (2005) 879–895. Schabas thought that Nansen may have borrowed the words from a personality of the French revolution, Charles Alexandre de Calonne, who said: “Madame, si c'est possible, c'est fait, impossible? Cela se fera”. See J. Michellet, *Histoire de la Revolution Francaise* (in seven volumes, 1847–1853; 2<sup>nd</sup> edn, edited by G. Walter, Gallimard, *Collection Bibliotheque de la Pleiade*, 1952) Vol. I, Pt 2, s. 8. Also known as a slogan of the United States Armed Forces: “The difficult we do immediately, the impossible takes a little longer”.

again”, and being asked for forgiveness by, and forgiving, those who had harmed them (reconciliation). Survivors generally felt that the *gacaca* proceedings were conducted in a fair way overall and that it had reconciled Rwandans so they were able to live together again. Before *gacaca* was introduced, survivors said that Hutu and Tutsi could not even greet each other on the streets without feelings of anger, but now they could greet one another again, come to each other’s rescue in times of need, attend the same meetings and even intermarry. Although complete reconciliation – on both the society and individual levels – may certainly not have been achieved, *gacaca* did provide a start in living peacefully together again. Notably, many survivors mentioned that, initially, they did not feel safe testifying in *gacaca*, but over time, when the issue of security became more prevalent due to several attacks, better security was put in place by Rwandan authorities and most could return to their old homes without being afraid of the former *genocidaires* who still live there.

Nevertheless, the survivors also pointed out a number of *gacaca*’s flaws. Several were disturbed by the absence of compensation: many did not receive any compensation for their losses during the genocide, in most cases because the perpetrators are poor. Some survivors were dissatisfied with the judges, who they felt were not properly trained in the field of law, biased and susceptible to bribery. Some felt the sentences handed to the perpetrators did not reflect the gravity of the crimes they had committed. Others mentioned the reluctance of the perpetrators to admit what they had done, to sincerely apologise for their crimes, to tell the whole truth, and to tell the survivors where to find the remains of their family members. Some said that they could not participate in *gacaca* because it was too traumatizing or because the perpetrators were unknown or fled (sometimes even from prison).

Surely, when evaluating *gacaca* against the classical penal court system, one will find flaws and failures, such as that *gacaca* did not respect the right of the accused (nor victims for that matter) to have legal representation. The question is, however, whether *gacaca* can be measured against the legal principles and characteristics that can be found in classical penal court systems. These characteristics do not form the basis of *gacaca*, a system based on Rwandan culture adjusted to confront the crimes committed during the genocide. It is a participatory form of justice, set up by Rwandans for Rwandans, to deal with their own history of violence in order to be able to live peacefully together again. As Haveman suggested:

Why not turn this [question] around, and assess the classical penal system comparing it to the more tradition inspired mechanisms such as the *gacaca*. In comparison to the *gacaca*, the classical penal system would score very low on participation, speed, access to justice, and on physical and psychological proximity.<sup>134</sup>

<sup>134</sup> Haveman, *supra* note 3, p. 2. In Haveman’s article “Watching the Human Rights Watchers” (2013) he criticises the NGO Human Rights Watch for critiquing *gacaca* often unfoundedly, but

If Rwanda would have continued to proceed the way it did in the early years after the genocide by trying the cases before ordinary criminal courts, only very few survivors would have seen justice done during their lifetime. Similarly, before the ICTR in Tanzania, very few cases were prosecuted, and although the Tribunal is important in itself by having prosecuted the most senior *genocidaires* and by establishing important legal precedents, Rwandans themselves have seen very little of it.<sup>135</sup> This is in part due to the little participation possibilities at the Tribunal for victims, the distance of the Court to the average Rwandans and little outreach to victims by the Tribunal about its trials and outcome thereof.<sup>136</sup> Yet, because of its characteristics and objectives, *gacaca* was able to empower Rwandans in a way that could not have been envisioned at its start.<sup>137</sup> It challenged each and every Rwandan – perpetrator, victim or witness – to confront him or herself with the truth of what happened during the genocide. It empowered Rwandans to deal with their past in order to create a better future. Rwandans made decisions in *gacaca* that directly impacted their lives. They owned the *gacaca* process by, amongst other things, gathering evidence, hearing cases, and delivering judgments. Every contribution of each Rwandan was valued, as a judge, a victim, witness, or accused. The participatory and accessible nature of the *gacaca* proceedings therefore, much more than in ordinary criminal proceedings, delivered justice and a roadmap to reconciliation to the people who actually went through the genocide.

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at the same time offering no real solutions to the post-genocide situation Rwanda is dealing with as well. Roelof Haveman, 'Watching the Human Rights Watchers', in M. Matthee *et al.*, (eds.), *Armed Conflict and International Law: In Search of the Human Face*, (T.M.C. Asser Press, The Hague, 2013) pp. 231–256.

<sup>135</sup> See *e.g.*, Felix Ndahinda, 'Survivors of the Rwandan Genocide under Domestic and International Legal Procedures', in Letschert *et al.*, *supra* note 14, pp. 479–481.

<sup>136</sup> *Ibid.* Note also that the ICTR prosecuted some 72 accused (in about 20 years time), costing around USD 1.7 billion, while the *gacaca* prosecuted over 1 million accused involving 2 million cases (in about ten years time), costing around RWF 30 billion (around USD 50 million). Although it seems almost impossible to compare both mechanisms established with different objectives and characteristics in mind (note, however, that the ICTR, also has within its mandate to establish national reconciliation and the maintenance of peace, besides rendering justice), it can be said that the ICTR has generally not had such a big impact on the lives of the average Rwandan due to the reasons mentioned above. See further on the ICTR: Hassan Bubacar Jallow, 'The Contribution of the United Nations International Criminal Tribunal for Rwanda to the Development of International Criminal Law'; Martin Ngoga, 'The Institutionalisation of Impunity: A Judicial Perspective on the Rwandan Genocide', in Phil Clark and Zachary D. Kaufman, (eds.), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (Columbia University Press, New York, 2009) pp. 261–279 and pp. 321–350, respectively; and Matthew Saul, 'Local Ownership of the International Criminal Tribunal for Rwanda: Restorative and Retributive Effects', 12 *International Criminal Law Review* (2012) 427–455.

<sup>137</sup> This sentence and those following are inspired by the speech of President Paul Kagame, who officially closed the Gacaca Courts in Kigali on 18 June 2012, <[www.paulkagame.tv/podcast/?p=episode&name=2012-06-18\\_kagamegacaca.mp3](http://www.paulkagame.tv/podcast/?p=episode&name=2012-06-18_kagamegacaca.mp3)>, 11 July 2012.

In this contribution, *gacaca* was measured against the standards it was set up for. Such an evaluation showed that survivors' views on *gacaca* are mixed and that *gacaca* generated both positive and negative outcomes for them, but that most survivors interviewed have viewed *gacaca* as positive overall. Although many survivors expressed that they had serious doubts about the value of *gacaca* when it was just introduced, most nowadays acknowledge that their views have drastically changed over time. Today most feel that *gacaca* worked well and fulfilled its objectives by helping to expose the genocide, speeding up the case load, holding perpetrators accountable, achieving reconciliation, and achieving all of this together. These findings do not only result from the interviews conducted with survivors in Rwanda, but are also confirmed in most of the recent literature and reports that were conducted to evaluate the impact of *gacaca* on Rwandans and society at large and as cited in this contribution.<sup>138</sup> In the end it should be the people who went through the genocide and participated in *gacaca* to judge on its legacy. It is their voices that we need to hear in order to understand some of the impact *gacaca* may have had on the lives of those who went through it. A full study of the complete archive on the *gacaca* cases may shed further light on this, as well as interviews with a representative number of survivors, perpetrators and officials that have been involved in the proceedings.

It needs to be recognised that in the case of Rwanda there was no easy solution to deal with the aftermath of genocide. Opting for *gacaca* – rather than resolving to revenge or amnesty – was a realistic way to work towards solving the problems that had resulted from the genocide. Although the final word on the legacy of *gacaca* cannot yet be made, it can be easily said that in the case of Rwanda, *gacaca* was a home-made and innovative judicial approach to a unique

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<sup>138</sup> See additionally the conclusions on *gacaca* in: Republic of Rwanda, National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*, *supra* note 86, pp. 60–71, on p. 70: "This section looked at transitional justice as a critical ingredient of reconciliation, with the hypothesis that if parties to conflict get proper justice, they are likely to be reconciled. The RRB [Rwanda Reconciliation Barometer] results suggested very high percentages (more than 80%) signs of individual healing based on occurrence of forgiveness seeking and giving, healing from the wounds of the past and experience of reconciliation in one's life. However, the survey came up with significant percentages of Rwandans (34.5%) who feel that engaging in reconciliation process is not a voluntary commitment, and that the attitude of some Rwandans suggests that they still want to take revenge for the events of the past (almost 26%). As far as parties to reconciliation is concerned, respondents mentioned primarily and in order of importance genocide survivors and genocide perpetrators (48.4%); Rwandans and other Rwandans (33.2%); as well as Hutu and Tutsi (15%). The RRB also suggested a very high confidence in *Gacaca* as a transitional justice mechanism. More than eighty percent of respondents appreciate positively the achievements of *Gacaca* in terms of truth unveiling, punishment, impartiality of judges, etc. However, the survey showed less appreciation vis-a-vis the compensation for the genocide survivors. Lesser appreciation was also recorded as far as ICTR is concerned. Globally speaking, for the majority of indicators used, more than 70 % of responses suggest high satisfaction with the justice that they received. This percentage is high enough to argue that transitional justice in Rwanda is in a better position to enhance reconciliation as suggested by the working hypothesis."

situation.<sup>139</sup> Although the *gacaca* response to the genocide fitted in the (historical) context of the country, it cannot be said that *gacaca* will fit in each and every post-conflict setting, although the features of the *gacaca* are promising to working towards justice and reconciliation and may serve as an inspiration in conflicts where mass victimization is involved. As for the legacy of *gacaca* in Rwanda, for the short term, it has been argued in this contribution that it will be important that survivors' concerns on compensation are addressed and that new cases related to the genocide will be dealt with before the respective courts without delay. For the longer term, these *gacaca* proceedings have resulted in documents in which the more complete truth of the genocide can be distilled from. Based on this information, *inter alia*, the causes that led to the genocide can be found and used to prevent any possible future genocide in Rwanda or elsewhere in the world. In addition, the early seeds of reconciliation were laid due to *gacaca* and more initiatives to continue on this road should continue to be implemented. Obviously, there is not a singular road to justice and reconciliation in a country after genocide. While *gacaca* certainly made a contribution to this process, other initiatives must go hand in hand with it.<sup>140</sup> This would include initiatives implemented by the government to support genocide survivors (e.g., the construction of houses by perpetrators for survivors, the provision of one cow per family and free HIV treatment – the latter two initiatives having been implemented for all poor people, not merely survivors), as well as the psychological support they receive from other survivors and the material, psychological and socio-economic support they receive through NGOs. In this regard, it remains very important to address survivors' most basic needs as there are still many people who live in poverty and are severely traumatised due to the genocide. Therefore, in addition to the pending reparation awards of *gacaca*, a broader claim to reparation by all survivors of the genocide needs to be implemented, which would surely need to include better access to health care, counselling and other treatment for all survivors, including better access to a wider range of HIV treatment that addresses the individual

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<sup>139</sup> See Usta Kaitesi and Roelof Haveman, 'Prosecution of Genocidal Rape and Sexual Torture before the Gacaca Tribunals in Rwanda', in Letschert *et al.*, *supra* note 14, p. 409.

<sup>140</sup> For example, the NURC's "Rwanda Reconciliation Barometer" provides interesting insights into the state of unity and reconciliation in Rwanda more generally. In 2010, this research concluded that the country's unity and reconciliation program had achieved 70 per cent of its objectives, having assessed Rwanda's political culture, human security, citizenship and identity, understanding of the past, transitional justice and social cohesion. Areas that required more attention included genocide survivors' access to land, housing and compensation, Rwandans' alienation from decision-making and impediments to equal sharing of government resources and assets. See Republic of Rwanda, National Unity and Reconciliation Commission, *Rwanda Reconciliation Barometer*, *supra* note 85. According to the executive secretary of the National Unity and Reconciliation Commission (NURC), the commission has made progress in its activities, mainly through intensive mobilization and grassroots partnerships with citizens in peace-building and solving social conflicts. See 'Good Progress in Unity and Reconciliation', *Rwanda Focus*, 5 March 2012.



needs of people living with HIV, nutritious food to maintain their health, counseling for mothers and children when the children are born from rape, and counseling and therapy for post-traumatic stress. Survivors' underlying trauma necessitates their need for on-going care, including home-based care. All children in Rwanda, especially orphans and other vulnerable children, also need greater support. Income-generating activities and stable housing are also crucial and continue to be inadequate for many survivors. Post-genocide, survivors had to deal with many pressing needs (shelter, food, caring for their children), and for most, ensuring *genocidaires* were held accountable was not a first priority. There are also many who never even saw their perpetrators brought to justice, and ways could be thought of to provide some sense of justice to them, for instance through the establishment of memorials, theatre or mock tribunals. With the closure of *gacaca*, another chapter in Rwanda's post-genocide period is closed, yet the road to reconciliation and unity of Rwandans is and remains to be an on-going process.