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**Analysing the Justice Needs of Rwandan Female
Victim-Survivors of Conflict-Related Sexual Violence
and Their Experiences with the *Gacaca* Courts**

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Thesis submitted to the
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Herrmann, Judith, 'Experiences, Challenges, and Lessons Learned - Interviewing Rwandan Survivors of Sexual Violence' (2017) 5(1) Griffith Journal of Law & Human Dignity 165

Rafferty, Judith, "'I Wanted Them to Be Punished or at Least Ask Us for Forgiveness": Justice Interests of Female Victim-Survivors of Conflict-Related Sexual Violence and Their Experiences with *Gacaca*' (2018) 12(3) Genocide Studies and Prevention 95

Abstract

This thesis investigates the justice needs of female victim-survivors of conflict-related sexual violence and assesses how these needs were met in transitional justice processes dealing with that violence. The focus lies on Rwandan victim-survivors who suffered sexual violence during the 1994 Genocide against the Tutsi in Rwanda and who had their cases tried by local community courts, called *gacaca*. Twenty-three Rwandan victim-survivors were interviewed to explore their needs, motivations and expectations about participating in *gacaca*, as well as their experiences with the courts. The thesis analyses the interviewees' justice needs and assesses how these needs were addressed by *gacaca*. The analysis suggests that the interviewees had multiple justice needs and these are categorised as process-related and outcome-related. In terms of process, the interviewees needed 'an enabling environment' that supported them to share their stories, opportunities for participation and information and support regarding their cases. In terms of outcomes, the interviewees placed greatest value on truth-telling, consequences for the perpetrators (predominantly by way of formal punishment), perpetrator responsibility and safety. Furthermore, the interviewees sought validation, vindication, reparation and empowerment by participating in *gacaca*.

This research finds that *gacaca* met several of these justice needs, while being limited in meeting others. An enabling environment was created at *gacaca* through supportive treatment of the interviewees by those who tried their cases and through several supportive procedures. These procedures included privacy provisions – sexual violence cases at *gacaca* were meant to be tried *in camera* – and some safety measures. However, these provisions and measures were not practised consistently and not all interviewees experienced the level of privacy and safety that they had wished. *Gacaca* provided several opportunities for the interviewees to partake in the process and the courts were therefore particularly strong in addressing the interviewees' need for participation. *Gacaca's* contribution to the interviewees' need for information and support was twofold. While the interviewees appeared to have received only limited information about the process, they especially appreciated the level of psychological assistance provided by trauma counsellors at *gacaca*.

Gacaca's strongest points for outcome-related justice needs lay in the punishment of perpetrators. With one exception, all the interviewees' perpetrators were found guilty and punished with between 20 years and life imprisonment. These penalties met several other justice needs, at least to some degree, including safety, validation, vindication and empowerment. *Gacaca* was less successful in facilitating perpetrator responsibility and only a few interviewees reported that their perpetrators confessed and/or apologised for their actions. The courts' main shortcoming in terms of outcome-related justice needs was that they neither facilitated nor provided compensation for the crimes of sexual violence. Poor health and material harm resulting from the sexual violence constituted the most pressing challenges reported by the interviewees after their participation in *gacaca*.

Based on the experiences of the interviewees, this thesis proposes that victim-survivors can be supported to experience a sense of justice through both the process and the outcomes of a justice initiative. The thesis articulates several process features and preferred outcomes that could be considered during future justice measures dealing with conflict-related sexual violence.

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List of abbreviations and acronyms

AI: Amnesty International

ARCT: Rwandan Association of Trauma Counsellors

AVEGA Agahozo: Association des Veuves du Génocide (Association of Widows of the Genocide of April 1994)

CNLG: Commission Nationale de Lutte contre le Génocide (Rwandan National Commission for the Fight against Genocide)

GBV: Gender Based Violence

FARG: Fonds d'assistance aux rescapés du génocide (the genocide survivors' assistance fund)

HIV/AIDS: Human immunodeficiency virus/Acquired Immune Deficiency Syndrome

HRW: Human Rights Watch

IBUKA: Rwanda's largest organisation of Rwandan genocide survivors

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

ICC: International Criminal Court

IMT: International Military Tribunal

IMTFE: International Military Tribunal for the Far East

IRC: International Rescue Committee

NSGC: Nation Service of *Gacaca* Courts

NURC: National Unity and Reconciliation Commission

PARMEHUTU: Parti du Mouvement de l'Emancipation des Bahutu

PTSD: Post-traumatic stress disorder

PRI: Penal Reform International

RPA: Rwandan Patriotic Army

RPF: Rwandan Patriotic Front

RTLm: Radio-Télévision Libre des Mille Collines

SA TRC: South African Truth and Reconciliation Commission

STD: Sexually Transmitted Disease

SURF: Survivors Fund

TRC: Truth and Reconciliation Commission

UN: United Nations

US: United States

VaW: Violence against women

WHO: World Health Organization

Glossary

Cell: Administrative level above the Village

District: Fourth level administrative area, above the Village, Cell and Sector

Gacaca: Rwandan local community courts that dealt with genocide related crimes; literally “grass”

Ibuka: Name of organisation of Rwandan genocide survivors; literally “to remember”

Inyangamugayo: *Gacaca* judge; literally, “person of integrity”

Incontanyi: Name given by the RPF to its soldiers; literally, “the tough fighters”

Inyenzi: Kinyarwanda for cockroach. Name originally given to Tutsi guerrillas in the 1960s, later used to refer to RPF soldiers and to the Tutsi in general during the 1994 Genocide against the Tutsi

Inzoka: Kinyarwanda for snake. Name used to refer to Tutsi during the genocide

Interahamwe: Rwandan militia group; literally, “those who work together”

Kinyarwanda: Rwandan language

Mwami: A chief or king

Province: Fifth level administrative area, above the Village, Cell, Sector and District

Sector: Third level administrative area, above the Village and the Cell

Map of Rwanda



Source: <https://www.worldometers.info/maps/rwanda-political-map>

1 CHAPTER 1: INTRODUCTION

This thesis investigates the justice needs of female victim-survivors¹ of conflict-related sexual violence and assesses how these needs were met in transitional justice processes dealing with that violence. The focus lies on Rwandan victim-survivors who suffered sexual violence during the 1994 Genocide against the Tutsi in Rwanda and who had their cases tried by local community courts, called *gacaca*. Twenty-three Rwandan victim-survivors were interviewed to explore their needs, motivations and expectations to participate in *gacaca*, as well as their experiences with the courts. The thesis analyses the interviewees' justice needs and assesses how these needs were addressed by *gacaca*. The primary research questions that this thesis seeks to answer are:

- 1) What were the justice needs of female victim-survivors who suffered sexual violence during the 1994 Genocide against the Tutsi in Rwanda and who had their cases of sexual violence tried by *gacaca*?
- 2) How well did the *gacaca* meet the needs of these female victim-survivors?

Research has found that victims² who have suffered gross human rights violations need to experience a sense of justice, which 'does seem to assist with other individual social and psychological "recovery" processes'.³ However, achieving justice for victims is a great challenge, because justice is 'simultaneously personal to each individual survivor, an issue for entire communities, and has national and international dimensions and there are tensions inherent in locating justice in these different spaces'.⁴ Justice for victims of human rights

¹ From here on, the term 'victim-survivors' refers to women who have experienced sexual violence. The term is commonly used in contemporary literature discussing justice needs of persons who experienced sexual violence. While this thesis does not explicitly distinguish between adult women and girls, the qualitative study and most literature reviewed for the thesis involve victim-survivors above the age of eighteen.

² In this thesis, the term 'victim' comprises any victim of mass atrocities, including but not limited to conflict-related sexual violence.

³ Hugo van der Merwe, 'Delivering Justice during Transition: Research Challenges' in Hugo van der Merwe, Vicki Baxter and Audrey R. Chapman (eds), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (United States Institute of Peace Press, 2009) 115, 123. See also Megan Bastick, Karin Grimm and Rahel Kunz, *Sexual Violence in Armed Conflict* (Report, Geneva Centre for the Democratic Control of Armed Forces, 2007) 165; Rama Mani, 'Integral Justice for Victims' in Inge Vanfraechem, Antony Pemberton and Felix Mukwiza Ndahinda (eds), *Justice for victims* (Routledge, 2016) 183, 183; Wendy Lambourne, 'Transformative Justice, Reconciliation and Peacebuilding' in Susanne Buckley-Zistel et al. (eds), *Transitional Justice Theories* (Routledge, 2014) 19, 23-32; Jo-Anne Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' in Rianne Letschert et al. (eds), *Victimological Approaches to International Crimes: Africa* (Intersentia, 2011) 145, 145.

⁴ Bastick, Grimm and Kunz (n 3) 165.

abuses is frequently associated with formal punishment of those responsible for the crimes.⁵ Van der Merwe, however, argues that evaluating justice for victims should also consider other elements, including vindication of victims and opportunities for them to regain control, power and a sense of meaning in society.⁶ Researchers such as Lambourne and Mani propose different types of justice, including distributive and political justice,⁷ which may also be relevant for meeting the needs of victims of mass violence and which go beyond legal justice or punishment.⁸

Since the beginning of this century, the body of research has grown on the question of which elements of justice are important from the point of view of victims of violent crimes, in particular in the context of mass violence.⁹ Different terms are used in the literature to

⁵ Van der Merwe, (n 3) 123; Jo-Anne Wemmers, 'The Meaning of Justice for Victims' in Shlomo Giora Shoham, Paul Knepper and Martin Kett (eds), *International Handbook of Victimology* (CRC Press, 2010) 27, 27-9; Nicola Henry, 'Witness to Rape: The Limits and Potential of International War Crimes Trials for Victims of Wartime Sexual Violence' (2009) 3(1) *International Journal of Transitional Justice* 114, 130.

⁶ Van der Merwe, (n 3) 123. See also Manuela Melandri, 'Gender and Reconciliation in Post Conflict Societies: The Dilemmas of Responding to Large Scale Sexual Violence' (2009) 5(1) *International Public Policy Review* 4, 15.

⁷ Types of justice are discussed in more detail in Chapter 4.

⁸ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Polity Press; Blackwell Publishers Inc, 2002); Lambourne (n 3).

⁹ For research on victims' justice needs in the context of mass violence see, e.g., Hugo van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' in Audrey R. Chapman and Hugo van der Merwe (eds), *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Pennsylvania Press 2008) 23; Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (University of Pennsylvania Press, 2011) 90. For research on justice needs of victim-survivors in the context of individual victimisation see, e.g., Mary P. Koss, 'Restoring Rape Survivors' (Pt Blackwell Publishing Inc) (2006) 1087(1) *Annals of the New York Academy of Sciences* 206; Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571; Kathleen Daly, 'Conventional and Innovative Justice Responses to Sexual Violence' (2011) 12 *ACSSA Issues* 11.

describe these elements,¹⁰ including victims' justice needs¹¹ and justice interests.¹² While both these terms are commonly used in research with victim-survivors, this thesis will use the term 'justice needs' as being more fundamental and connected with the elements of justice identified in this thesis (Chapter 5).¹³ However, the term is inclusive of both needs and interests discussed in other research.¹⁴

Studies in various contexts have identified several justice needs that are particularly important for victim-survivors, who were earlier defined as women who have experienced sexual violence (see footnote 1). These justice needs include but are not limited to participation, punishment, validation, vindication, perpetrator responsibility and truth-telling.¹⁵ While existing studies increase our understanding of which elements of justice victim-survivors value, the evidence base on victim-survivors' justice needs is still in its early

¹⁰ Besides justice needs and justice interests, these terms include 'vision of justice', 'views of justice' and 'sense of justice', see, e.g., Herman (n 9); Shirley Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (2006) 10(1) *Theoretical Criminology* 125; Christopher Bennett, 'Satisfying the Needs and Interests of Victims' in Gerry Johnstone and Daniel W. Van Ness (eds), *Handbook of Restorative Justice* (Willan Publishing, 2007) 247, 248.

¹¹ Koss (n 9); Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* (Report, School of Applied Social Science, University College Dublin, 27 November 2014); Bastick, Grimm and Kunz (n 3); Wendy Lambourne and Vivianna Rodriguez Carreon, 'Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women' (2015) *Human Rights Review* 1; Haley Catherine Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' in Nicola Henry, Asher Flynn and Anastasia Powell (eds), *Rape Justice: Beyond The Criminal Law*. (Palgrave Macmillan, 2015); Haley Catherine Clark, "'What Is the Justice System Willing to Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (2010)(85) *Family Matters* 28; *Submission to Ministry of Justice, Wellington, Re: "Focus on Victims of Crime" Consultation Document*, (Submission, AUT Restorative Justice Centre, 18 March 2010).

¹² Kathleen Daly, 'Reconceptualizing Sexual Vicimization and Justice' in Inge Vanfraechem, Antony Pemberton and Felix Mukwiza Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Routledge, 2014) 378, 388; Kathleen Daly, 'Sexual Violence and Victims' Justice Interests' in Estelle Zinsstag and Marie Keenan (eds), *Sexual Violence and Restorative Justice: Legal, Social and Therapeutic Dimensions* (Routledge, 2017) 108; Clare McGlynn, Julia Downes and Nicole Westmarland, 'Seeking Justice for Survivors of Sexual Violence: Recognition, Voice and Consequences' in Estelle Zinsstag and Marie Keenan (eds), *Sexual Violence and Restorative Justice: legal, social and therapeutic dimensions* (Routledge, 2017) 179; Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice' (2019) 28(2) *Social & Legal Studies* 179.

¹³ Human needs theorists argue that needs are more fundamental than interests, see Abraham H. Maslow, *A Theory of Human Motivation* (Start Publishing, 2012) 18-21; John Burton, *Conflict: Human Needs Theory* (Macmillan, 1990).

¹⁴ See n 11 and 12.

¹⁵ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388; Koss (n 9) 209; Herman (n 9); Henry (n 5); Sara Sharratt, *Gender, Shame and Sexual Violence* (ASHGATE, 2011); Binaifer Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' in Donna Pankhurst (ed), *Gendered Peace* (Routledge & UNRISD, 2008) 107; Prisca Uwigabye, 'Gacaca and the Treatment of Sexual Offenses' in Henry F. Carey and Stacey M. Mitchell (eds), *Trials and Tribulations of International Prosecution* (Lexington Books, 2013) 269.

stage, requiring further research.¹⁶ Depending on the context of sexual victimisation,¹⁷ victim-survivors may prioritise different justice needs. Most existing research with victim-survivors on their justice needs and experiences with justice processes considers an *individual* context of victimisation in times of peace in 'affluent democratic countries that have a strong rule of law and the capacity to enforce it'.¹⁸ More research on victim-survivors' justice needs and their experiences with justice processes is needed in diverse contexts of victimisation, in particular mass sexual violence in armed conflict.¹⁹

To improve the value of research on justice for victim-survivors, Daly maintains that researchers should be explicit about 1) the context of victimisation relevant to their study, 2) the specific justice mechanism that is being assessed and 3) the identification and definitions of victim-survivors' justice needs.²⁰ To contextualise and prepare for the analysis of the primary data discussed in Chapters 6-10, this chapter provides an overview of the context of victimisation, the justice mechanism and victim-survivors' justice needs relevant to this research, which are further explored in Chapters 3-5 respectively. The chapter commences by introducing conflict-related sexual violence, with a focus on Rwanda and the Genocide against the Tutsi, as the context of victimisation. This is followed by an introduction to victim-survivors' justice needs and challenges associated with achieving justice for victim-survivors of conflict-related sexual violence. The chapter then provides an overview of the justice mechanism considered in this thesis: the Rwandan *gacaca* courts. Before briefly outlining the functioning of *gacaca* and its handling of sexual violence cases, the chapter introduces transitional justice as the broader justice framework as part of which *gacaca* was established. The chapter then highlights the significance of this research by identifying relevant research gaps in the literature and explains how this thesis contributes to filling these gaps. The chapter

¹⁶ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 389; Daly, 'Sexual Violence and Victims' Justice Interests' (n 12).

¹⁷ The context of victimisation, according to Daly, includes both the country context in which the sexual violence occurred and the offending-victimisation context of violence. The latter considers factors surrounding the perpetrator(s), for example whether sexual violence is committed by an individual or collectively, such as by 'loosely or well-organised groups', Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 384-5.

¹⁸ An individual context of sexual victimisation refers to 'an individual acting alone (or perhaps with several others) who victimises a family member, peer, acquaintance or person unknown', Kathleen Daly, 'Sexual Violence and Justice: How and Why Context Matters' in Anastasia Powell, Nicola Henry and Asher Flynn (eds), *Rape Justice: Beyond the Realm of Law* (Palgrave MacMillan, 2015) 36, 37.

¹⁹ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 124-5; Daly, 'Sexual Violence and Justice: How and Why Context Matters' (n 18), 37. See also van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 123.

²⁰ Daly, 'Sexual Violence and Justice: How and Why Context Matters' (n 18) 37.

concludes with a brief discussion of the research limitations of this thesis and an overview of subsequent chapters.

1.1 Conflict-related Sexual Violence

Violence against women is ubiquitous. More than one third of all women worldwide is estimated to have experienced physical or sexual abuse at some stage during their lives.²¹ The United Nations (UN) defines violence against women (VaW) as ‘any act of gender-based violence [GBV] that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.²² Violence against women is particularly prevalent during times of armed conflict.²³ This thesis uses the term ‘armed conflict’ to distinguish the context in which the sexual violence relevant to this thesis occurred. Most importantly, this context is characterised by destructive forms of conflict – including the use

²¹ See 'Facts and Figures: Ending Violence against Women', *UN Women* (Web Page, November 2019) <<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>>; World Health Organization, *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (Executive Summary, 2013). The prevalence of sexual violence has also been highlighted by the ‘me too’ movement, see "History and Inception", *me too*, (Web Page, 2020) <https://metoomvmt.org/get-to-know-us/history-inception/>.

²² United Nations, *Declaration on the Elimination of Violence against Women*, (20 December 1993) 2 art 1. GBV summarises the range of ‘harmful acts that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and female’, Inter-Agency Standing Committee (IASC), *Guidelines for Gender-based Violence Interventions in Humanitarian Settings* (Guidelines, September 2005) 7. GBV does not exclusively refer to violence directed against females, but can also include gender-based violence against males and transgender people, see Bastick, Grimm and Kunz (n 3) 18. Nevertheless, the IASC explains that gender-based violence ‘has greater impact on women and girls than on men and boys’, which is why the two terms are frequently used interchangeably.

²³ Inter-Agency Standing Committee (n 22) 1; Bastick, Grimm and Kunz (n 3). One widely recognised definition of ‘armed conflict’ has been provided by the Department of Peace and Conflict Research, Uppsala University, as part of the Uppsala Conflict Data Program (UCDP):

A state-based armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.

'UCDP Definitions', *Uppsala University Department of Peace and Conflict Research* (Web Page, n.d.) <https://www.pcr.uu.se/research/ucdp/definitions/#Non-state_conflict>. According to the UCDP, their definition of armed conflict ‘has become the global standard of how conflicts are systematically defined and studied’. However, the definition is problematic in the context of sexual violence primarily because counting methods of ‘battle-related deaths’ focus on casualties resulting from direct violence, but typically do not include victim-survivors of conflict-related sexual violence who later die from the consequences of the violence (discussed in detail throughout Chapter 3). Furthermore, a focus on the numbers of deaths neglects the non-fatal sufferings of victim-survivors. This thesis aims to highlight sufferings and deaths that do not fall within the narrow definition of ‘battle-related deaths’.

of armed forces – the involvement of ‘organised collectivities’ as opposed to individuals acting alone, and ‘the political nature of the contested incompatibilities’.²⁴

While women suffer from various forms of violence during armed conflicts, this thesis focuses on sexual violence as one of the most dangerous forms of violence suffered by women.²⁵ The following broad definition of sexual violence, from the Rome Statute of the International Criminal Court (ICC), is utilised in this thesis:

The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.²⁶

The UN uses the term ‘conflict-related sexual violence’, which is also used in this thesis, to ‘denote sexual violence occurring in a conflict or post-conflict setting that has a direct or indirect causal link with the conflict itself.’²⁷ The term ‘genocidal sexual violence’ further distinguishes conflict-related sexual violence that is ‘committed with the intent to destroy in part or in whole a national, ethnical, religious or racial group’.²⁸ The term has also been used to denote the sexual violence committed during the Genocide against the Tutsi and is therefore important for this thesis.²⁹

²⁴ Erik Melander, *The UCDP Armed Conflict Definition* (Presentation, Department of Peace and Conflict Research, Uppsala University, n.d.).

²⁵ Inter-Agency Standing Committee (22) 1; Donna Pankhurst, 'The 'Sex War' and Other Wars: Towards a Feminist Approach to Peace Building' (Pt Taylor & Francis, Ltd. on behalf of Oxfam GB) (2003) 13(2/3) *Development in Practice* 154.

²⁶ International Criminal Court, *Elements of Crimes* (International Criminal Court, 2011), art 7(1) (g)-6.

²⁷ *Report of the Secretary-General on the Implementation of Security Council Resolutions 1820 (2008) and 1888 (2009)*, UN GASC, 35 sess, Agenda Item 33, UN Doc A/65/592-S/2010/604 (24 November 2010), 2-3.

²⁸ *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted by the General Assembly of the United Nations on 9 December 1948 UNTS 1021 (entered into force 12 January 1951), 280.

²⁹ Publications that use the term genocidal sexual violence include, for example, Christopher W. Mullins, "'He Would Kill me with his Penis': Genocidal Rape in Rwanda as a State Crime' (2009) 17(1) *Critical Criminology* 15-3329-31; Christopher W. Mullins, "'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (2009) 49(6) *The British Journal of Criminology* 719-735, 721-2; Usta Kaitesi, *Genocidal Gender and Sexual Violence* (Intersentia, 2014) 15, 237; Rebecca L. Haffajee, 'Prosecuting Crimes of Rape and Sexual Violence at the ICTR: The Application of Joint Criminal Enterprise Theory' (2006) 29 *Harvard Journal of Law & Gender* 201-221, 201; Binaifer Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (Report, Human Rights Watch, September 1996) 1-2.

1.2 Sexual Violence during the Genocide against the Tutsi

This thesis focuses on Rwandan victim-survivors who suffered sexual violence during the Genocide against the Tutsi. 'The 1994 Genocide against the Tutsi in Rwanda' is the preferred term used by the Rwandan government that has also been adopted by the United Nations (UN) to refer to mass atrocities committed against Tutsi and their perceived Hutu sympathisers by the Rwandan government and Hutu extremists in 1994.³⁰ According to the Rwandan Ministry of Local Government, more than 1 million persons were killed over the period of 100 days from April until July 1994.³¹ During the genocide, sexual violence was widespread and of extreme brutality.³² It was ordered by the leaders of the genocide and specifically targeted Tutsi women,³³ which, according to the ICTR '[contributed] to their

³⁰ *Resolution 2150*, SC Res 2150, 7155th mtg, UN Doc S/RES/2150 (16 April 2014) and *Resolution 74/273*, 74th sess, Agenda Item 64 (b), UN Doc A/RES/74/273 (20 April 2020). In this thesis, the 1994 Genocide against the Tutsi in Rwanda will be referred to as 'the genocide' or 'the Genocide against the Tutsi' where it needs to be distinct from other types of genocides.

³¹ The Ministry of Local Government, specifies that 1,074,017 people were killed during the genocide, Rwandan Ministry of Local Government, *Dénombrement des Victimes du Génocide* (Final Report, 2004). Similarly, Nyseth Brehm, Uggen and Gasanabo note that according to the Center for Conflict Management of the National University of Rwanda, over 1,050,000 people lost their lives during the genocide, Hollie Nyseth Brehm, Christopher Uggen and Jean-Damascène Gasanabo, 'Genocide, Justice, and Rwanda's *Gacaca* Courts' (2014) 30(3) *Journal of Contemporary Criminal Justice* 333, 334. Original estimates ranged between 500,000 and 1 million, see Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (Cambridge University Press, 2010), 1, 12; Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (Report, Human Rights Watch, March 1999) 15-6; Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (New York Columbia University Press, Pbk ed. ed, 1995) 265.

³² Chitra Nagarajan, 'An Appraisal of Rwanda's Response to Survivors Who Experienced Sexual Violence in 1994' (2012) 10 *Wagadu* 108, 111; Sarah L. Wells, 'Gender, Sexual Violence and Prospects for Justice at the *Gacaca* Courts in Rwanda' (2005) *California Law Review & Women's Studies* 167, 182; Kaitesi (n 29) 77; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2; Bastick, Grimm and Kunz (n 3) 55; Amnesty International (Report, 5 April 2004), 2; Anne-Marie De Brouwer and Sandra Ka Hon Chu, *The Men Who Killed Me: Rwandan Survivors of Sexual Violence* (Douglas & McIntyre, 2009), 14; Emily Amick, 'Trying International Crimes on Local Lawns: The Adjudication of Genocide Sexual Violence Crimes in Rwanda's *Gacaca* Courts' (2011) 20(2) *Columbia Journal of Gender and Law* 1, 8.

³³ Some Hutu women who were affiliated with Tutsi, for example through marriage, as well as some Tutsi boys and men were also subjected to sexual violence, see Kaitesi (n 29) 22, 76-7, 80; Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18(2) *European Journal of International Law* 253, 257-8; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; de Brouwer and Ka Hon Chu (n 32) 15.

destruction and to the destruction of the Tutsi group as a whole'.³⁴ Therefore, the sexual violence considered in this thesis reflects a distinct form of conflict-related sexual violence, which was introduced earlier as genocidal sexual violence.³⁵ Between 250,000 and 500,000 women are estimated to have been raped during the genocide, primarily by members of militia groups, government officials and civilians, who frequently lived in the same communities as their victims.³⁶

The pre-existing relationship between many perpetrators and their victims, as well as the mass targeting of Tutsi women because of their gender and group membership, are particular characteristics of the experiences of sexual violence of Rwandan victim-survivors and are considered in the analysis of victim-survivors' justice needs in Chapters 6-10. Besides rape, many women also experienced other acts of sexual violence during the genocide, including

³⁴ *The Prosecutor v Akayesu (Judgement)* (International Criminal Tribunal for Rwanda, Chamber I, Case No ICTR-96-4-T, 2 September, 1998) [731]. See also René Degni-Ségui, *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*, Commission on Human Rights Comm, 52 sess, Agenda Item 10, UN Doc E/CN.4/1996/68 (29 January 1996), 7 [16]; Bastick, Grimm and Kunz (n 3) 55; Amnesty International (n 32) 2; Paula Donovan, 'Rape and HIV/AIDS in Rwanda' (2002) 360(1) *The Lancet* 17, 17; Françoise Nduwimana, *The Right to Survive Sexual Violence, Women and Hiv/Aids* (International Centre for Human Rights and Democratic Development, December 2004), 19; International Panel of Eminent Personalities, *Rwanda: The Preventable Genocide* (Report, African Unity, July 2000), 149 [16.20]; Donatilla Mukamana and Anthony Collins, 'Rape Survivors of the Rwandan genocide' (2006) 17 *International Journal of Critical Psychology* 140, 144. One component of the definition of genocide in the Genocide Convention is that specific acts, such as killing members of a group, 'or causing serious bodily or mental harm, is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups', *Genocide Convention* (n 47) art 2.

³⁵ Haffajee (n 29) 201; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 1-2; Kaitesi (n 29) 15; Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 721, 728-30.

³⁶ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 24; Amick (n 32) 7-8; Maggie Zraly and Laetitia Nyirazinyoye, 'Don't Let the Suffering Make You Fade Away: An Ethnographic Study of Resilience among Survivors of Genocide-Rape in Southern Rwanda' (2010) 70(10) *Social Science & Medicine* 1656, 1657. These estimates are based on figures of pregnancies recorded following the genocide, which were estimated between 2,000 and 5,000. The UN Special Rapporteur of the Commission on Human Rights, Mr. René Degni-Ségui, explains that 'according to the statistics, one hundred cases of rape give rise to one pregnancy. If this principle is applied to the lowest figure, it gives at least 250,000 cases of rape and the highest figure would give 500,000.', *Report on the Situation of Human Rights in Rwanda* (n 34) [16]. This calculation, however, does not consider the thousands of women who were raped and immediately killed during the genocide, those who were raped and died shortly after the genocide and those who aborted pregnancies resulting from rapes committed during the genocide, see Linda Bianchi, 'The Prosecution of Rape and Sexual Violence: Lessons from Prosecutions at the ICTR' in Anne-Marie de Brouwer et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 123, 126 fn 9; Bastick, Grimm and Kunz (n 3) 55. For further discussion on figures and why they matter see 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, 2011) vol 13, 385, 387.

sexual slavery, sexual torture and mutilation,³⁷ as well as non-sexual atrocities. Many acts of a sexual nature were deliberately committed against women in front of their families and communities to destroy social networks.³⁸ As a result, affected victim-survivors have suffered from severe physical and psychological consequences, as well as from social stigma.³⁹

1.3 Victim-survivors' Justice Needs and Experiences with Justice Processes

Justice for victims of gross human rights violations, such as in Rwanda post-genocide, is not easily achieved. On the contrary, justice for mass violence is a complex process that needs to take into account the challenges associated with any post-conflict situation, including the diversity of needs and interests of all the stakeholders.⁴⁰ Justice for victim-survivors of conflict-related sexual violence is particularly challenging due to several factors. Firstly, most victim-survivors are reluctant to report sexual violence, particularly in settings where the risk of social stigma is high.⁴¹ Comprehensive research undertaken in several developed countries suggests that only about 15 per cent of all rape cases are ever reported.⁴² In settings where stigma is likely to lead to significant social and socioeconomic consequences, victim-survivors are even more reluctant to report rape. Secondly, even though sexual violence has been

³⁷ *Report on the Situation of Human Rights in Rwanda* (n 34) 13; Kaitesi (n 29) 76; AVEGA "AGAHOZO", *Survey on Violence against Women in Rwanda* (Report, December 1999) (on file with author); Zraly and Nyirazinyoye (n 36) 1657; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2; Amick (n 32) 8; Kaitesi (n 29) 22; de Brouwer and Ka Hon Chu (n 32) 15.

³⁸ See, e.g., Bastick, Grimm and Kunz (n 3) 3, 51, 55, 63, 65.

³⁹ See Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29); Lars Waldorf, *Transitional Justice and DDR: The Case of Rwanda* (Research Unit, The International Center for Transitional Justice, June 2009) 20; AVEGA "AGAHOZO" (n 37) 22-7; Amnesty International (n 32) 5; Uwigabye (n 15) 275.

⁴⁰ Kaitesi highlights the enormous challenge that any judicial system has when responding to mass scale conflict-related sexual violence, Kaitesi (n 29) 217. See also Anne-Marie De Brouwer and Etienne Ruvebana, 'The Legacy of the *Gacaca* Courts in Rwanda: Survivors' Views' (2013) 13(5) *International Criminal Law Review* 937.

⁴¹ Letitia Anderson, *Addressing Conflict-Related Sexual Violence - An Analytical Inventory of Peacekeeping Practice* (Report, United Nations Development Fund for Women, Department of Peacekeeping Operations United Nations, June 2010), 12; *Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste*, (Commission for Reception, Truth, and Reconciliation Timor-Leste (CAVR), 2005), 116.

⁴² Daly, 'Conventional and Innovative Justice Responses to Sexual Violence' (n 9) 5; Incidents of sexual violence tend to be largely underreported for reasons such as fear of reprisal and re-victimisation, Inter-Agency Standing Committee (n 22) 4; Lucy Fiske and Rita Shackel, 'Ending Rape in War: How Far Have We Come?' (Pt UTS Cosmopolitan Civil Societies Research Centre) (2015) 6(3) *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 123, 123; Pankhurst (n 25) 2. Research shows that even in industrial countries such as Australia and the US, only 14 per cent of victim-survivors report the offence to the police, see Kathleen Daly and Brigitte Bouhours, 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries' (Pt The University of Chicago Press) (2010) 39(1) *Crime and Justice* 565, 565; Herman (n 9).

committed in numerous conflicts 'almost since the existence of humankind',⁴³ it was not given much attention either in international or local justice processes dealing with mass atrocities until the end of the 20th century.⁴⁴ Askin notes, for example, that both the International Military Tribunal (IMT or Nuremberg Tribunal) and the International Military Tribunal for the Far East (IMTFE or Tokyo Tribunal) 'essentially ignored' sexual violence committed against women 'even though evidence documented cold, calculated instances of sexual assault, including rape, forced prostitution and forced sterilization'.⁴⁵

The first international tribunals that officially recognised sexual violence as crimes of genocide, torture, war crimes, and crimes against humanity were the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993, and the International Criminal Tribunal for Rwanda (ICTR), established in 1994.⁴⁶ Thereby, the ICTY and ICTR contributed considerably to the international recognition and legal definition of sexual violence and rape in particular, as well as the prosecution of these crimes. Since then, significant advances have been made in the legal treatment of sexual violence in armed conflict as well as the level of accountability for these crimes.⁴⁷ As a result, accountability for persons responsible for widespread sexual violence has been pursued not only in international but also in domestic criminal courts and other transitional justice processes.⁴⁸ Various UN Security Council Resolutions, starting with Resolution 1325 (2000), have acknowledged the impact of sexual

⁴³ Kelly Dawn Askin, *War Crimes against Women* (Kluwer Law International 1997), 1; Susan Brownmiller, *Against our Will: Men, Women And Rape* (Secker and Warburg, 1975); Elizabeth Rowley, Claudia Garcia-Moreno and Elizabeth Dartnall, *A Research Agenda for Sexual Violence in Humanitarian, Conflict and Post-Conflict Settings* (Executive Summary, Sexual Violence Research Initiative, 2013) 1.

⁴⁴ Askin (n 43) 13-4; Melandri (n 6) 4; Vesna Nikolic-Ristanovic, 'Sexual Violence. International Law and Restorative Justice' in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Hart Publishing, 2005) 273-293, 273; Ward, Jeanne and Mendy Marsh, 'Sexual Violence against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources' (Briefing Paper, Symposium on Sexual Violence in Conflict and Beyond, 21-23 June 2006), 3; Pégorier (n 50) 125; Melanie O'Brien, 'Don't Kill Them, Let's Choose them as Wives': The Development of the Crimes of Forced Marriage, Sexual Slavery and Enforced Prostitution in International Criminal Law' (2016) 20(3) *The International Journal of Human Rights* 386, 388-9.

⁴⁵ Askin (n 43) 13-4. O'Brien (n 44) 388.

⁴⁶ Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights* (Routledge, 2010). The achievements of the ICTR regarding sexual violence are discussed more fully in Chapter 4 (4.2.1).

⁴⁷ See, e.g., Sandra Rubli and Elisabeth Baumgartner, *Gender and Dealing with the Past* (Essential No 1, swisspeace, 2014) 19; UN WOMEN, *UN Women Sourcebook on Women, Peace and Security: Overview of Contents* (Sourcebook, October 2012) 12; Melandri (n 6) 15.

⁴⁸ Sexual violence has been given specific attention in non-judicial transitional justice initiatives including truth commissions such as the South African Truth and Reconciliation Commission (SA TRC), the TRC of Sierra Leone and the TRC in the Solomon Islands.

violence not only on affected women but also on peace and security more generally.⁴⁹ However, despite the legal advancement and increased attention being paid to conflict-related sexual violence, many experts agree that most acts of conflict-related sexual violence remain unpunished.⁵⁰

Thirdly, many past justice processes have been criticised for not adequately considering the justice needs of victim-survivors.⁵¹ For example, as noted by Valiji, the adversarial nature of conventional criminal trials is in many respects ‘ill-suited ... to crimes of a sexual nature’.⁵² Research suggests that the expectations and justice needs of many victim-survivors who have participated in criminal trials were not met, either in relation to the process or to the

⁴⁹ Other resolutions include 1820 (2008), 1888 (2009) and, most recently, 2467 (2019), see *Resolution 1820*, SC Res 1820, 5916th mtg, UN Doc S/RES/1820 (19 June 2008); *Resolution 1888*, SC Res 1888, 6195th mtg, UN Doc S/RES/1888 (30 Sep 2009) and *Resolution 2467*, SC Res 2467, 8514th mtg, UN Doc S/RES/2467 (23 April 2019). For example, in the Security Council Resolution 1820 from 2008, the UN stresses that

sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.

⁵⁰ See, e.g., *Resolution 2467*, UN Doc S/RES/2467 (n 49); O’Brien (n 44); Clotilde Pégrier, 'Denial, Impunity and Transitional Justice' in Lisa Yarwood (ed), *Women and Transitional Justice: The Experience of Women as Participants* (Routledge, 2012) 119, 130-4; Nikolic-Ristanovic (n 44) 273; Askin (n 43) 205; Kelly Dawn Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' in Anne-Marie de Brouwer et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 19, 524; Human Security Research Group, *Human Security Report 2012: Sexual Violence, Education, and War: Beyond the Mainstream Narrative* (Report, Human Security Press, 2012), 49-50; LaShawn R. Jefferson, 'In War as in Peace: Sexual Violence and Women’s Status' in Human Rights Watch (ed), *Human Rights Watch World Report 2004: Human Rights and Armed Conflict* (Report, 2004) 325, 326; Estelle Zinsstag, 'Sexual Violence Against Women in Armed Conflicts and Restorative Justice' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice* (Intersentia, 2013) vol 13, 189, 197; Parliamentary Assembly of the Council of Europe, *Sexual Violence against Women in Armed Conflict*, Res 1670, (29 May 2009).

⁵¹ Victim-survivors have reported negative experiences with justice processes both in conflict/post-conflict settings and in non-conflict settings. See, e.g., Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15); Michelle Staggs Kelsall and Shanee Stepakoff, ‘“When We Wanted to Talk About Rape”: Silencing Sexual Violence at the Special Court for Sierra Leone’ (2007) 1(3) *International Journal of Transitional Justice* 355; Sharratt (n 15); Henry (n 5); Herman (n 9); Haley Catherine Clark, 'A Fair Way To Go: Criminal Justice for Victim/Survivors Of Sexual Assault' (PhD Thesis, University of Melbourne, 2011); Nicola Godden, May, 'Seeking Justice for Victim-survivors: Unconventional Legal Responses to Rape' (Durham University, 2013) 62; McGlynn, Downes and Westmarland (n 12) 179. Wemmers discusses experiences of victims of violent crime with justice processes more generally (not focused on sexual violence), noting that ‘the victimological literature has made it very clear that victims are often very dissatisfied with classical criminal (retributive) justice’, Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 151. Ellen A. Waldman, 'Healing Hearts or Righting Wrongs?: A Meditation on the Goals of “Restorative Justice”'. (Fall 2003 Dispute Resolution Institute Symposium)' (2004) 25(2) *Hamline Journal of Public Law and Policy* 355, 356.

⁵² Nahla Valiji, *A Window of Opportunity: Making Transitional Justice Work for Women* (Report, UN Women, October 2012) 6. See also Herman (n 9); Lambourne and Carreon (n 12); Melandri (n 6) 15.

outcomes.⁵³ In terms of outcomes, victim-survivors have reported that the justice processes in which they had engaged did not help them to achieve what they had hoped for, including punishment of perpetrators and/or the provision of reparation.⁵⁴ In terms of process, victim-survivors have criticised a lack of support provided to them, as well as a lack of confidentiality and safety measures.⁵⁵ Lack of confidentiality and safety have been reported not only as issues during conventional criminal trials but also during other justice processes, such as truth and reconciliation commissions (TRC) and traditional justice processes,⁵⁶ as well as during the *gacaca* trials in Rwanda (see Section 1.4.2). Confidentiality is a particular concern in settings where identifying as a victim-survivor is likely to lead to shame and stigma, which may lead to shunning, community ostracism and subsequent socioeconomic consequences.⁵⁷

1.4 The Justice Mechanism

This thesis assesses Rwandan *gacaca* from the perspective of victim-survivors in terms of how well the community courts met their justice needs. Any evaluation of a justice initiative should also consider the broader context in which the initiative is operating. To contextualise the establishment and functioning of *gacaca*, the following section introduces transitional justice as the justice framework that shaped the objectives and procedures of *gacaca*. Afterwards,

⁵³ Kaitesi (n 29) 181-4; Sharratt (n 15); Henry (n 5) 131; Nowrojee, “‘Your Justice Is Too Slow’ Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?” (n 15); Kelsall and Stepakoff (n 51). The critique of failure to prosecute or not adequately punishing crimes of sexual violence is not limited to transitional justice processes, but has also been raised as a concern in domestic criminal justice processes, see, e.g., Godden (n 51) 62; Herman (n 9); Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11); Mary P. Koss, ‘Restorative Justice for Acquaintance Rape and Misdemeanor Sex Crimes’ in James Ptacek (ed), *Restorative Justice and Violence Against Women* (Oxford University Press, 2010) 218.

⁵⁴ Nowrojee, “‘Your Justice Is Too Slow’ Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?” (n 15); Sharratt (n 15).

⁵⁵ Nowrojee, “‘Your Justice Is Too Slow’ Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?” (n 15); Wells (n 32). See also *Report of the Secretary-General on the Implementation of Security Council Resolutions 1820 (2008) and 1888 (2009)*, UN Doc A/65/592-S/2010/604 (n 27); Sharratt (n 15); Melandri (n 6) 15.

⁵⁶ See, e.g., Susan Harris Rimmer, *Building Democracy and Justice after Conflict* (Working Paper Nr 4, The Solomon Islands Truth and Reconciliation Commission, March 2010), 9. See also Judith Herrmann and Claire Holland, ‘Co-creating Mediation Models: Adapting Mediation Practices when Working across Cultures’ (2017) 28(1) *Australasian Dispute Resolution Journal* 43.

⁵⁷ See Herman (n 9) 581-2; Nowrojee, “‘Your Justice Is Too Slow’ Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?” (n 15); Lambourne and Carreon (n 12); Melandri (n 6) 15; *Chega! The Report of the Commission for Reception, Truth, and Reconciliation Timor-Leste* (n 41) 123; Uwigabye (n 15) 275; Karen Brounéus, ‘The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health’ (2010) 54(3) *Journal of Conflict Resolution* 408; Karen Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (2008) 39(1) *Security Dialogue* 55.

Rwanda's overall approach to transitional justice is briefly considered, followed by an overview of *gacaca*.

1.4.1 Transitional justice

The past century has seen many intrastate conflicts.⁵⁸ In these settings, perpetrators and victim-survivors are often expected to live side by side once the mass violence stops, as was the case in post-genocide Rwanda. After having experienced periods of conflict and mass violence among their citizens, nations may use a range of initiatives to rebuild their societies and to re-establish the rule of law.⁵⁹ The term transitional justice is used to describe initiatives that form part of an approach to achieving justice in times of transition from armed conflict and/or state repression.⁶⁰ According to former UN Secretary-General Kofi Annan, transitional justice includes 'the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.⁶¹ Other important objectives of transitional justice are the recognition of victims, peace and democracy.⁶² The processes and mechanisms meant to achieve these objectives include both judicial and non-judicial measures, such as criminal prosecution, truth commissions, reconciliation processes, reparations and institutional reform.⁶³

⁵⁸ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace Press, 1997); Anderson (n 41) 10; Nandor Knust, *Strafrecht und Gacaca* (Duncker & Humblot, 2013), 44; Marie Vlachová and Lea Bion, 'Violence against Women as a Challenge for Security Sector Governance' in Heiner Hänggi and Theodor H Winkler (eds), *Challenges of Security Sector Governance* (Geneva Centre for the Democratic Control of Armed Forces, 2003) 1, 1.

⁵⁹ Thomas Obel Hansen, 'Transitional Justice: Toward a Differentiated Theory' (2011) 13(1) *Oregon Review of International Law* 1-46, Alex Boraine, 'Defining Transitional Justice: Tolerance in the Search for Justice and Peace' in Alex Boraine and Sue Valentine (eds), *Transitional Justice and Human Security* (International Center for Transitional Justice, 2006) 22; International Center for Transitional Justice, *What is Transitional Justice?* (Factsheet, 2008) <http://www.ictj.org/static/Factsheets/ICTJ_TJ_fs2009.pdf>.

⁶⁰ 'What is Transitional Justice?', *International Center for Transitional Justice* (Web Page, 2020) <<https://www.ictj.org/about/transitional-justice>>; Louis Bickford, 'Transitional Justice', *The Encyclopedia of Genocide and Crimes Against Humanity* (Macmillan Reference USA, 2004) n.d.

⁶¹ United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, UN Doc S/2004/616 (23 August 2004) 4.

⁶² International Center for Transitional Justice (n 59).

⁶³ *Guidance Note of the Secretary-General - United Nations Approach to Transitional Justice*, (March 2010), 2. 'What is Transitional Justice?' (n 60); Susanne Buckley-Zistel and Magdalena Zolkos, 'Introduction: Gender in Transitional Justice' in Susanne Buckley-Zistel and Ruth Stanley (eds), *Gender in Transitional Justice* (Palgrave Macmillan, 2011) 1, 1.

It was not until the end of the 20th century that transitional justice became a normative paradigm of the rule of law.⁶⁴ However, the international community (mainly represented by the UN) has actively engaged in justice activities that dealt with mass violence concerning nations during transitions since the end of World War II.⁶⁵ For example, the Nuremberg Tribunal and Tokyo Tribunal were set up to prosecute war crimes committed by Germany and Japan respectively and to prevent the future recurrence of 'such genocidal events'.⁶⁶ Since then, not only international but also national and local involvement in seeking justice for mass atrocities and human rights violations has increased, including through criminal trials, truth and reconciliation commissions and traditional indigenous justice processes.⁶⁷ Significant developments in transitional justice include the creation of the previously mentioned ICTY and ICTR, the South African Truth and Reconciliation Commission (SA TRC), established in 1995,⁶⁸ and the ICC, initiated in 1998 and officially established in 2002.⁶⁹

Justice is a focal point of transitional justice and may be pursued in various forms as part of a transitional justice approach. The two most common approaches to justice discussed in transitional justice literature are retributive justice and restorative justice. Retributive justice is predominantly concerned with the punishment of the perpetrator 'through a process of judging guilt and imposing penalties commensurate to the nature of the crime'.⁷⁰ Purely retributive justice processes are perpetrator-focused, while victims play a rather marginalised role, for example as witnesses. Restorative justice, on the other hand, focuses less on punishment for the crime committed, and more on 'restoring or compensating for the harm done to the victim and society',⁷¹ involving 'all those affected by an offence – victims,

⁶⁴ Ruti G. Teitel, 'Transitional Justice Genealogy' (Spring 2003) 16 *Harvard Human Rights Journal* 69, 71, 89-90.

⁶⁵ See *Ibid* 70-89.

⁶⁶ Buckley-Zistel and Zolkos (n 63) 3.

⁶⁷ See Wendy Lambourne, 'Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation' (2004)(4) *Peace, Conflict and Development*; Buckley-Zistel and Zolkos (n 63) 3-4.

⁶⁸ Ayumi Kusafuka, 'Truth Commissions and Gender: A South African Case Study' (Pt African Centre for the Constructive Resolution of Disputes (ACCORD)) (2009) 9(2) *African Journal on Conflict Resolution* 45-68, 46.

⁶⁹ 'About', *International Criminal Court*, (Web Page, 4th July 2016) <<https://www.icc-cpi.int/about>>; Buckley-Zistel and Zolkos (n 63) 4.

⁷⁰ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 119; Bastick, Grimm and Kunz (n 3) 3, 156.

⁷¹ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 119.

perpetrators and by-standing communities'.⁷² Whether retributive or restorative justice constitutes the most appropriate form of dealing with societies in transition has been debated in the literature on transitional justice.⁷³

1.4.2 *Gacaca*

To deal with crimes committed during the Genocide against the Tutsi, the international community and the Rwandan Government pursued several transitional justice responses, focusing primarily on retributive justice. The UN established the ICTR to prosecute the leaders of the genocide,⁷⁴ while the majority of genocide suspects were tried by Rwandan justice initiatives, including specialised chambers in its military and ordinary courts. Due to the mass involvement of Rwandan civilians in the genocide, additional special measures were seen as necessary to deliver justice to genocide survivors, while rebuilding the Rwandan society at the same time. As one response to the 'challenges of justice in the aftermath of genocide',⁷⁵ the Rwandan Government established a system of local community courts called *gacaca* to assist Rwanda's military and ordinary courts with the case load of genocide-related crimes. *Gacaca* started as a pilot project in 2002, became operational throughout Rwanda in 2005, and was formally closed in 2012.⁷⁶

Gacaca was introduced with the explicit objective to combine elements of both retributive and restorative justice.⁷⁷ Several researchers highlight that *gacaca* pursued restorative justice both through its process and its outcomes.⁷⁸ For example, restorative justice was identified

⁷² Bastick, Grimm and Kunz (n 3) 70156; Tony F. Marshall, 'The Evolution of Restorative Justice in Britain' (1996) 4(4) *European Journal on Criminal Policy and Research* 21, 37; Chris Cunneen, 'The Limitations of Restorative Justice' in Chris Cunneen and Carolyn Hoyle (eds), *Debating Restorative Justice* (Hart Publishing, 2010) 102; Carolyn Hoyle, in Chris Cunneen and Carolyn Hoyle (eds), *Debating Restorative Justice* (Hart Publishing, 2010) 1, 2.

⁷³ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 119; Wendy Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' in Helen Irving, Jacqueline Mowbray and Kevin Walton (eds), *Julius Stone: A Study in Influence* (The Federation Press, 2010) 214; Kora Andrieu, 'Transitional Justice: A New Discipline in Human Rights' (2010) *Online Encyclopedia of Mass Violence*; Ray Nickson and John Braithwaite, 'Deeper, Broader, Longer Transitional Justice' (2013) *European Journal of Criminology* 1-19; Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice As Transitional Justice' (Spring, 2006) 79(1) *Temple Law Review* 2.

⁷⁴ Mark R Amstutz, 'Is Reconciliation Possible After Genocide?: The Case of Rwanda' (2006) 48(3) *Journal of Church and State* 541, 552.

⁷⁵ National Service of *Gacaca* Courts, *Gacaca Courts in Rwanda* (Report, 2012), 14-5.

⁷⁶ Paul Christoph Bornkamm, *Rwanda's Gacaca Courts* (Oxford University Press, 2012), 39.

⁷⁷ Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3(1) *International Journal of Transitional Justice* 28, 39.

⁷⁸ Amstutz (n 74) 556-7; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 238.

in the involvement of the community through negotiation and collaboration during *gacaca* hearings, as well as the consideration of guilty pleas to reduce sentences.⁷⁹ Nevertheless, one main objective of *gacaca* was to punish genocide-related crimes, including with prison sentences, reflecting retributive justice. Several scholars have criticised that the emphasis on punishment seriously compromised *gacaca*'s restorative aims.⁸⁰

Gacaca functioned as a system in three stages: 1) information gathering, 2) classification of genocide accused, and 3) trial of suspects. During the information gathering stage, the '*Inyangamugayo*'⁸¹ – lay judges with no legal background who were elected by their communities to hear and try genocide-related crimes at *gacaca* – and their local communities collected information about victims, perpetrators and crimes committed during the genocide.⁸² Based on this information, the *Inyangamugayo* put together case files of genocide suspects and categorised their crimes according to their severity.⁸³ During *gacaca*'s third stage, the *Inyangamugayo* heard and judged the cases that had been allocated to their *gacaca* jurisdiction. Judgements and penalties were determined based on a sentencing scheme outlined in *gacaca* law.⁸⁴

According to *gacaca*'s categorisation system, those accused of rape and sexual torture were classified as 'Category 1' suspects.⁸⁵ This category comprised the most serious crimes committed during the genocide. Cases classified as Category 1 were originally placed under the jurisdiction of Rwanda's ordinary courts.⁸⁶ Therefore, *gacaca* initially did not try sexual

⁷⁹ Amstutz (n 74); Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 238. The functioning of *gacaca* is explained in more detail in Chapter 3.

⁸⁰ See, e.g., Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 234-6; William A. Schabas, 'Genocide Trials and *gacaca* Courts' (2005) 3 *Journal of International Criminal Justice* 1, 3-4. *Gacaca*'s retributive and restorative justice elements are more fully discussed in Chapter 4 (4.2.3).

⁸¹ The term *Inyangamugayo* means 'person of integrity' in Kinyarwanda. The characteristics and responsibilities of the *Inyangamugayo* are explained in more detail in Chapter 4 (4.2.3).

⁸² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 76.

⁸³ The classification of crimes is explained in more detail in Chapter 4 (4.2.3). This classification was determined according to a complex categorisation system from Rwanda's genocide law of 1996, *Organic Law N° 08/96* (Rwanda) 30th August 1996; National Service of *Gacaca* Courts (n 75) 42-44.

⁸⁴ See, e.g., *Organic Law N° 16/2004* (Rwanda) 19th June 2004 art 72-81. For charges and sentences regarding Category 1 crimes, see Appendix 1.

⁸⁵ *Gacaca* law explicitly lists the terms rape and sexual torture *Organic Law N° 40/2000* (Rwanda) 26th January 2001, art 51; National Service of *Gacaca* Courts (n 75) 98-99. Both rape and sexual torture are included in the term sexual violence as used in this thesis. See Chapter 4 for more detail on the process of categorising rape and sexual violence in preparation for *gacaca*.

⁸⁶ *Organic Law N° 40/2000* (n 85) art 2; *Organic Law N° 16/2004* (n 84) art 2.

violence cases.⁸⁷ Nevertheless, during the information-gathering stage of *gacaca*,⁸⁸ the community courts functioned as the prosecution and were collecting all information about any perpetrators, victims and crimes committed during the genocide.⁸⁹ This information included evidence relating to sexual violence cases that were later referred to the ordinary courts.⁹⁰ During the information-gathering stage of *gacaca*'s pilot phase, victim-survivors and other community members, including perpetrators, could publicly raise sexual violence cases at *gacaca* hearings. While the vast majority of victim-survivors did not report their case at *gacaca*, Kaitesi explains that during these first years of *gacaca* 'a great deal was spoken about sexual torture', resulting in 'numerous cases' of sexual violence being discussed at *gacaca*.⁹¹ These public discussions reportedly led to re-traumatisation of many victim-survivors during *gacaca* hearings.⁹²

Prompted by these experiences, the Rwandan Government amended *gacaca* procedures concerning sexual violence through changes to the law in 2004, 2006, 2007 and 2008.⁹³ These changes included, for example, that sexual violence cases could no longer be raised in public but had to be reported privately.⁹⁴ Because *gacaca* moved at a much faster pace than Rwanda's ordinary courts, *gacaca* law was substantively amended in 2008 to allow the transfer of most remaining Category 1 cases, including sexual violence cases, from Rwanda's ordinary courts to *gacaca*.⁹⁵ While the exact number of sexual violence cases tried by *gacaca* remains unknown, between 6000 and 8000 sexual violence cases were reportedly transferred

⁸⁷ National Service of *Gacaca* Courts (n 75) 42; Heidi Rombouts, 'Women and Reparations in Rwanda: A Long Path to Travel' in Ruth Rubio-Marin (ed), *What Happened to the Women? Gender and Reparations for Human Rights Violations* (International Centre for Transitional Justice, 2006) 194.

⁸⁸ Information about the genocide was collected at *gacaca* between the 18th June 2002 (when the first *gacaca* courts of the pilot project were launched) and the 30th June 2006; see National Service of *Gacaca* Courts (n 75) 53, 87.

⁸⁹ *Organic Law N° 40/2000* (n 85) art 34; Kaitesi (n 29) 209.

⁹⁰ *Organic Law N° 40/2000* (n 85); Kaitesi (n 29) 209.

⁹¹ Kaitesi (n 29) 208.

⁹² Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57); Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57); Wells (n 32).

⁹³ Kaitesi (n 29) 218, 232. Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57).

⁹⁴ *Organic Law N° 16/2004* (n 84) art 38.

⁹⁵ *Organic Law N° 13/2008* (Rwanda) 19th May 2008, art 1; Bornkamm (n 76) 44.

for trial to *gacaca* in 2008, and predominantly were tried between mid-2008 and mid-2009.⁹⁶ In contrast to the previously public *gacaca* proceedings, all trials that included charges of sexual violence were meant to be held in closed sessions (*in camera*),⁹⁷ and thus differed significantly from the original *gacaca* process.

Most previous research on the experiences of victim-survivors with *gacaca* was conducted during *gacaca*'s early stages when sexual violence was discussed in public as part of the information collection. Scholars who analysed victim-survivors' experiences with public *gacaca* during its early phase overwhelmingly highlighted the victim-survivors' exposure to re-victimisation, re-traumatisation and other risks.⁹⁸ A few publications discuss victim-survivors' opinions and expectations of the changes to the 2008 law that made *gacaca* competent to try sexual violence cases. These publications suggest that many victim-survivors did not appreciate the change but were sceptical about their privacy and confidentiality at *gacaca* as well as its potential contributions to justice and reconciliation.⁹⁹ Most of this research, however, appears to discuss concerns and opinions, rather than actual experiences of affected victim-survivors with the amended *gacaca* processes. Very few studies consider the experiences of victim-survivors with the closed *gacaca* trials that began in 2008, and do so only marginally and briefly.¹⁰⁰ This thesis analyses in-depth the experiences of Rwandan victim-survivors who had their cases tried *in camera* by a *gacaca* court after the changes to the law in 2008. A detailed description of the functioning of *gacaca* trying sexual violence

⁹⁶ Kaitesi and Haveman refer to 'about 7000 cases', Kaitesi and Haveman (n 36) 385. According to Amick, 6608 cases of rape and sexual torture were transferred to *gacaca* in 2008, Amick (n 32) 3, citing *Gacaca Courts Process: Implementation and Achievement*, Republic of Rwanda, The National Service of *Gacaca* Courts (2008). Kaitesi mentions 'at least 6000' cases, Kaitesi (n 29) 224. Haskell reports that 'just over 8000 ... cases involved rape or sexual violence', Leslie Haskell, *Justice Compromised - The Legacy of Rwanda's Community-Based Gacaca Courts* (Report, Human Rights Watch, May 2011). The New Humanitarian refers to 'at least 8000 rape or sexual violence cases', see IRIN News, 'Rape, justice and privacy', *The New Humanitarian* (Web Page, 2 June 2011) <http://www.irinnews.org/Report.aspx?ReportID=92876>.

⁹⁷ *Organic Law N° 13/2008* (n 95) art 6.

⁹⁸ Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57) Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57); Wells (n 32); Rombouts (n 87); IRIN News (n 96).

⁹⁹ Rakiya Omaar et al., *Survivors and Post-Genocide Justice in Rwanda* (Report, African Rights and REDRESS, November 2008) 5; Anne-Marie De Brouwer and Sandra Ka Hon Chu, 'Survivors' Views on *Gacaca*', *IntLawGrrls - Voices on International Law, Policy, Practice* (Blog Post, 8 April, 2012) <http://www.intlawgrrls.com/2012/04/survivors-views-on-gacaca.html>; Haskell (n 96) 112-4; Nagarajan (n 32) 119-21.

¹⁰⁰ Haskell (n 96) 116-8; Meghan Brenna Morris, 'The Courage to Come Forward: Factors Related to Rwandan Women Taking Cases of Sexual Violence to Transitional Courts' (PhD Thesis, University of California, 2014); Kaitesi (n 29) 233-5; Uwigabye (n 15); de Brouwer and Ka Hon Chu (n 32) 140; Amick (n 32).

cases is outlined in Chapter 4, while the significance and value of this research as well as its limitations are discussed in the following two sections of in this chapter.

1.5 Significance and Value of this Research

This research is important and valuable because of its focus and timing. The research makes specific contributions in the following areas:

1) Information on the functioning and outcomes of *gacaca* trying sexual violence cases

This thesis analyses the experiences of Rwandan victim-survivors who had their cases tried by a *gacaca* court, based on interviews that the author conducted with 23 victim-survivors in Rwanda in 2015 and 2016, as explained in detail in Chapter 2. By considering in-depth the experiences of the interviewees with *gacaca*, this thesis is distinct from existing research on sexual violence and *gacaca*. While the body of literature considering a gendered analysis of *gacaca* has grown over the past 15 years, little existing research considers the *gacaca* experience in-depth, explicitly and solely from the perspectives of victim-survivors. Furthermore, those studies that focus on the experiences of victim-survivors at *gacaca* predominantly consider public *gacaca* hearings during the information gathering phase.¹⁰¹

At the time of writing of this thesis, the experiences of victim-survivors who had their cases tried by *gacaca* had not been analysed in detail and no information was publicly available concerning the outcomes of these trials. At the time of undertaking the research for this thesis, Dr Jean-Damascène Gasanabo, the Director-General of the Research and Documentation Center on Genocide within the National Commission for the Fight Against Genocide (CNLG), indicated that statistics relating to *gacaca* trials concerning sexual violence were not available and CNLG would 'not give to anyone *gacaca* documents on sexual violence during the genocide'.¹⁰² Because *Inyangamugayo* were by law prohibited to reveal details of *in camera* trials and outside observers were not permitted,¹⁰³ only 'little first-hand data exists

¹⁰¹ Wells (n 32); Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57); Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57).

¹⁰² Email from Dr Jean-Damascène Gasanabo to Judith Rafferty, 4 October 2015. In another email, Dr Jean-Damascène Gasanabo explained that CNLG was 'working on the digitization process of the *Gacaca* documents', but also confirmed that documents on sexual violence were not available to the public due to the sensitivity of such data and matters of confidentiality, Email from Dr Jean-Damascène Gasanabo to Judith Rafferty, 8th February 2019.

¹⁰³ *Organic Law N° 13/2008* (n 95) art 5 and 6.

on how rape trials were handled'.¹⁰⁴ Therefore, this research makes a unique contribution to the literature by providing important, detailed and new information on the process and judgements reached during *gacaca* trials dealing with sexual violence. All victim-survivors who participated in the interviews (referred to as 'interviewees' from here on) also shared information about their experiences with sexual violence during the genocide. This thesis thus also contributes more comprehensive, first-hand accounts of the genocide itself.

2) Assessing *gacaca*

This research assesses *gacaca* in terms of how well it met the justice needs of Rwandan victim-survivors, thereby also adding evidence to the overall knowledge base on the strengths and limits of different justice mechanisms dealing with sexual violence. Having said that, justice mechanisms should not be evaluated solely according to how well they address victim-survivors' justice needs because not all justice processes were designed with the primary goal to do so.¹⁰⁵ The assessment of *gacaca* in this thesis also considers *gacaca*'s objectives and procedures, outlined in Chapter 4, which again contributes information about how well *gacaca* met its objectives from the point of view of victim-survivors.

Ndahinda and Muleefu highlight the unique setting in which *gacaca* was established and challenge particularly Western critics of *gacaca* for not considering the complexity of issues that Rwanda was facing in the aftermath of the Genocide against the Tutsi.¹⁰⁶ They caution that 'some conclusions on how the [*gacaca*] process impacts on the country's future (in terms of peace and reconciliation) – even when they are purportedly based on empirical evidence – seem 'hastily drawn'.¹⁰⁷ Ndahinda and Muleefu further explain:

only time can allow for sound conclusions to be drawn as to whether *gacaca* courts have achieved (some of) their stated objectives since even after the official closure of

¹⁰⁴ Haskell (n 96) 112.

¹⁰⁵ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 383. Daly further explains that this point applies in particular to the more conventional mechanisms such as criminal trials. More innovative processes such as victim-offender conferencing were designed specifically to enhance victims' voice, participation, etc. At the same time, these innovative processes may be inadequate for addressing other justice needs.

¹⁰⁶ Felix Mukwiza Ndahinda and Alfonse Muleefu, 'Revisiting the Legal and Socio-Political Foundations and (Western) Criticism of *Gacaca* Courts' in Tom Bennett et al. (eds), *African Perspectives on Tradition and Justice* (Intersentia, 2012) 149.

¹⁰⁷ Ibid 151.

proceedings, society will still be marked by the process as long as (the majority of) convicts are not yet reintegrated in their communities.¹⁰⁸

Therefore, research on *gacaca* several years after the courts officially closed was merited.

3) *Analysing the needs of Rwandan victim-survivors to inform support initiatives beyond gacaca*

A number of analyses of *gacaca* highlight the need for trauma-healing measures to address the re-traumatisation that many genocide survivors experienced during *gacaca*.¹⁰⁹ Initiatives assisting victim-survivors beyond *gacaca*, such as ongoing psychosocial support, have been suggested to support victim-survivors to recover from trauma and other ongoing issues.¹¹⁰ The analysis of the interviewees' justice needs in this thesis aims to identify which needs of Rwandan victim-survivors have not yet been sufficiently addressed, and how they could be supported in the future.

4) *Developing the set of victim-survivors' justice needs*

More research on victim-survivors' justice needs is required. Such research is especially important in conflict and post-conflict settings, both to develop the construct of victim-survivors' justice needs and to assess how these needs apply in various social, cultural, historical and political settings. Chapter 5 analyses existing studies with victim-survivors (and with victims of mass violence more generally) to develop a comprehensive set and detailed definitions of victim-survivors' justice needs. The analysis of the primary data in Chapters 6-10 adds further empirical evidence to the set of victim-survivors' justice needs and provides additional nuances to their definitions.

Previous research has investigated how various stakeholders understand the notion of justice.¹¹¹ Nevertheless, a more specific assessment of justice from a victim-survivor's

¹⁰⁸ Ibid 151.

¹⁰⁹ National Service of *Gacaca* Courts (n 75) 42; Wendy Lambourne and Lydia Wanja Gitau, 'Psychosocial interventions, peacebuilding and development in Rwanda' (2013) 8(3) *Journal of Peacebuilding and Development* 23, 29; Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57).

¹¹⁰ See Lambourne and Gitau (n 109) 29.

¹¹¹ See Lambourne and Carreon (n 12); Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73); Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15); Sharratt (n 15); Omaar et al. (n 99); de Brouwer and Ruvebana (n 40).

perspective in different contexts is still needed. This requirement has been raised by Bastick, Grimm and Kunz, who claim that ‘space must be created to seek, listen to and respect the views of the victims [of sexual violence] on what, for them, constitutes justice’.¹¹² The analysis of Rwandan victim-survivors’ justice needs based on the interviews in this research can help to get a better understanding of what justice means for these victim-survivors, which can again assist in determining their preferred approach to justice.

5) Contributing to research in transitional justice

This thesis also adds empirical evidence to the body of literature on transitional justice, thereby responding to a number of research needs raised by transitional justice scholars. For example, transitional justice scholars see a need for more empirical research to ‘investigate the most pressing needs of victims of different contexts’.¹¹³ This thesis addresses this research gap by analysing the justice needs of a group of Rwandan victim-survivors, including a discussion of their most pressing needs after their *gacaca* participation.

To evaluate the effectiveness of a given justice measure and its impact on victims, van der Merwe, Baxter and Chapman recommend investigating the experiences of former victims, which may include questions such as whether transitional justice measures can ‘restore dignity to victims and promote psychological healing’.¹¹⁴ The authors note that this kind of enquiry is important since victim-centred research can have an impact on policy debates in new transitional justice settings.¹¹⁵ Furthermore, transitional justice scholars have different opinions on whether transitional justice frameworks should focus on retributive or on restorative justice, and more research is needed to better understand victims’ views on this question.¹¹⁶ This thesis directly relates to these research gaps by analysing 1) the experiences

¹¹² Bastick, Grimm and Kunz (n 3) 156.

¹¹³ Christine Bell and Catherine O’Rourke, ‘Does Feminism Need a Theory of Transitional Justice? An Introductory Essay’ (2007) 1(1) *International Journal of Transitional Justice* 23; Hansen (n 59); Chen Reis, ‘Ethical, Safety and Methodological Issues Related to the Collection and Use of Data on Sexual Violence In Conflict’ in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia, 2013) 189, 189;

¹¹⁴ Hugo van der Merwe, Vicki Baxter and Audrey R. Chapman, ‘Introduction’ in Hugo van der Merwe, Vicki Baxter and Audrey R. Chapman (eds), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (United States Institute of Peace Press, 2009) 1, 5.

¹¹⁵ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 129-30. For an example of how victim-centred research may be used to discuss implications for policy, see Simon Robins, ‘Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal’ (2011) 5(1) *International Journal of Transitional Justice* 75.

¹¹⁶ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 119-20.

of Rwandan victim-survivors with *gacaca*, 2) the perceived impact of participating in the process and 3) victim-survivors' understanding of justice in the context of sexual violence.

Finally, more empirical research is needed to develop knowledge around how to make transitional justice more responsive to the diverse needs of women.¹¹⁷ For example, Fineman and Zinsstag highlight the need for more research that considers the experiences of women who participated in transitional justice processes.¹¹⁸ This thesis focuses not only on the experiences of a particular group of women with a specific transitional justice process, but also on potential implications of the research into how future transitional justice process may consider the justice needs of female victim-survivors.

6) Alignment with research priority themes of Sexual Violence Research Initiative (SVRI)

As a final point, the research focus chosen for this thesis aligns with research priority themes developed by the SVRI to 'guide research on sexual violence in conflict and post-conflict settings'.¹¹⁹ 'Priority Theme 2' refers to research regarding 'the scope and effectiveness of programs to respond to conflict-related sexual violence' and lists 'victim-survivors' perspectives and experiences' as one area requiring research.¹²⁰ More specifically, the following questions are listed as part of the Priority Theme 2 identified by the SVRI:

- A) What do the victim-survivors of conflict-related sexual violence identify as their immediate needs?
- B) What are victim-survivors' perceptions about the services they receive in response to conflict-related sexual violence?¹²¹

This research addresses question A by analysing the justice needs of Rwandan victim-survivors. Furthermore, this thesis considers victim-survivors' experiences with therapy

¹¹⁷ Bell and O'Rourke (n 113); Hansen (n 59); Reis (n 113) 189; Van der Merwe, Baxter and Chapman (n 114) 1.

¹¹⁸ Martha Albertson Fineman and Zinsstag, Estelle, 'Introduction' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia, 2013) 1, 2. See also Dyan Mazurana and Keith Proctor, *Gender, Conflict and Peace* (Occasional Paper, World Peace Foundation, 15 October 2013), 30; Mayesha Alam, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave Macmillan, 2014), 3.

¹¹⁹ Sexual Violence Research Initiative, *Research Themes and Questions to Guide Research on Sexual Violence in Conflict and Post-Conflict Settings* (Guide, n.d.).

¹²⁰ Ibid 3.

¹²¹ Ibid 3.

groups and trauma training, which was a point of discussion during the interviews, therefore also addressing question B.

1.6 Research Limitations

This thesis focuses on genocidal sexual violence as a specific form of conflict-related sexual violence, committed predominantly against Tutsi women during the genocide in Rwanda. This focus brings various limitations. Firstly, conflict-related sexual violence is also committed against men, transgender people and children, including boys and girls.¹²² However, since most victim-survivors of conflict-related sexual violence are females,¹²³ and since sexual violence has such a damaging impact on women specifically (Chapter 3), this research focuses on sexual violence committed against women with the objective of increasing knowledge about the specific justice needs identified by women.

Secondly, women are exposed to various forms of violence, including but not limited to sexual violence, both in times of peace and times of conflict.¹²⁴ Some scholars suggest that a focus on sexual violence can divert attention from other human rights violations or struggles experienced by women.¹²⁵ Bastick, Grimm and Kunz caution that a concentration on sexual violence during armed conflict may suggest that it is ‘inherently more “serious” and worthy of international attention than any other form of gender-based violence’.¹²⁶ For example, intimate partner violence, which is also prevalent during times of peace, also tends to increase during times of armed conflict or genocide.¹²⁷ Because women’s suffering is predominantly perceived as linked to sexual violence, there is a risk that other challenges faced by women in

¹²² Anne-Marie De Brouwer et al., 'Interdisciplinary Approaches to Recognizing, Investigating and Prosecuting Sexual Violence as an International Crime' in Anne-Marie de Brouwer et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) 3, 3; Kaitesi (n 29) 79-80, 175-80; O'Brien (n 46) 386. Bastick, Grimm and Kunz note that during armed conflict, men and boys are particularly vulnerable to sexual violence when in detention or ‘when forcibly recruited by armed groups’, Bastick, Grimm and Kunz (n 3) 14.

¹²³ Sharratt (n 15) preface. See also Sandra Ka Hon Chu, Anne-Marie de Brouwer and Renee Roemkens, 'Survivors of Sexual Violence in Conflict. Challenges in Prevention and International Criminal Prosecution' in Rianne Letschert et al. (eds), *Victimological Approaches to International Crimes: Africa* (Intersentia, 2011) vol 13, 527, 532; Nikolic-Ristanovic (n 44) 273; Dara Kay Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980-2009)' (Pt Cambridge University Press) (2013) 107(3) *American Political Science Review* 461; O'Brien (n 46) 386.

¹²⁴ Valiji (n 52) 2.

¹²⁵ Bastick, Grimm and Kunz (n 3) 19.

¹²⁶ Ibid 19

¹²⁷ Valiji (n 52) 2.

conflict and post-conflict settings may be marginalised and consequent needs neglected.¹²⁸ Nevertheless, the scope of this thesis has been limited to sexual violence because it is regarded as prevalent and an extremely damaging type of violence committed against women during conflict.¹²⁹

Thirdly, Sharratt explains that a focus on sexual violence reinforces the vulnerability and 'rapeability' of women,¹³⁰ which, according to Rubli and Baumgartner, can reinforce stereotypes of women and depict them as fragile and in need of protection.¹³¹ Rubli and Baumgartner further caution that a focus on the role of women as 'victims' of sexual violence during and post-conflict can limit women's 'social positions and political identities in the newly emerging society as passive and inferior'.¹³² There is a risk of women being viewed as 'objects of transitional justice processes, rather than negotiators, political actors and change agents in their own right'.¹³³ To promote gender equality and security in a holistic and sustainable manner, all forms of violence committed against women at any time would need to be considered, as well as their role as active agents in conflict contexts.

Fourthly, women who have been subjected to sexual violence during armed conflict and/or genocide are likely also to have suffered from other atrocities. For example, they may have lost family members, they may have been displaced, lost their home and belongings.¹³⁴ That is why, in the context of violent conflict, victim-survivors are likely to have justice needs that derive not only from the experience of sexual violence but also from other bodily harm, trauma, the loss of family, discrimination, domination and lack of physical, social and legal security. For example, Sharratt explains that 'when women who have survived sexual violence talk about their war experiences, they often ... discuss other crimes committed against them and in many instances clearly state that rape was not the worst crime'.¹³⁵ Because of the

¹²⁸ Ibid. For example, Bastick, Grimm and Kunz explain that harmful experiences other than sexual violence endured by women were not adequately dealt with during the hearings of the SA TRC, because they were regarded as less significant than acts of sexual violence, Bastick, Grimm and Kunz (n 3).

¹²⁹ Inter-Agency Standing Committee (n 22) 1.

¹³⁰ Sharratt (n 15) 2.

¹³¹ Rubli and Baumgartner (n 47) 9.

¹³² Ibid 9.

¹³³ Ibid 5.

¹³⁴ Sharratt (n 15) 119-120; Valiji (n 52) 2.

¹³⁵ Sharratt (n 15) 120.

experiences of multiple sufferings at the same time, it may not always be possible to distinguish those justice needs that only relate to sexual violence.

Another limitation of this research is that victim-survivors' justice needs and their expectations of a specific justice initiative are likely to have been shaped by factors unique to a particular context and group of victim-survivors. The context of victimisation has already been highlighted as a critical factor that needs to be made explicit when analysing victim-survivors' justice needs and experiences with justice processes. The broad context of victimisation relevant to this thesis has been defined as conflict-related sexual violence. However, different motives behind such sexual violence are likely to influence the experiences and needs of victim-survivors. Genocidal sexual violence, which constitutes the specific kind of conflict-related sexual violence considered in this research, is likely to be experienced differently from conflict-related sexual violence that is committed in a non-genocidal context. Even during the same genocide, experiences of victim-survivors will differ. For example, several researchers found that the Genocide against the Tutsi played out locally and that genocide experiences varied across the different Rwandan provinces.¹³⁶ Thus, victim-survivors' experiences with *gacaca* are also likely to have differed across Rwanda.¹³⁷ These differing experiences with the genocide and *gacaca* suggest that findings from research conducted with victim-survivors in one region cannot be extrapolated to victim-survivors in other parts of the country. This limitation applies to this research because the victim-survivors

¹³⁶ Several researchers highlight that the genocide and its impact played out differently across Rwanda, due in part to the different population concentrations of Tutsi versus Hutu, and the extent of the violence and its timing, see Lee Ann Fujii, *Killing Neighbors: Webs of Violence in Rwanda* (Cornell University Press, Ithaca, 2009); Wendy Lambourne, 'Ethnic Conflict and Genocide in Rwanda' in Steven Ratuva (ed), *The Palgrave Handbook of Ethnicity* (Springer Nature, 2019) n.d.. As discussed in Chapter 3 (3.2.2), Des Forges notes that the willingness of the Hutu population to engage in violence against their Tutsi neighbours differed significantly between the Northern Province and other areas such as Central and Southern Rwanda, Des Forges (n 31) 11. According to Prunier, areas that were occupied by the RPF relatively early during the genocide 'suffered for a shorter period' than for example South and South-West Rwanda, where 'massacres went on for the longest, Prunier (n 31) 261. As will be discussed in Chapter 2, Kaitesi and Haveman state that 'over half of the entire gender violence case load nation-wide' that was referred to *gacaca* in 2008 came from the Southern Province, see Kaitesi and Haveman (n 36) 403, which may indicate that sexual violence was particularly prevalent in the Southern Province. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31); Prunier (n 31).

¹³⁷ Clark notes that in certain regions of Rwanda, genocide survivors more generally experienced a continued sense of vulnerability well after the genocide, including during the time when *gacaca* courts took place, which impacted on people's 'willingness to participate in public gatherings such as *gacaca*', Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 151. Lambourne notes, also more generally, 'regional variations in participation and trial proceedings' at *gacaca*, Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 233.

who participated in this research had experienced sexual violence and had their *gacaca* trial in two of the five provinces of Rwanda (Chapter 2).

Victim-survivors' justice needs and their expectations regarding a specific justice process are also likely to have been shaped by the broader context in which the justice process was established. Contextual factors that need to be considered include historical, cultural, political, legal and social factors. This research focuses on Rwandan victim-survivors who experienced genocidal sexual violence and who participated in a unique transitional justice process (*gacaca*). The findings are thus limited in that they cannot be generalised to the experiences of female victim-survivors in other armed-conflict or even genocide contexts. The specific context in which the sexual violence and *gacaca* occurred, as well as the functioning of *gacaca* and its objectives, are discussed in Chapters 3 and 4, and are again considered in the conclusion of this thesis to contextualise the research findings.

Another limitation derives from the specific law governing the functioning of *gacaca*. Crimes covered by *gacaca* law included crimes against humanity and acts of genocide committed between 1 October 1990 and 31 December 1994,¹³⁸ which means that only those crimes of sexual violence that were committed as part of the genocide between 1 October 1990 and 31 December 1994 were dealt with by *gacaca*. Therefore, this thesis does not include other experiences of sexual violence that are not covered by the *gacaca* mandate. Chapter 4 discusses in more detail which cases were covered by the *gacaca* jurisdiction.

1.7 Outline of the Thesis

The next chapter sets out the research methodology of this thesis, including the research objectives, outcomes and questions, as well as methodological and theoretical underpinnings of the research. The chapter outlines how the primary data of this research was collected through qualitative research by way of semi-structured interviews with Rwandan victim-survivors, along with the consideration of various ethical, methodological and practical challenges. A discussion of these challenges and how they were managed concludes this chapter.

Chapter 3 presents the context of victimisation relevant to this thesis, discussing the experiences of victim-survivors with conflict-related sexual violence. The chapter firstly

¹³⁸ *Organic Law N° 16/2004* (n 84), 1; Kaitesi (n 29) 68.

introduces conflict-related sexual violence as the broad context of victimisation, before discussing the Genocide against the Tutsi and sexual violence committed during the genocide as the specific context of victimisation. The chapter pays particular attention to the consequences of conflict-related sexual violence, because these consequences shape to a significant degree victim-survivors' justice needs and their expectations of a justice initiative.

Chapter 4 sets out *gacaca* as the justice initiative analysed in this thesis. The chapter provides the theoretical and practical background to *gacaca* and outlines in detail the functioning of the courts. The chapter introduces transitional justice as the overarching framework as well as five key themes of transitional justice – justice, truth, reconciliation, forgiveness and healing – which are central to the analysis of *gacaca* and the primary data of this thesis. The chapter also introduces Rwanda's approach to transitional justice, including an overview of the ICTR, Rwanda's ordinary courts and *gacaca*. The chapter details *gacaca*'s objectives and procedures, with a focus on its handling of sexual violence cases. Experiences of Rwandan victim-survivors with *gacaca* are discussed throughout the chapter as well as how these experiences influenced the various laws and regulations that determined the procedures of the *gacaca* courts regarding sexual violence.

Chapter 5 provides the conceptual framework that is used to analyse the interviewees' justice needs (Chapters 8 and 9). Based on a consolidation and analysis of existing literature on justice needs of victims of mass atrocities, with specific focus on victim-survivors, the chapter develops a comprehensive set of justice needs and provides a detailed definition of each need. In doing so, the chapter distinguishes process-related and outcome-related justice needs. Process-related justice needs include an enabling environment, participation, as well as information and support. Outcome-related justice needs comprise truth recovery, consequences, perpetrator responsibility, safety (for self and others), validation, vindication, reparation and empowerment.

Chapters 6-10 focus on analysis of the primary data. Chapter 6 provides important background information on the interviewees, including demographic details. The chapter also discusses the interviewees' experiences of the genocide, especially their experiences of sexual violence, as well as the consequences suffered afterwards. These consequences are distinguished as physical, psychological, social and economic consequences.

Chapter 7 outlines the functioning of *gacaca* as experienced by the interviewees. While Chapter 4 provided an overview of the procedures of *gacaca* dealing with sexual violence as specified in *gacaca* laws and regulations, the interviewees' accounts considered in Chapter 7 indicate that not all of the envisaged procedures were followed in practice. The chapter discusses the experiences of victim-survivors of the *gacaca* process including the reactions from perpetrators to the allegations made against them and sets out the verdicts reached in the cases of the 23 interviewees.

Chapters 8 and 9 analyse the interviewees' justice needs and assess how well the *gacaca* laws and procedures (Chapter 4), and *gacaca* in practice (Chapter 7), met these needs. Chapter 8 focuses on the interviewees' process-related justice needs, while Chapter 9 centres on outcome-related justice needs. The analysis of the interviewees' justice needs in the two chapters indicates that all justice needs included in the conceptual framework in Chapter 5 were relevant to the interviewees, with some being more and others being less important in the context of post-genocide Rwanda and *gacaca*.

Chapter 10 analyses how the interviewees' lives changed after participating in *gacaca*. In doing so, the chapter discusses persisting challenges as well as any positive changes in the lives of the interviewees since *gacaca* and at the time of the interview. The chapter also considers activities and initiatives beyond *gacaca* that contributed to the improvements of the interviewees' psychological health, including trauma training, therapy groups, and faith and religion.

Chapter 11 concludes this thesis by discussing its key findings and potential implications. The chapter starts by summarising the interviewees' justice needs (Chapters 8 and 9) and the development of these needs (Chapter 10), followed by a summary of *gacaca*'s main strengths and limitations in meeting these needs. The chapter then contextualises the research findings, highlighting the particularities of the interviewees' experiences of sexual violence and other contextual factors that are likely to have impacted the interviewees' expectations and experiences. The chapter also considers *gacaca*'s official and profound objectives to enable a more holistic assessment of *gacaca* dealing with sexual violence. Finally, the chapter discusses potential implications of the research findings for the design of future justice processes dealing with conflict-related sexual violence, and to support Rwandan victim-survivors beyond *gacaca*.

2 CHAPTER 2: METHODOLOGY

This chapter discusses the research methodology. The primary research involved semi-structured interviews with 23 Rwandan victim-survivors who had suffered sexual violence during the Genocide against the Tutsi and who had their case(s) tried by *gacaca*. The chapter firstly outlines the research objectives, outcomes and questions that lay at the heart of the research. This is followed by an explanation of the methodology used to conduct the primary research, including a discussion of theoretical underpinnings that informed the research design and an outline of how the data was collected and analysed.

The research design was informed by phenomenological and feminist approaches, which assisted in recognising and addressing matters specific to this research. Besides methodological issues deriving from the role of a qualitative researcher, research involving victim-survivors requires particular practical, ethical and safety considerations. Special care is needed in settings that bear a high risk of stigma for victim-survivors. This chapter outlines the various methodological, ethical and practical challenges encountered while interviewing Rwandan victim-survivors and discusses how these challenges were addressed. The challenges included identifying and inviting research participants, managing interview logistics, researching in another language, building rapport with interviewees, referral to support services and self-care.

2.1 Research Objectives

- 1) Analyse the justice needs of Rwandan victim-survivors who suffered sexual violence during the Genocide against the Tutsi and who had their case tried at *gacaca*
- 2) Assess how well *gacaca* addressed the justice needs of Rwandan victim-survivors
- 3) Analyse the experiences of Rwandan victim-survivors with *gacaca* and assess how these experiences relate to the objectives that *gacaca* was meant to achieve
- 4) Compare the justice needs of the victim-survivors interviewed for this research and their experiences with *gacaca* with other victim-survivors' justice needs and experiences with justice processes, including in Rwanda and in other settings, as identified in the research literature

- 5) Gain a better understanding of justice from the perspective of Rwandan victim-survivors.

2.2 Research Outcomes

- 1) Inform Rwandan initiatives to support victim-survivors who experienced sexual violence during the Genocide against the Tutsi beyond *gacaca*
- 2) Inform the design of future justice processes dealing with conflict-related sexual violence as to how victim-survivors justice needs can be supported
- 3) Contribute to the development of the construct 'victim-survivors' justice needs' to assist other researchers in analysing justice needs and to enable a more meaningful comparison of justice processes dealing with sexual violence
- 4) Improve the options for victim-survivors of conflict-related sexual violence to receive justice and access support to participate in a justice processes, as well as other support addressing their needs.

2.3 Research Questions

The primary research questions that this thesis seeks to answer are:

- 1.1. What were the justice needs of female victim-survivors who suffered sexual violence during the 1994 Genocide against the Tutsi in Rwanda and who had their cases of sexual violence tried by *gacaca*?
- 1.2. How well did *gacaca* meet the justice needs of these victim-survivors?

The secondary research questions considered in this thesis are:

- 2.1. What new needs emerged for the victim-survivors during/after their participation in *gacaca* and did these needs change over time?
- 2.2. In the view of the victim-survivors, what could have been done differently during *gacaca* and what would have helped them during the process?
- 2.3. How did the victim-survivors understand and define justice, and how did their understandings compare with the approach to justice taken by *gacaca*?
- 2.4. How did the justice needs of the victim-survivors interviewed for this research compare with

- a. The intentions of the legislation and regulations that established the procedures and objectives of *gacaca*?
- b. The justice needs and experiences of victim-survivors discussed in other research by scholars and experts in the field?

2.4 Research Approach

The research gaps identified in Chapter 1 influenced the decision to analyse the justice needs of Rwandan victim-survivors who suffered sexual violence during the Genocide against the Tutsi and who had their case tried at a *gacaca* court. A qualitative approach was selected because qualitative research focuses on the investigation of social complexities ‘to truly explore and understand the interactions, processes, lived experiences, and belief systems that are part of individuals, institutions, [and] cultural groups’.¹³⁹ This objective ties in with the research topic, focusing on victim-survivors’ experiences with justice processes, as well as with the research questions articulated for this thesis. The qualitative approach assisted in answering all primary and secondary research questions listed earlier, at least to some extent.¹⁴⁰ Qualitative research can also consider the diversity of individuals with differing expectations and experiences.¹⁴¹ Since individual experiences with the genocide and with *gacaca* were assumed to be diverse, qualitative research was the most suitable approach.

Interviews constitute one method to collect qualitative data.¹⁴² Qualitative interviews, such as semi-structured interviews used in this research, aim to elicit the interviewees’ views and opinions.¹⁴³ Miller explains how qualitative interviews can provide us ‘with a means of understanding the social world from the distinct points of view of the research subjects, highlighting the meanings individuals attribute to their experience’.¹⁴⁴ Since one research objective identified earlier in this chapter relates to a better understanding of the experiences

¹³⁹ Zina O’Leary, *The Essential Guide to Doing Your Research Project* (SAGE, 2010), 130.

¹⁴⁰ As outlined earlier, research question 2.4 also required an extensive review of the literature on justice needs of victims and victim-survivors (in particular of conflict-related sexual violence) as well as of *gacaca* legislation and regulations.

¹⁴¹ De Brouwer and Ruwebana (n 40) 944.

¹⁴² Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (SAGE, 2006), 25.

¹⁴³ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (SAGE Publications, Inc, 4th ed, 2014), 190.

¹⁴⁴ Jody Miller, ‘Researching Violence against Street Prostitutes’ in Martin D. Schwarz (ed), *Researching Sexual Violence Against Women: Methodological and Personal Perspectives* (Sage, 1997) 144, 145.

of victim-survivors participating in *gacaca*, qualitative interviews were selected as the most appropriate data collection method.¹⁴⁵

Qualitative research appreciates various methodologies,¹⁴⁶ including phenomenology and grounded theory.¹⁴⁷ Researchers may choose to draw on key points of several qualitative approaches to develop their own qualitative framework of enquiry.¹⁴⁸ The decision to conduct qualitative interviews and the design of these interviews were informed by various elements of phenomenology, feminist approaches, grounded theory and evaluation research. How these approaches determined and impacted on the research design is discussed in more detail below.

2.4.1 Phenomenology

Phenomenology informed the research questions as well as the methods of data collection. According to Husserl, phenomenology is concerned with ‘the way people make sense of their world’.¹⁴⁹ Phenomenological methods are meant to capture ‘lived experiences of individuals about a phenomenon as described by the participants’.¹⁵⁰ Drawing on phenomenology assisted in addressing both the primary and secondary research questions, since all questions required an assessment of victim-survivors’ experiences with *gacaca*. O’Leary highlights the value of understanding lived experiences for the design of ‘problem resolution strategies’.¹⁵¹ A number of research outcomes outlined earlier relate to the practical resolution of problems.¹⁵² Therefore, a research methodology informed by phenomenology also assisted in addressing some of the research outcomes.

¹⁴⁵ De Brouwer and Ruvebana conducted research with genocide survivors in Rwanda about their *gacaca* experience, using a semi-structured interview schedule. They explain that this approach to interviewing allowed for the consideration of 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 could give more attention and time to these issues.

De Brouwer and Ruvebana (n 40) 944. This rationale directly applies to this research and therefore supported selecting semi-structured interviews as the most suitable method for this research.

¹⁴⁶ Uwe Flick, *An Introduction to Qualitative Research* (SAGE Publications, 4th ed, 2009), 14.

¹⁴⁷ Creswell (n 143) 13.

¹⁴⁸ O’Leary (n 139) 131.

¹⁴⁹ Sotirios Sarantakos, *Social Research* (Palgrave MacMillian, 4th ed, 2013), 44, citing Husserl, 1950.

¹⁵⁰ Creswell (n 143) 14.

¹⁵¹ O’Leary (n 139) 140.

¹⁵² Including the identification of measures to support Rwandan victim-survivors beyond *gacaca*, and informing the design of future transitional justice processes.

Phenomenology is an overall approach to research but does not prescribe one clear method of collecting and analysing data. On the contrary, a number of different methods can find application in a phenomenological study. One common method of phenomenological research is the conduct of interviews,¹⁵³ since interviews can assist in generating 'rich descriptions of lived experiences' of the interviewees.¹⁵⁴ The preparation of interviews requires first of all 'the sourcing of people who have experienced a particular phenomenon and conducting one or more in-depth interviews with each participant'.¹⁵⁵ Participation in a *gacaca* trial dealing with sexual violence was the phenomenon that the victim-survivors interviewed for this research had experienced. It was anticipated that the interviewees would be able to provide 'rich descriptions' of their experience with the *gacaca*. Phenomenological ideas were used to design the interview questions to elicit the interviewees' 'lived experiences'.¹⁵⁶

2.4.2 Feminist research

Similar to phenomenology, there is no single unified feminist theory and thus no one clear feminist methodology.¹⁵⁷ Nevertheless, a number of characteristics lie at the heart of feminist research that informed this thesis. While traditional social science research is often accused of disregarding a gender distinction, feminist research places gender and gender inequality at the centre of its analyses.¹⁵⁸ Feminist researchers tend to be politically motivated and committed to social action aiming at empowering women and improving women's status.¹⁵⁹

¹⁵³ Creswell (n 143); Clark E. Moustakas, *Phenomenological Research Methods* (Sage, 1994) 5, 114; Kim Usher and Debra Jackson, 'Phenomenology' in Jane Mills and Melanie Birks (eds), *Qualitative Methodology: A Practical Guide* (Sage, 2014) Ch 11, 188.

¹⁵⁴ O'Leary (n 139) 139.

¹⁵⁵ Ibid 139.

¹⁵⁶ Phenomenological interviews, according to O'Leary, reflect a conversation, allowing participants to talk in depth about 'what a phenomenon feels like, what it reminds them of, and how they would describe it', Ibid 139. In the process, the researcher can support participants by asking the question of 'what something feels like' instead of just asking 'why' and 'how' questions. Moustakas explains that in a phenomenological interview, participants are asked to 'take a few moments to focus on the experience, moments of particular awareness and impact, and then to describe the experience in full', Moustakas (n 153) 114. During the interview, respondents can be encouraged to elaborate on certain aspects of their narrative and to provide further insight into the words they choose to describe their experience.

¹⁵⁷ Claire M. Renzetti, 'Confessions of a Reformed Positivist' in Martin D. Schwarz (ed), *Researching Sexual Violence Against Women: Methodological and Personal Perspectives* (Sage, 1997) 131, 132; O'Leary (n 139) 145; Liz Kelly, 'Journeying in Reverse: Possibilities and Problems in Feminist Research on Sexual Violence' in Loraine Gelsthorpe and Allison Morris (eds), *Feminist Perspectives in Criminology* (Open University Press, 1990) 107, 107-8.

¹⁵⁸ Fineman and Zinsstag (n 118) 2; Renzetti (n 157) 133; Kelly (n 157) 107-8.

¹⁵⁹ Renzetti (n 157) 133; O'Leary (n 139) 146; Kelly (n 157) 107-8.

The focus of feminist research lies in individual experiences, particularly those of women and other marginalised groups.¹⁶⁰ These characteristics of feminist research determined the focus of this thesis on female victim-survivors, their access to justice and an improvement of relevant processes. Feminist methodologies also influenced the development of the research questions concerned with the personal experiences of victim-survivors with the *gacaca* process. Furthermore, feminist methodologies impacted the approach to researcher reflexivity, which is discussed in more detail later in this chapter. Finally, because of its commitment to giving individuals and particular marginalised groups a voice, feminist research prioritises qualitative methods such as in-depth interviews as well as convenience and purposive sampling strategies.¹⁶¹ Feminist approaches have thus also influenced the choice of the data collection method.

2.4.3 Evaluation research

The term evaluation research refers to all research that aims to evaluate an initiative by ‘identifying [its] consequences as well as opportunities for modification and improvement’.¹⁶² Evaluation research may include an assessment of the processes and outcomes of an initiative by considering the perspectives of various stakeholders.¹⁶³ This research involves an assessment of *gacaca* from the perspectives of a selected group of victim-survivors in terms of how *gacaca* met their justice needs. The research findings add to past research and increase the current knowledge base available to those whose focus is on evaluating *gacaca* in a more holistic manner.¹⁶⁴

Outcome evaluation gathers data and information about the effectiveness of a particular intervention, for example by assessing whether its objectives have been met and what other outcomes have resulted from it.¹⁶⁵ The results of such a study can assist in determining ‘whether an initiative should be continued as is, modified, expanded, or scrapped’.¹⁶⁶ The findings are mainly used to make decisions on the handling of the intervention in question (for example, whether it needs modification or not) but can also inform other stakeholder

¹⁶⁰ Renzetti (n 157) 133; O’Leary (n 139) 146; Kelly (n 157) 107-8.

¹⁶¹ Renzetti (n 157) 135; Kelly (n 157) 108.

¹⁶² O’Leary (n 139) 159.

¹⁶³ Ibid 159.

¹⁶⁴ For example, including men’s experiences of *gacaca* and an assessment of how well *gacaca* responded to offences that did not involve sexual violence.

¹⁶⁵ O’Leary (n 139) 159.

¹⁶⁶ Ibid 159.

groups and initiatives.¹⁶⁷ These various objectives of evaluation research have informed several research questions, including questions 2.3, and 2.4a, which compare the interviewees' experiences with the procedures and objectives of *gacaca*, as determined by *gacaca* laws and regulations, in particular in regards to trying sexual violence, as well as with *gacaca*'s approach to justice. Evaluation research also influenced research question 2.1, which asks about the perceived impact on the victim-survivors' lives of having participated in *gacaca*. As suggested by evaluation research, answers to questions about the value and impact of a specific initiative can inform 'other stakeholder groups and initiatives'. Informing other initiatives both in Rwanda as well as in other contexts reflect two of the key research outcomes of this thesis.

2.4.4 Grounded theory

Grounded theory has merits for many types of qualitative research.¹⁶⁸ Since grounded theory focuses on 'unravelling the elements of experience',¹⁶⁹ it constitutes another qualitative research approach relevant for this thesis, informing predominantly the data analysis part of the research. In addition, various principles of the 'constructivist version of grounded theory' as developed by Charmaz were considered as part of this researcher's reflexivity.¹⁷⁰

Researchers using a grounded-theory approach initially study the elements of experience and their interrelationships.¹⁷¹ Based on the analysis of relevant data, the researcher develops a theory that is meant to assist in understanding the nature and meaning of an experience for a particular group of people in a particular setting.¹⁷² Grounded theory appreciates simultaneous collection and analysis of data in an iterative process.¹⁷³ Glaser explains how grounded theory researchers collect a first set of data, analyse it and 'look for, identify and

¹⁶⁷ Ibid 159.

¹⁶⁸ Ibid 131; Johnny Saldana, *The Coding Manual for Qualitative Researchers* (SAGE, 2009), 51; Flick (n 149) 428; Kathryn Roulston, 'Analysing Interviews' in Uwe Flick (ed), *The SAGE Handbook of Qualitative Data Analysis* (SAGE Publications Ltd, 2014) 297, 304-5.

¹⁶⁹ Moustakas (n 153) 4.

¹⁷⁰ Kathy Charmaz, *Constructing Grounded Theory* (SAGE, 2nd ed, 2014), 12-21. See also John W. Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (SAGE Publications, 3rd ed, 2013), 87-8; Robert Thornberg and Kathy Charmaz, 'Grounded Theory and Theoretical Coding' in U. Flick (ed), *The SAGE Handbook of Qualitative Data Analysis* (Sage Publications Ltd, 2014) 153, 154.

¹⁷¹ Moustakas (n 153) 4.

¹⁷² Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine Pub. Co, 1967), 2-3. Moustakas (n 153) 4. O'Leary (n 139) 131.

¹⁷³ Thornberg and Charmaz (n 170) 153.

select one core category',¹⁷⁴ which influences the decision on 'what data to collect next and where to find them'.¹⁷⁵ The primary research of this thesis does not reflect a pure grounded theory approach as described by Glaser, since data was not simultaneously collected and interpreted, and analysis of the interviews did not lead to the decision to collect new data elsewhere. Furthermore, the analysis did not focus on one core category but on several themes that emerged during the interviews.¹⁷⁶ Nevertheless, qualitative researchers can utilise analytic strategies of grounded theory regardless of 'whether or not the research purpose involves the development of grounded theory'.¹⁷⁷ Grounded-theory methods of data analysis can find application in non-grounded theory studies and are particularly valuable for the coding and interpretation of interview data.¹⁷⁸ Such methods include the 'constant comparative method' as well as initial, focused, axial and theoretical coding.¹⁷⁹ How these methods assisted the data analysis part of this research is described in more detail later (2.7).

2.5 Data Collection

The qualitative data of this thesis was collected in semi-structured interviews with 23 Rwandan victim-survivors.¹⁸⁰ The interviews were conducted by the author of this thesis, assisted by a Kinyarwanda-English interpreter, in the Southern Province and Kigali City between December 2015 and January 2016.¹⁸¹ Interview questions aimed at eliciting the interviewees' motivations, expectations and needs when raising their case at *gacaca*, their experiences with the process and the perceived impact of their participation. In doing so, the interviewees were encouraged to describe in detail their *gacaca* trial as well as their lives after *gacaca*.¹⁸²

Qualitative research assumes that 'purposefully selecting' participants or sites can best answer the research questions developed by the researcher.¹⁸³ Random sampling or the

¹⁷⁴ Ibid 158, quoting Glaser 1978; 1998; 2005.

¹⁷⁵ Ibid 155, quoting Glaser, 1978.

¹⁷⁶ See Appendix 9: Themes emerging during the first read of interview transcript.

¹⁷⁷ Roulston (n 168) 303.

¹⁷⁸ Saldana (n 168) 51; Roulston (n 168) 304-5.

¹⁷⁹ Roulston (n 168) quoting Lofland et al., 2006, 303. See also Saldana (n 168) 51.

¹⁸⁰ See Chapter 6 (6.1) for a summary of demographic details. See also Appendix 2: Demographic details of interviewees.

¹⁸¹ Further information about the interview location, the interview process and the interviewees is discussed in Section 2.9 below. The section will also address why the research only took place in two provinces.

¹⁸² See Appendix 5: Interview Schedule Victim-survivors.

¹⁸³ Creswell, Research Design: Qualitative, Quantitative, and Mixed Method Approaches (n 183) 189.

inclusion of large numbers of participants and sites is not considered to be necessary during a qualitative approach.¹⁸⁴ On the contrary, qualitative research is usually conducted 'in natural settings with small numbers, including non-random sampling strategies'.¹⁸⁵ The 23 Rwandan victim-survivors who participated in this research were purposefully selected based on the following criteria:¹⁸⁶

- 1) The interviewee had suffered sexual violence during the Genocide against the Tutsi
- 2) The interviewee was female
- 3) The interviewee had her case tried at *gacaca*
- 4) The interviewee consented to being interviewed as part of the research study for this thesis.¹⁸⁷

As noted in Chapter 1, 6000-8000 cases of rape and sexual torture were reportedly tried by *gacaca* courts in 2008. It is, however, unclear how many plaintiffs these cases involved. Most interviewees were raped by multiple perpetrators, including at different locations, which are likely to have been handled as different cases. Other interviewees reported that they participated with other victim-survivors in the same trial since they were accusing the same perpetrators. It is possible that a trial with multiple plaintiffs was still counted as a single case even though it involved more than just one victim-survivor. Since *gacaca* documents on sexual violence were not accessible at the time of writing of this thesis, the exact number of victim-survivors involved in the cases that were tried by *gacaca* could not be verified. Consequently, no definite assessment of the total number of victim-survivors who would have met the selection criteria can be made.

¹⁸⁴ Ibid.

¹⁸⁵ O'Leary (n 139) 130.

¹⁸⁶ Section 2.9 explains in detail how the interviewees were identified and selected.

¹⁸⁷ The importance of consent as a criterion has also been stressed by Moustakas (n 153) 107.

The qualitative data also includes one semi-structured interview with a female psychotherapist, MUKANSORO Emilienne.¹⁸⁸ Emilienne fulfilled two roles relevant to this research. Firstly, she worked as a trauma counsellor for the victim organisation IBUKA to accompany victim-survivors during *gacaca*. She supported victim-survivors during the information gathering phase and later during their *gacaca* trial and appeal (if applicable) across seven sectors of Rwanda, including the sectors where the interviewees had their *gacaca* trials. According to Emilienne, she attended *gacaca* as a support person up to three to four times per week over several years, including during the trial phase of sexual violence cases. Emilienne assisted six of the interviewees as their trauma counsellor during their *gacaca* trial and was therefore present during a number of trials that the interviewees discussed as part of this research. Secondly, in the aftermath of *gacaca*, Emilienne established several therapy groups as part of a project of the Rwandan psychiatrist Dr Naasson Munyandamutsa to support women who had suffered sexual violence during the genocide. More than half of the interviewees were members of one of these groups. At the time of the interviews, some of these groups had been running for more than five years, since they had been formed after *gacaca* finished.

The interview with Emilienne included questions in relation to her role both as trauma counsellor during *gacaca* and as the leading psychotherapist of the groups. Regarding *gacaca*, the interview questions aimed at eliciting Emilienne's view on victim-survivors' motivations, expectations and experiences during *gacaca*. Regarding the support groups, interview questions focused on finding out about the perceived impact of membership of the group on the lives of the victim-survivors, as well as Emilienne's evaluation of how the members of the group had been progressing over the years. Emilienne also shared some information on what sort of topics she discussed during group sessions and what kind of psychotherapeutic work was involved in the sessions. Even though the interview was limited to discussing Emilienne's thoughts and experiences, she noted:

¹⁸⁸ Interviewing trauma counsellors or other stakeholders was not part of the original research design for this thesis. However, once the author had established a relationship with Emilienne for the purpose of identifying interviewees and had learned about Emilienne's role in the *gacaca* trials, an interview was considered an invaluable contribution to this research. Interviews with other trauma counsellors were not feasible due to time and resource constraints. Unless indicated otherwise, all references to Emilienne relate to this interview, see Interview with Emilienne MUKANSORO, Psychotherapist (Judith Rafferty, 10 January 2016). The interview with Emilienne was conducted by the author in French and was later transcribed by a professional transcriber and then translated by the author of this thesis.

In fact, I don't really have a personal view any more when I am with these women. You see, I have accompanied these women, who have experienced rape, for over five years and sometimes it feels like I am just speaking on their behalf. It's as if I was just repeating what I've heard, that's what I speak. Yes, I do have my personal opinion, but it's based on what I have often heard from the women. And it's what I have observed when accompanying the women. Therefore, it's what I have heard from the women and what I have observed.

Emilienne's years of experience in working with victim-survivors during and after *gacaca*, as well as her attitude and commitment to represent her clients' views, made her a credible and valuable source to support some of the points that emerged during the interviews with the 23 victim-survivors.

2.6 Data Analysis

All interviews were recorded on an audio recording device, and the Kinyarwanda questions and responses were later transcribed and translated by a Kinyarwanda-English translator.¹⁸⁹ The translated transcripts were analysed, guided by a grounded theory approach to data analysis. The analysis process commenced with a 'first read' through all interview transcripts to get an understanding of the 'overall meaning', as suggested by Creswell.¹⁹⁰ Since the transcripts did not provide information about utterance,¹⁹¹ the audio recordings of the interviews as well as the field notes were used to add descriptions about non-verbal behaviours (such as crying or other signs of distress) and actions.¹⁹² During the first read, notes were taken about emerging themes,¹⁹³ which were considered later during the data analysis,¹⁹⁴ as suggested by Creswell.¹⁹⁵ Each interview was then coded, meaning that raw interview data was organised by segmenting text into certain categories that were labelled

¹⁸⁹ Challenges associated with researching in another language and how they were addressed in this research are discussed in Section 2.9.

¹⁹⁰ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 197.

¹⁹¹ Roulston (n 168) 299.

¹⁹² *Ibid.* For example, several interviewees stood up during the interviews to show the researcher scars on their bodies, or to show the researcher medical documents that they were carrying to underline their physical sufferings.

¹⁹³ See Appendix 9: Themes emerging during the first read of interview transcripts.

¹⁹⁴ Some of the themes related conceptually to justice-needs and were discussed as such in Chapters 8 and 9, while others determined the content of Chapter 6, 7 and 10. For example two emerging themes consisted of the interviewees' genocide story and consequences suffered during the genocide, which informed the content of Chapter 6.

¹⁹⁵ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 197.

with a meaningful term.¹⁹⁶ The codes used during the data analysis included some pre-determined theory-driven codes,¹⁹⁷ as well as newly developed data-driven codes ‘on the basis of the emerging information collected from participants’.¹⁹⁸ Coding the interview transcripts was an iterative process, which, based on advice by Roulston, included ‘reading, focused coding, reflection, writing and rereading’.¹⁹⁹ The iterative coding process enabled making connections between ideas and generating overarching themes.²⁰⁰ These themes were then used to ‘form complex theme connections’.²⁰¹

The qualitative data analysis was concluded by an interpretation of the findings. This interpretation included a comparison of the findings from the analysis of the interviews with other research to highlight similarities or differences. Contextual factors that were thought to have influenced the interviewees’ expectations and experiences were considered. These factors include, for example, the historical relationship between Hutu and Tutsi, relevant cultural norms, as well as official and profound objectives of *gacaca* and transitional justice as the overarching justice framework. The research findings were also compared with the legislation and procedures that established the process and objectives of *gacaca* to investigate whether and how interviewees’ experiences matched or differed from how *gacaca* was meant to function and what it was meant to achieve.

2.7 Credibility of Findings

O’Leary explains that qualitative research is sometimes criticised for ‘not reaching standards of credibility’.²⁰² However, qualitative studies can be rigorous and can be measured by various criteria to ensure reliability and validity, including through a thorough design of the research process, including data collection and data analysis.²⁰³ The methodological approach to data

¹⁹⁶ Ibid 198. See also Jessica T. DeCuir-Gunby, Patricia L. Marshall and Allison W. McCulloch, ‘Developing and Using a Codebook for the Analysis of Interview Data: An Example from a Professional Development Research Project’ (2011) 23(2) *Field Methods* 136, quoting Miles and Huberman 1994:65, 137.

¹⁹⁷ Saldana (n 168) 62.

¹⁹⁸ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 199. See also DeCuir-Gunby, Marshall and McCulloch (n 198) 137; Saldana (n 168) 100-1. For a list of codes used during the analysis, see Appendix 10.

¹⁹⁹ Roulston (n 168) 305.

²⁰⁰ Ibid 305.

²⁰¹ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 196, 200. The coding process was conducted using the computer program Nvivo, rather than relying on manual coding. The key themes that emerged during the data analysis are discussed in Chapters 6-10.

²⁰² O’Leary (n 139) 131.

²⁰³ David Silverman, *Interpreting Qualitative Data* (Sage, 4th ed, 2011) 360; Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 201.

collection and analysis in this thesis, as detailed in this chapter, is based on established research theories and similar studies by other researchers. Furthermore, during the data collection phase, the validity of the research was enhanced through saturation.²⁰⁴ The concept of saturation comes from grounded theory and refers to the point at which ‘gathering fresh data no longer sparks new insights or reveals new properties’.²⁰⁵ The number of participants in this study (23) is consistent with saturation requirements of both phenomenology²⁰⁶ and grounded theory, and is consistent with participant numbers interviewed in comparable studies and cited in relevant literature.²⁰⁷

O’Leary explains that qualitative researchers who investigate populations look for ‘rich understanding that may come from the few rather than the many’, rather than seeking representativeness.²⁰⁸ The in-depth exploration of the experiences of individual female victim-survivors who participated in *gacaca* lay at the heart of this study. The author of this thesis therefore does not claim that the findings of this study are statistically representative of all female victim-survivors who participated in *gacaca*, a point also raised as a research limitation.²⁰⁹ Nevertheless, while there was no deliberate selection of interviewees based on personal characteristics such as age, marital status and income, the group of interviewees showed some variation in these characteristics.²¹⁰ For example, the interviewees had participated in *gacaca* courts in nine different sectors, of which eight were located in the

²⁰⁴ See, e.g., O’Leary (n 139) 132. See also Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 202.

²⁰⁵ Charmaz (2006) as cited in Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 189. See also O’Leary (n 139) 139.

²⁰⁶ Phenomenological methods usually require about three to ten participants, see Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 189.

²⁰⁷ Ibid 115, 189. See also Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (n 57) 54; de Brouwer and Ruvebana (n 40).

²⁰⁸ O’Leary (n 139) 186.

²⁰⁹ De Brouwer and Ruvebana who conducted research with 28 Rwandan genocide survivors about their opinions on *gacaca* state that they ‘believe that this group of 28 survivors interviewed is a representative group to draw some conclusions from’, De Brouwer and Ruvebana (n 40) 944. They further highlight the importance of hearing individual stories to get a better insight into ‘the legacy of the *gacaca* courts’. Similarly, the author of this thesis argues that the experiences of the 23 victim-survivors interviewed in this research contributes to a better gendered understanding of the legacy of *gacaca*, and allows for certain conclusions to be drawn for Rwandan victim-survivors who participated in *gacaca*.

²¹⁰ See Chapter 6 (6.1) for a summary of demographic details. See also Appendix 2: Demographic details of interviewees.

Southern Province and one in Kigali.²¹¹ Most interviewees had their cases tried in *gacaca* courts in rural areas of the Southern Province, while six interviewees had participated in trials in urban areas, including in the Southern Province and in Kigali. Furthermore, variation was increased by the interviewees' diversity in terms of level of education, age, marital status, number of children given birth to and still alive, as well as religious preferences. These identifying characteristics were collected at the time of the interview and some of them were considered during the analysis.

Finally, qualitative researchers can use a number of strategies to maximise the validity of their data collection and analysis.²¹² These strategies include a clarification of the researcher bias, the inclusion of negative or discrepant information and rich, thick description of findings.²¹³ All of these strategies were addressed during the research and are discussed in the next sections.

2.8 The Researcher's Reflexivity

Qualitative research acknowledges that researchers may position themselves and bring personal value to the study.²¹⁴ In this section the author discusses her personal relationship with the research and her relationship with her interpreter and the interviewees. As this section focuses on personal reflexivity of the researcher, it has been written in the first person.

Miller cautions that the personal backgrounds of qualitative researchers as well as their 'political and theoretical understandings of the social world' can influence how the experiences of research participants are interpreted.²¹⁵ To address this challenge, I wrote a list with all preconceptions that I had in relation to my research before starting my fieldwork.²¹⁶ This activity was based on phenomenological ideas, suggesting that researchers

²¹¹ As discussed in Section 2.9, the author had originally planned to enhance variation by interviewing victim-survivors in all five provinces of Rwanda. Because of logistical constraints, however, the research was limited to two provinces. As discussed in Chapter 1 (1.5), the genocide played out locally, which is why the findings of this research cannot be generalised across other provinces in Rwanda.

²¹² Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 201.

²¹³ See, e.g., O'Leary (n 139) 132. See also Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 202.

²¹⁴ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 186-7; Thornberg and Charmaz (n 170) 154; Juliet M. Corbin and Anselm L. Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (SAGE, 4th ed, 2015), 46.

²¹⁵ Miller (n 144) 150.

²¹⁶ See n 219 for some examples.

commence a study by articulating their personal background and any preconceptions they have relating to the topic.²¹⁷ The activity was also supported by feminist researchers, who suggest openly acknowledging one's own assumptions, beliefs and values that could impact on research as part of a built-in reflexivity approach.²¹⁸ When revisiting my preconceptions after I had collected my data and making a first evaluation of my interviews, I noted that some of my preconceptions were confirmed while others were contradicted.²¹⁹ The fact that my analysis and interpretation of the data contradicted some of my assumptions suggests that I did not analyse and interpret my data in a way to achieve the results that I thought I would get, but that my analysis allowed for new data to emerge. I also kept a fieldwork diary to capture my observations, reflections and feelings, which I considered later during the data-analysis process.²²⁰

Another challenge associated with qualitative research derives from the intimate relationship between the researcher and research participants and the impact of this relationship on the data-collection process.²²¹ Both phenomenological and feminist researchers assume a close, collaborative relationship and reciprocity between the researcher and the 'researched',²²² embracing these factors as important characteristics of their methodologies. Challenges deriving from this close relationship were identified as part of my built-in reflexivity and are considered in various sections below.

²¹⁷ Moustakas (n 153) 5, 105-6, 122.

²¹⁸ Renzetti (n 157) 133-4.

²¹⁹ For example, based on the literature review regarding victim-survivors' experiences with *gacaca*, I believed that no interviewee would have wanted to discuss sexual violence in public. However, one of my interviewees indicated that she would have preferred to have her case tried in public, because she had also been raped in public in front of her community. Furthermore, based on my literature review, I believed that most interviewees' experiences with *gacaca* would predominantly be negative. I wrote as a preconception 'I believe that the majority of women would be dissatisfied with *gacaca*, since it added to their traumatisation, community ostracism and stigma, and since *gacaca* did not provide reparation'. Even though interviewees described their *gacaca* experience as challenging and traumatic at times, benefits of participating in *gacaca* still appeared to outweigh the challenges for most interviewees, as is discussed in Chapters 7-9.

²²⁰ Writing up field notes that may later be used during the data analysis process is a common qualitative research practice, particularly during ethnographies, but also during interviews, Flick (n 149) 296; Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 183) 195; Silverman (n 203) 362. Field notes have also been used by other researchers conducting interviews with victim-survivors, see Christine Mattley, 'Field Research with Phone Sex Workers' in Martin D. Schwarz (ed), *Researching Sexual Violence Against Women: Methodological and Personal Perspectives* (Sage, 1997) 101.

²²¹ Miller (n 144) 145, 147.

²²² Renzetti (n 157) 133, 135. See also O'Leary (n 139) 146. This is also a key feature of all postmodern methodologies.

2.9 Methodological, Ethical and Practical Challenges

Researchers conducting studies with human beings need to anticipate ethical and safety issues that may arise during the collection, analysis and dissemination of their data.²²³ For example, the Australian Research Council requires ‘any researcher conducting research with human participants’ to adhere to the values and principles listed in the National Statement on Ethical Conduct in Human Research.²²⁴ Van der Merwe, Baxter and Chapman caution that research with victims of human rights abuses requires ‘very sensitive methodologies that do not harm (or further traumatize) those participating in research’.²²⁵ Sensitive methodologies are particularly important when research involves violence against women,²²⁶ especially when it concerns violence of a sexual nature.²²⁷ The World Health Organization (WHO) explains that ‘the highly sensitive nature of sexual violence poses a unique set of challenges for any data gathering activity’,²²⁸ and developed special ‘ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies’.²²⁹ I used these ethical and safety recommendations as a guideline to organise and conduct my fieldwork.

Later I discuss methodological, ethical and practical issues specific to my research with victim-survivors in Rwanda. I consider how ethical issues impacted on and reinforced methodological and practical challenges that I encountered when planning and conducting interviews in a country and culture that I was unfamiliar with. While I was preparing for my fieldwork, I was living and working in Australia. I had no existing relationships with any person in Rwanda and

²²³ Creswell, *Research Design: Qualitative, Quantitative, and Mixed Method Approaches* (n 6, 92).

²²⁴ Australian Research Council & Australian Vice-Chancellors' Committee National Health and Medical Research Council, *National Statement on Ethical Conduct in Human Research* (Australian Government, Rev. ed, 2007), 1.

²²⁵ Van der Merwe, Baxter and Chapman (n 114).

²²⁶ Charlotte Watts et al., *Putting Women First: Ethical and Safety Recommendations for Research on Domestic Violence Against Women* (Recommendations, 2001), 6-7.

²²⁷ Reis (n 113) 189.

²²⁸ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (Recommendations, 2007), 1.

²²⁹ Ibid. These guidelines mainly apply to research conducted in ‘emergencies’. However, the WHO also cautions that ‘any inquiry into sexual violence must be designed and carried out with an understanding of ... the specific context in which the inquiry will take place’, see World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 7. I found that the WHO Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies contained valuable insights into safety issue associated with my research in Rwanda.

had never been to the country myself.²³⁰ Since the methodological, ethical and practical challenges of my research are interwoven, I discuss them concurrently. I used the WHO ethical and safety recommendations as a guideline to organise and conduct my fieldwork, because the National Statement on Ethical Conduct in Human Research does not discuss specific ethical issues arising when researching violence against women.

2.9.1 Finding and inviting research participants

Conducting research with vulnerable groups and sensitive topics restricts researchers in their approach to finding participants. Scholars who had previously conducted research with genocide survivors in Rwanda had identified their participants by collaborating with local organisations working with survivors.²³¹ Such a collaboration was also helpful to obtain the research clearance by the Rwandan Ministry of Education, which, at the time of undertaking this research, required any researcher planning to conduct research in Rwanda to have an affiliation with a Rwandan organisation. Establishing a collaboration with a local organisation in Rwanda from outside the country proved difficult for me. Emails were not the most appropriate means to make first contact with organisations that did not know me. I found that meaningful relationships were best established by meeting face-to-face. Therefore, I travelled to Rwanda to prepare my fieldwork and to introduce myself personally to organisations who were working with genocide survivors. This trip was invaluable for my research, since I was also able to find an institution that agreed to support my research as the ‘Affiliating Institution’ required as part of the research clearance process.²³² I also made important contacts who assisted me later in recruiting my participants. Finally, during this first trip, I met and established a personal relationship with two Rwandan women who later assisted me as my interpreter and translator.

Originally, I had planned to source participants in five different regions of the country to increase their variety. However, once on the ground in Rwanda, I realised that identifying and

²³⁰ Even though I had not been to Rwanda before my PhD research, I had previously lived and worked in Africa. In 2011, I was engaged as a consultant by the International Rescue Committee (IRC) to research linkages between the formal and informal justice system in the Central African Republic (CAR) and to develop training resources for village chiefs to support their informal conflict resolution practice. As part of my engagement I interviewed various stakeholder groups, including village chiefs, groups of female community members, and various minority groups. For more information about my research in CAR, see Herrmann and Holland (n 56).

²³¹ De Brouwer and Ruvebana (n 40) 943-4. See also Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (n 57) 63-4.

²³² My research was endorsed by CNLG as the affiliating organisation.

inviting victim-survivors for an interview in a safe manner required extensive preparation. Furthermore, interviews needed to be conducted in a safe location and participants had to be provided with the contact details of an affordable and accessible counselling service. Building personal relationships with professionals and planning my interviews in an ethical and safe manner in five different parts of Rwanda proved impossible with the budget and time available for my research. During my two trips to Rwanda, I met several Rwandan professionals who helped me to recruit participants in two Rwandan provinces, including the Southern Province and Kigali.²³³ Kaitesi and Haveman state that 'over half of the entire gender violence case load nationwide' came from the Southern Province.²³⁴ Therefore, the focus of the research on the Southern Province appears an appropriate choice.

Two main methods were used to invite victim-survivors to participate in my research:

- 1) My invitation to participate was verbally passed on to potential participants by the professionals who worked with these victim-survivors and knew them personally

Passive snowball recruitment was used. Victim-survivors who had been personally invited by the aforementioned professionals were encouraged to pass on the information about my study to other victim-survivors who they knew met the selection criteria.

One of the professionals who assisted me in finding participants was Emilienne, the psychotherapist who was also interviewed as part of this research (see 2.6 above). Emilienne ran support groups in both urban and rural areas of the Southern Province for female victim-survivors who had suffered sexual violence during the genocide. She passed my invitation on to all those group members who had participated in *gacaca* and invited them to preliminary information sessions.²³⁵ In these sessions, Emilienne introduced my interpreter and me to the participants and gave us an opportunity to talk about ourselves and my research. Some of the group members had invited other victim-survivors from their community to participate in my

²³³ One of them was Emilienne. The other professionals cannot be named for reasons of confidentiality.

²³⁴ Kaitesi and Haveman (n 36) 403.

²³⁵ Three information sessions were held, because the interviewees took place in different locations and three sessions were needed to meet most of the interviewees. Emilienne knew only the participants of her support groups, but had not personally met the other victim-survivors who had been recruited through snowballing before the information session.

research, who also attended the information sessions.²³⁶ This way, I recruited 21 participants. Two other professionals who also worked with victim-survivors assisted in inviting the other two victim-survivors who participated in my study.

2.9.2 Confidentiality

The WHO states that ‘preserving the confidentiality of personal information is one of the fundamental principles governing the collection of data about individuals.’²³⁷ This applies to any type of research and particularly to research with victim-survivors, since in the context of sexual violence in conflict or post-conflict settings ‘the stakes can be high’.²³⁸

All interviews were recorded on an audio recording device. The recording and any notes taken during the interview did not include the name of the interviewees. Instead, a code was allocated to each interviewee, such as M1, M2 and M3. These codes were also used for the discussion of the interview data in this thesis. All names of places or names of other persons that the interviewees cited during their interviews were also replaced with a code, such as ‘XXX’, ‘YYY’ and ‘ZZZ’. No identifying information about any of the interviewees is used in this thesis. The interviews were assisted by an interpreter and were later transcribed and translated by a translator. A confidentiality agreement was put in place between myself and the interpreter prior to conducting any interviews as well as between myself and the translator prior to exchanging any files with the translator.

2.9.3 Interview location

Researching topics that are linked to violence against women can pose risks for participants, their families and also the fieldworkers involved in a research project.²³⁹ Researchers need to

²³⁶ Some interviewees did not participate in a group information session, but met with Emilienne, my interpreter and myself individually before consenting to participate in the interview. During the interviews, many of the interviewees who were not a member of a group mentioned to the researcher that they wanted to become a member of a support group. After the interview, I passed this wish on to Emilienne, who ran the other support groups, and she contacted those nine interviewees who had not yet been a member of a support group to invite them to become a member. Emilienne reported afterwards that all interviewees who she had approached followed her invitation, which is why she created a new group with those nine interviewees (and some additional victim-survivors), Email from Emilienne MUKANSORO to Judith Rafferty, 20 January 2016.

²³⁷ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 18. See also Henrica A.F.M. Jansen, *Swimming against the Tide* (United Nations Population Fund, 2010) 29; National Health and Medical Research Council (n 224) 11.

²³⁸ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 18.

²³⁹ Jansen (n 237) 5, 27.

provide physical and psychological safety for both the participants and the research team.²⁴⁰ Safety must be considered when finding an interview location.²⁴¹ Jansen claims that interviews of a sensitive nature require a private setting.²⁴² The WHO recommends conducting interviews with victim-survivors in 'a safe place ... that does not draw unnecessary attention and does not raise suspicion, and where participants cannot be overheard'.²⁴³

The professionals who supported my research by inviting victim-survivors to participate also assisted with the provision of interview spaces. For example, Emilienne made her office space available for the majority of my interviews. This was the same location where meetings of the support groups for the women had usually been held, which meant that most participants were familiar with the interview location and people living around the location were used to seeing women go in and out of this office.²⁴⁴ Using this office as an interview location was consistent with good practice recommendations made by the WHO:

[S]ome data collectors have found that obtaining information about women's experience of sexual violence can be done discreetly by arranging to conduct interviews in the context of other activities that draw less attention, for example, in women's centres ... that routinely offer a variety of services and activities for females.²⁴⁵

Another interview location was the house of one interviewee situated in a rural area where no office spaces were available.²⁴⁶ The interviewee was a member of one of Emilienne's support groups and group meetings were frequently held at her house. Therefore, people

²⁴⁰ See Ibid 29; World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 16.

²⁴¹ See 'National Statement on Ethical Conduct in Human Research' (National Statement, Australian National Health and Medical Research Council, Revised Ed, 2007) 25 <<https://www.nhmrc.gov.au/guidelines-publications/e72>>.

²⁴² Jansen (n 237) 28, 29.

²⁴³ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 16.

²⁴⁴ Similarly, Brounéus conducted her interviews with Rwandan women who had survived the genocide at the office of the widows' association, Association des Veuves du Genocide d'Avril ('AVEGA'): Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57). De Brouwer and Ruwebana conducted their interviews with genocide survivors at the office of the organisation Solace Ministries, see De Brouwer and Ruwebana (n 40) 943.

²⁴⁵ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228).

²⁴⁶ Emilienne had contacted the victim-survivor in advance to get consent to conduct interviews at her house.

living in the village were familiar with seeing women go in and out of the house regularly and our meetings did not draw attention within the village.

One issue relevant to fieldwork such as mine, particularly in rural communities, relates to the apparent tensions between two ethical concerns: avoiding any appearance of inducement to participate and making sure that participants are not financially disadvantaged by their participation. I conducted a number of interviews in remote locations where opportunities to purchase food were limited. In addition, many of the interviewees were extremely poor and did not have the financial means to buy food when travelling around. Some interviewees lived up to eight hours by foot away from the interview location. To minimise stress for the interviewees and to ensure their physical wellbeing during my research, I offered each interviewee a soft drink and a small snack during the interview. I had not made indications about the catering before the interview to ensure that there were no perceived material benefits for participating in my research.

What I had promised during the information session was that I would reimburse each interviewee for costs associated with transport to and from the interview location. I wanted to ensure that an interviewee did not have to walk for hours and miss out on a whole day of work by participating in my research. Providing for transportation was also a way to address issues of physical safety for participants, ensuring that interviewees could safely make their way to the interview location and back home. The professionals who had assisted in recruiting the interviewees helped me to determine appropriate reimbursement for transport, since they knew where the interviewees lived and the usual costs for transport in the area.

2.9.4 Information sheet and informed consent

Before commencing each interview, I verbally briefed each interviewee about the details of my research, highlighting that it focused on the experiences of victim-survivors with *gacaca*. I offered each interviewee a hard copy of my information sheet. This information sheet did not explicitly use the term 'sexual violence', which I also mentioned to each interviewee.²⁴⁷ I used more general wording about health on the written information sheet to ensure that the interviewees did not carry a document identifying them as victim-survivors.

²⁴⁷ See Appendix 4: Information Sheet Victim-survivors.

Studies with human beings require the researcher to obtain informed consent from participants.²⁴⁸ Informed consent in human research of this kind is usually gained through the provision of a consent form that is read and signed by the participants.²⁴⁹ However, the WHO ethical and safety recommendations caution that ‘asking for a signature to confirm that informed consent has been given may not always be appropriate, (because) a signature will identify someone and possibly place that individual at risk’.²⁵⁰ This concern was confirmed by the professionals who assisted me with finding participants, flagging that it was not appropriate to ask any victim-survivor to write her full name in a readable manner on a consent form. I had addressed this issue when planning my consent gathering process, and my interviewees could consent to being interviewed and audio taped by putting an ‘x’ into the signature field, or, if they personally chose to, by adding their signature.²⁵¹ My interpreter then acted as an ‘impartial witness’, signing the consent form after the interviewees had put down an ‘x’ or added their signature.²⁵² Afterwards, I signed the document as a means of additional confirmation that the interviewee had given consent.²⁵³ All women who were invited to participate gave consent to being interviewed and audio-recorded.

2.9.5 Conducting the interviews

Each interview was recorded on an audio recording device and took on average one hour. My interview schedule was designed as ‘an informal, interactive process ... [with] open-ended comments and questions’,²⁵⁴ allowing the interviewees to talk in-depth about what it was like

²⁴⁸ National Health and Medical Research Council (n 224) 12, 16-8; World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 22.

²⁴⁹ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 16.

²⁵⁰ Ibid 23 [6.5].

²⁵¹ This process had been approved by the Ethics Committee of James Cook University and the Rwandan Ministry of Education. Twenty-two research participants chose to place their signatures (none of them were placed in a readable manner), one research participants put an ‘x’ in the signature box.

²⁵² Even though the interpreter is a party to the interviewing process, she does not have a personal interest in the data per se, but solely acts as an intermediary between the researcher and the participant. That is why she was considered to be a suitable person to witness the participants’ consent. This process of using an impartial witness was based on recommendations by the public research institute University of California, Irvine (‘UCI’): University of California Irvine, Consenting Subjects Who Do Not Read, Speak or Understand English (UCI Office of Research) <<http://www.research.uci.edu/compliance/human-research-protections/researchers/consenting-subjects-who-do-not-read-speak-or-understand-english.html>>.

²⁵³ This was consistent with the WHO recommendation on how to gain consent of victim-survivors: see World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 23 [6.5].

²⁵⁴ Moustakas (n 153) 5, 114. This process reflects a standard semi-structured interview technique.

to participate in *gacaca*. Based on advice from Moustakas, I had developed ‘a series of questions aimed at evoking a comprehensive account’ of the interviewees’ experiences with *gacaca*.²⁵⁵ In some interviews I used all the questions that I had developed; in other interviews only a few questions were needed, since the interviewee shared ‘the full story of ... her experience’ without needing much additional prompting.²⁵⁶ I frequently encouraged interviewees to elaborate on certain aspects of their narrative and to provide further insights into the words they chose to describe their experience.²⁵⁷ I also used questions of ‘what something felt like’ rather than asking ‘why’ and ‘how’ questions, which had been advised by O’Leary to elicit meaningful responses.²⁵⁸

While I had informed each interviewee that I would not ask questions about the genocide,²⁵⁹ most interviewees chose to talk about their sexual violence experience during the genocide. Many would do so at the beginning of the interview, often as a response to questions regarding their marital status and children. I was aware that interviewees might want to include personal experiences from the genocide, prompted by Byamukama’s experiences when interviewing Rwandan genocide survivors.²⁶⁰ Based on Byamukama’s experience, listening to the interviewees’ genocide experiences was a necessary step and assisted me in building rapport with the interviewees as well as creating a relationship of trust.²⁶¹ Further ways to create a safe environment and establish rapport are explained in the following section.

2.9.6 Establishing rapport

Researchers who had conducted similar research flagged the importance of establishing rapport between researcher, interpreter and research participants. Rapport was firstly needed to gain the trust of the victim-survivors to participate in the interviews and to

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ O’Leary (n 139) 139.

²⁵⁹ My PhD research does not focus on the experiences relating to the actual sexual violence, but on the experiences with *gacaca* dealing with the violence.

²⁶⁰ Even though Byamukama’s research focused on the interviewees’ experiences with *gacaca*, she explains that it was ‘nearly impossible to interview a survivor of genocide, especially women who had been sexually assaulted, about the *gacaca* process without dedicating at least 30 minutes to the genocide itself and their personal experiences.’, Shvon Byamukama, 'Justice in the Aftermath of the 1994 Rwanda Genocide: A Study of *Gacaca* Courts' Glasgow Caledonian University, 2008), 39-40.

²⁶¹ Ibid 40.

meaningfully share information about their experiences. Ample consideration of rapport building seemed particularly important due to my outsider status (being of different nationality and skin colour). One way of establishing rapport is through association with a person who research participants know and trust. For example, Sharratt explains that during her interviews with victim-survivors who had participated at the ICTY,²⁶² 'many women ... would not agree to participate unless someone they knew and trusted was part of the project'.²⁶³ As another example, Brounéus was supported during her research with Rwandan victim-survivors by counsellors of the Rwandan widows association AVEGA as interpreters, and describes how important this assistance was, because the interview participants trusted the counsellors.²⁶⁴

Emilienne had organised and participated in the first meeting between myself and 21 victim-survivors. These meetings assisted not only in sharing important information about the study but also provided an opportunity to build rapport between the victim-survivors, my interpreter and myself. Some of these initial meetings involved several victim-survivors, others involved one individual. Most of the victim-survivors who attended these joint meetings knew each other from the support groups, during which they had already addressed issues of confidentiality. However, not all victim-survivors who participated in the information sessions had previously been part of Emilienne's support group but some had been recruited through snowballing. Emilienne advised that it would be appropriate to have everyone attend these joint meetings and reminded all attendees how important it was to keep confidential everyone's experience, to which everyone agreed. Overall, I had the impression that the victim-survivors who I met formed a remarkably close community and were committed to protecting each other's confidentiality.

In the initial meetings, Emilienne introduced me to the victim-survivors as a person who she knew and trusted. I was then given time to talk about myself and my research. Based on the experiences of other researchers, I was aware that the victim-survivors might like to know about me personally.²⁶⁵ Byamukama explains that inviting research participants to ask the

²⁶² Sharratt interviewed female victim-survivors testifying before the ICTY, see Sharratt (n 15).

²⁶³ Ibid 48.

²⁶⁴ Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57) 63-4

²⁶⁵ See, e.g., Renzetti (n 157) 140.

researcher some personal questions made them feel comfortable.²⁶⁶ 'Being direct and blunt' is, according to Byamukama, not appreciated in the Rwandan culture.²⁶⁷ Her interview participants were mainly interested in knowing who she was rather than finding out details about her research. These experiences assisted me in being prepared for personal questions. One of the first questions that women asked me was whether I was 'still a girl' (single) or 'a woman' (married). In contrast to Byamukama, I found that women would also ask detailed questions about why I had chosen Rwanda for my research and what I was intending to do with my data later.

Besides gaining trust, the interviewer also needs to have adequate skills to encourage interviewees to share their experience.²⁶⁸ Jansen reports great willingness of women to tell their stories about violence against them — even in settings in which these topics were usually considered a taboo — provided that interviewers had appropriate skills,²⁶⁹ including 'creating a safe space and empathetic atmosphere'.²⁷⁰ Through my work and training as a mediator and conflict coach, as well as through various workshops preparing me for this type of research,²⁷¹ I had gained skills to conduct my interviews in an encouraging and empathetic manner. These skills include demonstrating attention to interviewees and deep listening, involving minimal responses as well as non-verbal behaviour such as supportive facial expressions and body language.

In all interviews, I was assisted by the same interpreter. A relationship of trust between the interpreter and interviewees is an important requirement when conducting interviews.²⁷² Brounéus cautions that 'interview material will lose its value' when there is a lack of trust between the interpreter and interviewees, for example because the interviewee may not

²⁶⁶ Byamukama (n 260) 38.

²⁶⁷ Ibid 39.

²⁶⁸ Jansen (n 237) 23, 28.

²⁶⁹ Jansen refers to interviews that her team conducted in the Solomon Islands and Kiribati, see *ibid*.

²⁷⁰ *Ibid*.

²⁷¹ These workshops included 'Designing and Analyzing Research for Sexual and Intimate Partner Violence' by Dr Henrica A F M Jansen at the Sexual Violence Research Initiative ('SVRI') Forum in Bangkok, 2013, the workshop 'Researcher Self-care' at the University of Wollongong, 2015, facilitated by the Australian Red Cross and Phoenix Australia, and 'Trauma Awareness and Field Research: How to Prepare and Deal with Traumatic Research Content', facilitated by Dr Wendy Lambourne at the University of Sydney, July 2015.

²⁷² See, e.g., Renzetti (n 157) 127; Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57) 63; Sharratt (n 15) 60.

speak freely.²⁷³ My interpreter had both the personal characteristics and professional skills to support the creation of a safe and empathetic environment. She was a Rwandan woman from the same area as the interviewees (albeit unknown to them) and shared a common history with them, which I believe assisted in establishing rapport.

Interpreters need not only to be trusted by the interviewees but also to be adequately trained and skilled to conduct interpretation in an ethical and professional manner. Data translated by an interpreter could lose its meaning if the interpreter chose to hide facts or distort information according to their own opinions.²⁷⁴ My interpreter had useful qualifications, including a degree in clinical psychology and public health, and was enrolled in a PhD in public health. She had previously conducted research herself with vulnerable groups in Rwanda and was familiar with methodological issues.

I felt that one of the most important qualifications of my interpreter was her education and experience as a psychologist, since many of the participants felt distress at some stage during the interviews. In a number of cases my interpreter had to take on the role as a counsellor to provide emotional support. On one occasion, I thought it was better to stop an interview because the interviewee became quite distressed but my interpreter encouraged the interviewee to continue. My interpreter later pointed out to me that it had been very important for the interviewee to continue and that she would have felt much worse if she had stopped in the middle of the interview. Indeed, the interviewee expressed positive feelings at the end of her interview about having continued and stated that she felt a great sense of relief after having spoken to us.

Feeling relief after participating in the interview appeared to be a common reaction of nearly every interviewee.²⁷⁵ Each interviewee thanked me at the end for having taken the time to speak to her and explained how important it was for her to have participated in the study. Only one of the 23 interviewees arrived late to her interview and this was due to personal reasons. The majority of interviewees, including those who lived several hours away, arrived

²⁷³ Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57) 64.

²⁷⁴ Ibid.

²⁷⁵ For example, when asked what made her happy in her life today, M6 responded: 'The one thing that is making me happy right now is sitting here talking to you. You have made my day'. The interviewees' thoughts on their participation in the interviews are more fully discussed in Chapter 10.

early for their interview appointments, sometimes several hours early. One interviewee (M1) explained to me that she was several hours early because she 'could not have missed the opportunity to talk to me'. Another interviewee revealed during her interview that she was HIV positive, explaining that she had never before shared this information with anybody outside her family. These experiences gave me the impression that my 'outsider' status had not prevented the interviewees from talking frankly with me. On the contrary, I sensed that the interviewees had felt encouraged to share even extremely sensitive information, since they did not have to fear social consequences from revealing this information to me.

2.9.7 Researching in another language

Making sense of the stories of research participants may require the researcher to understand the meaning behind words used by the participants to describe their experiences.²⁷⁶ Since my research involved interviews with participants whose language I did not speak, I had to identify special ways to ensure that I could understand the above-mentioned 'meaning behind words'. During my interviews I relied on my interpreter's ability to correctly translate meanings from the Kinyarwanda language into English. My interpreter and I acknowledged that exact interpretation would frequently be impossible and recognised the need to identify potential different meanings and interpretations of words. I had a close working relationship with my interpreter and we held a debriefing session after each interview day to clarify in detail the meaning of ambiguous words as well as particular expressions used by the participants.

All interviews were transcribed in Kinyarwanda and then translated into English by a Rwandan translator. Initially, I had planned only to transcribe the English interpretation myself, that had been provided by my interpreter during the interviews. As a way of quality control, I had planned to have the interpretations at the time of the interview cross-checked by an independent translator. However, after having had one interview transcribed and translated in full, I changed this plan. In direct comparison with the interpretation on the day of the interviews, the translated transcript was far richer than what my interpreter had been able to convey during the interview. I therefore had all interviews fully transcribed in Kinyarwanda and then translated into English. For each transcript I worked closely with the translator to

²⁷⁶ O'Leary (n 139) 139.

clarify any questions and to obtain additional explanations of the possible meanings of various expressions and their implications. Working closely with both my interpreter and translator assisted me in clarifying misunderstandings and prevented me from missing important data if words had particular connotations in the Kinyarwanda language.²⁷⁷

Language differences and the influences of culture can be especially significant when talking about sexual violence. Even though this research was focused on the victim-survivors' experiences of *gacaca*, they also talked about their sexual violence experiences and I was careful to ensure how this was translated and interpreted. I was conscious of the observations and experiences of others such as the UN Special Rapporteur on Violence against Women and the UN ICTR where women's testimonies were translated as using indirect or euphemistic language when referring to rape and other sexual violence.²⁷⁸ However, in this research when women talked about their experiences of sexual violence, most appeared to use expressions that both the interpreter and translator translated as 'precise' sexual language.²⁷⁹

2.9.8 Referral to services

Researchers are required to provide for the psychological wellbeing of participants, including minimising stress for participants and preparing adequate psychological support.²⁸⁰ The WHO recommends researchers to ensure that 'basic care and support to victims/survivors ... [is] available locally before commencing any activity that may involve individuals disclosing information about their experiences of sexual violence'.²⁸¹ Jansen suggests that interviewers need to have available information on support services that can be provided to participants after the interview.²⁸² I had to consider that the availability of support services in rural areas

²⁷⁷ As an example, two interviewees used the word 'tracts'. The translator explained that the term refers to handwritten, unsigned threats slipped through under someone's door.

²⁷⁸ For example, the UN Special Rapporteur on Violence against Women, its Causes and Consequences explains in her 1998 report that 'the exact words to describe some sexual acts do not exist in Kinyarwanda so that concepts and ideas are difficult for victims to express', Coomaraswamy, Radhika, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Addendum: Report of the Mission to Rwanda on the Issues of Violence against Women in Situations of Armed Conflict*, UN ESC, 54 sess, Agenda Item 9, UN Doc E/CN.4/1998/54/Add.1 (4 February 1998), 13-4 [50]. See also *The Prosecutor v Akayesu* (n 34) [145, 152].

²⁷⁹ For example, interviewees used expressions that the interpreter and translator translated as 'vagina', 'penis', 'have sex', etc.

²⁸⁰ Jansen (n 237) 28-9; World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 16.

²⁸¹ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 15.

²⁸² Jansen (n 237) 28, 31.

may be limited and, even if they were available, they may not be suitable to assist each individual.²⁸³ Jansen suggests that the researcher, together with the local people who assist with research, should identify ‘the most appropriate and accessible resources for each area, e.g. church-based resources or health services’ before conducting an interview.²⁸⁴

I was fortunate to work closely with Emilienne who assisted me with my research and who was a psychotherapist. She volunteered to counsel any interviewee after the interview if needed. On one occasion, an interviewee became so distressed during the interview that my interpreter and I decided to stop the interview. We encouraged the interviewee to get in contact with Emilienne, which she did on the same day. During this conversation the interviewee asked Emilienne to arrange for another meeting with me, since she really wanted to participate in the research. We met a second time, during which the interviewee was able to respond to all questions and complete the interview.

As indicated earlier in this chapter (2.10.3), one ethical concern during research with human beings relates to avoiding any appearance of inducement to participate. When conducting fieldwork in rural communities, this concern may be in tension with the ethical requirement of ensuring accessibility of referral services. Many interviewees lived several hours’ walk away from Emilienne’s office. Even though most interviewees possessed a mobile phone, many of them did not have the financial means to buy phone credit to get in contact with Emilienne if needed. I provided a small financial contribution so that the interviewees could afford phone credit to contact Emilienne after their interview. I did not mention this contribution until the end of each interview so as not to give the appearance of any financial benefit for taking part in my research.

2.9.9 Self-care

The researcher and interpreter working with sensitive topics can also feel distress during fieldwork. The WHO requires ‘all members of a data gathering team ... to receive ... ongoing support’.²⁸⁵ Jansen suggests providing some debriefing opportunities so that interviewers get a chance to talk about their most important experiences and reduce stress.²⁸⁶ Hearing the

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ World Health Organization, *WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (n 228) 24.

²⁸⁶ Jansen (n 237) 28, 33.

interviewees' accounts of rape and sexual torture was distressing for me at times. My interpreter and I spent at least an hour together after each interview day and talked about the most stressful moments of the interviews. In workshops on researcher self-care, I had learned how important it was to look after my own wellbeing when conducting research that could be distressing for me. I exercised regularly while in Rwanda and maintained my mental wellbeing by staying in regular contact with my family and supervisors. Furthermore, I ensured that I got time away from my research to 'switch off' and regain energy by enjoying non-research related experiences in Rwanda, such as trips to national parks.

During and after my fieldwork there were times when I struggled with the limits of my role as a researcher, which did not allow me to help the interviewees other than by listening to them and later by ensuring that my research would not be confined in a document on a bookshelf. However, it seemed that merely being listened to had a positive impact on the interviewees. I formed the impression that it gave the interviewees hope that someone had come to hear their stories and advocate for their needs by writing about them. I believe this positive impact on the interviewees helped me to come to terms with my limited role. Since I have returned from my fieldwork, seeking opportunities to tell the interviewees' stories has given me a sense that I can do something for them, even though it is only a small contribution.

2.10 Conclusion

This chapter explained the research methodology used in this thesis, including a discussion of the theoretical underpinnings that informed the research design, the methods of data collection and analysis, as well as an outline of the methodological, ethical and practical challenges that arose during the research. In doing so, this chapter demonstrated that the approach taken for this research supported the interviewees to share their needs, motivations and expectations regarding *gacaca*, as well as their experiences with the community courts. The research approach was suitable for generating meaningful data to answer the research questions. As part of the research methodology, challenges associated with conducting interviews in another language were considered and addressed to ensure that the interviewees' accounts, which had been provided in Kinyarwanda, were understood and reflected in the most accurate manner in the English language. The most accurate translations of the interviews were crucial to enable meaningful conclusions about abstract concepts such as justice and the construct of justice needs, which lie at the heart of this thesis.

3 CHAPTER 3: CONTEXT OF VICTIMISATION

This chapter discusses the context of victimisation relevant to this thesis. It is divided in two. The first part focuses on conflict-related sexual violence, including its scale and scope, reasons why it is committed and major consequences for victim-survivors and communities. An understanding of the particular experiences of victim-survivors with conflict-related sexual violence is critical for the analysis of the justice needs of affected victim-survivors, which is a focal point of this thesis. The motives behind sexual violence in conflict need to be understood, since these motives influence not only victim-survivors' experiences of sexual violence but may also affect justice responses to these crimes. For example, different international and domestic legislation may apply to sexual violence committed with the intent to destroy a group compared with sexual violence committed for opportunistic reasons.²⁸⁷ While several drivers of conflict-related sexual violence are briefly considered, the chapter focuses on mass scale conflict-related sexual violence that is encouraged and/or ordered by the leadership of a belligerent party with the aim to destroy a specific group of people, which was introduced as genocidal sexual violence in Chapter 1.

The second part of the chapter introduces the Genocide against the Tutsi and sexual violence committed during the genocide as the specific context of victimisation relevant to this thesis. A detailed understanding of the genocide experiences of Rwandan victim-survivors and resulting consequences is essential for the analysis of the interviewees' genocide experiences as well as their justice needs and experiences with *gacaca* discussed in Chapters 6-10. This second part of the chapter starts with a historical overview of the relationships between Hutu and Tutsi, followed by a summary of the major events of the genocide with a focus on sexual violence. The subsequent discussion of the physical, psychological, social and economic consequences for affected victim-survivors provides a basis for analysis of the needs of the 23 Rwandan victim-survivors who were interviewed.

²⁸⁷ For example, as outlined in Chapter 4, the ICTR prosecuted sexual violence as a war crime, as torture, as a crime against humanity and as genocide. The sexual violence committed during the Genocide against the Tutsi could be prosecuted as a crime against humanity where it had been 'committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious ground', *Resolution 1717*, UN Doc S/RES/1717 (13 October 2006) annex ('*Statute of the International Criminal Tribunal for Rwanda*') art 3(g). Furthermore, sexual violence during the genocide was tried as genocide if it had been 'committed with the specific intent to destroy', *The Prosecutor v Akayesu* (n 34) [731].

3.1 Conflict-related Sexual Violence

Sexual violence is committed against women during peace and war.²⁸⁸ Nevertheless, conflict-related sexual violence stands out from peacetime sexual violence in scale and scope.²⁸⁹ Furthermore, conflict-related sexual violence tends to take particular forms,²⁹⁰ including but not limited to rape,²⁹¹ gang rape,²⁹² sexual torture, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and forced nudity.²⁹³ Bastick, Grimm and Kunz note that sexual violence committed in many past and ongoing conflicts has been of 'massive extent and ... extreme brutality'.²⁹⁴ Therefore, conflict-related sexual violence reflects 'extraordinary sexual violence', which is distinct from 'everyday forms of sexual violence'.²⁹⁵

In many past armed conflicts, sexual violence was widespread, including World Wars I and II,²⁹⁶ the Genocide against the Tutsi, as well as the armed conflict in the former Yugoslavia in the 1990s.²⁹⁷ Country specific numbers of rape are unlikely to be anywhere near the numbers of rapes that have actually taken place, because victim-survivors are known to be reluctant to report sexual violence.²⁹⁸ While Pankhurst holds that sexual violence committed in times

²⁸⁸ Askin, *War Crimes against Women* (n 43) 205, 217.

²⁸⁹ Cahn explains that 'the scale and scope of sexual violence against women in many contemporary international and intra-state conflicts are almost incomprehensible', see Naomi R. Cahn, 'Women in Post-Conflict Reconstruction: Dilemmas and Directions' (2006) 12(2) *William and Mary Journal of Women and the Law* 335-376, 357. See also Cohen (n 123) 464; Elisabeth Jean Wood, 'Variation in Sexual Violence during War' (2006) 34(3) *Politics & Society* 307, 307.

²⁹⁰ Rowley, Garcia-Moreno and Dartnall (n 43) 2.

²⁹¹ The ICC defines rape with two key elements, see International Criminal Court (n 26) art 7(1)(g)-1:

1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or the perpetrator with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body.

2) The invasion was committed by force, or by the threat of force or coercion, such as that was caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of giving genuine consent.

²⁹² If a victim is raped by two or more perpetrators, the act is called gang rape. Cohen holds that gang rape is committed much more frequently during times of conflict than during times of peace, Cohen (n 123) 461.

²⁹³ *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 7(g); International Criminal Court (n 26) art 7(1)(g)-2-6. See also Ka Hon Chu, de Brouwer and Roemkens (n 123) 531; O'Brien (n 44); Bastick, Grimm and Kunz (n 3) 13.

²⁹⁴ Bastick, Grimm and Kunz (n 3) 27; Wood (n 289) 315.

²⁹⁵ Daly, 'Sexual Violence and Justice: How and Why Context Matters' (n 18), 36. See also Lambourne and Carreon (n 12).

²⁹⁶ Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' (n 43) 28-9, 34-46. During World War II, widespread sexual violence was committed by numerous actors, including the German, Japanese (e.g. the 'rape of Nanking.') and Russian armies, see Wood (n 289) 309-11.

²⁹⁷ Up to 50,000 women were raped and subjected to sexual torture during the war in Bosnia-Herzegovina, see Bastick, Grimm and Kunz (n 3) 117; Wood (n 289) 311.

²⁹⁸ Pankhurst (n 25) 160.

of war still seems to be on the increase,²⁹⁹ Cohen, Green and Wood note that ‘existing data cannot determine conclusively whether wartime sexual violence on a global level is increasing, decreasing, or holding steady’.³⁰⁰ Several researchers highlight that sexual violence is not a ‘natural’ byproduct of warfare and it is not widespread in all armed conflicts.³⁰¹

The main drivers for conflict-related sexual violence³⁰² and why sexual violence is committed extensively in some conflicts and only rarely in others, remain debated.³⁰³ Conflict-related sexual violence appears to be more likely in settings that are characterised by a lack of functioning state institutions and law enforcement.³⁰⁴ Institutions that would usually control and sanction ‘sexual aggression’ during times of peace tend not to function well during conflict and this increases opportunities to engage in sexual violence during times of conflict.³⁰⁵ Some scholars argue that with increased opportunities, ‘men with a propensity to rape will do so more frequently or ... more men (but not necessarily all) will rape’.³⁰⁶ Other scholars believe that the risk of sexual violence during armed conflict correlates with the status of women and their rights in a given setting in peacetime.³⁰⁷ The argument is that gender inequality facilitates acceptance of violence against women, making conflict-related violence more likely.³⁰⁸ Cohen, on the other hand, claims that ‘once a war has begun, there is no apparent relationship between gender inequality and rape during civil war’.³⁰⁹ She acknowledges that gender inequality may have some influence on conflict-related sexual violence but highlights the lack of empirical evidence to confirm this link.³¹⁰

²⁹⁹ Ibid 159.

³⁰⁰ Dara Kay Cohen, Amelia Hoover Green and Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward* (Special Report 323, United Nations Institute of Peace, February 2013), 1.

³⁰¹ Cohen (n 123). Wood (n 289); *ibid*; Michele Leiby, ‘Wartime Sexual Violence in Guatemala and Peru’ (2009) 53(2) *International Studies Quarterly* 445.

³⁰² Cohen (n 123); O’Brien (n 44) 387.

³⁰³ See, e.g., Wood (n 289) 308, 330. According to a study by the Peace Research Institute Oslo (PRIO), which assessed the prevalence of sexual violence in all African conflicts committed between 1989 and 2009, ‘64 percent of armed groups were not reported to have engaged in any form of sexual violence’, see Cohen, Green and Wood (n 300) 3.

³⁰⁴ Cohen (n 123) 476. Bastick, Grimm and Kunz (n 3) 14; Joshua Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge: Cambridge University Press, 2001), cited in Cohen (n 123) 462.

³⁰⁵ Wood (n 289) 321.

³⁰⁶ *Ibid* 322.

³⁰⁷ Jefferson (n 50) 326. Cohen (n 123) 463.

³⁰⁸ Cohen (n 123) 463; Jefferson (n 50) 327.

³⁰⁹ Cohen (n 123) 471.

³¹⁰ *Ibid* 471.

While sexual violence appears to be committed indiscriminately and randomly without any particular purpose behind it in some conflict,³¹¹ the attitude of a conflict party's leadership towards sexual violence appears to be one key factor that makes the occurrence of sexual violence more or less likely.³¹² The leadership may forbid sexual violence against civilians or belligerent troops or may tolerate it.³¹³ In other conflicts, such as during the genocide in Rwanda, sexual violence may be encouraged and even ordered by the leadership.³¹⁴ In these conflicts, sexual violence is not a side effect of war but constitutes 'policy'.³¹⁵ Sexual violence may be encouraged or tolerated by leaders for several reasons, including to boost the morale within a belligerent party and to reward 'bravery',³¹⁶ or to increase social cohesion among members of armed groups.³¹⁷ Furthermore, sexual violence and rape in particular may constitute an element of broader war strategies and 'a weapon of war'.³¹⁸ The UN confirmed in its Resolution 1820 from 2008 that sexual violence committed against women and girls

³¹¹ Askin, *War Crimes against Women* (n 43) 16.

³¹² Wood (n 289) 322-3.

³¹³ Cohen, Green and Wood (n 300) 1, 3; Askin, *War Crimes against Women* (n 43) 16.

³¹⁴ Pégrier (n 50) 122.

³¹⁵ Funmi Olonisakin, 'Roots and Scope of Gender-Based Violence' in Marie Vlachová and Lea Biason (eds), *Women in an Insecure World* (Geneva Centre for the Democratic Control of Armed Forces, 2005) 3, 6.

³¹⁶ Cohen (n 123), 463-4; Dara Kay Cohen, *Explaining Sexual Violence During Civil War: Evidence from the Sierra Leone War (1991-2002)* (Paper, Prepared for the 2007 Annual Meeting of the American Political Science Association Chicago, Illinois 16 October 2007) 5; Jelke Boesten, 'Analyzing Rape Regimes at the Interface of War and Peace in Peru' (2010) 4(1) *International Journal of Transitional Justice* 110, 110; Jefferson (n 50); Claire McEvoy, 'Seeking Post-Conflict Justice' in *The Shame of War* (OCHA/IRIN, 2007) 95; Valiji (n 52) 2; Jocelyn Kelly, *Rape in War: Motives of Militia in DRC*, United States Institute of Peace, June 2010) 3; Bastick, Grimm and Kunz (n 3) 15. Wood (n 289) 327.

³¹⁷ Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980-2009)' (n 123) 464, 469-70; Wood (n 289) 326-7. Research suggests that engaging together in gang rape enables a sense of unity amongst group members, Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980-2009)' (n 123) 464; Wood (n 289) 326; Karen Franklin, 'Enacting Masculinity: Antigay Violence and Group Rape as Participatory Theater' (2004) 1(2) *Sexuality Research & Social Policy* 25, 29.

³¹⁸ Boesten (n 316); *Resolution 1820*, UN Doc S/RES/1820 (n 49) 2; Tara Gingerich and Jennifer Leaning, *The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan* (Report, prepared for U.S. Agency for International Development/OTI, October 2004). Robin Baumgarten, 'Sexual Violence as a Weapon of War' (2008) 20 *Sister Namibia* 12; Stark, Lindsay. and Mike Wessells, 'Sexual Violence as a Weapon of War' (2012) 308(7) *JAMA* 677. Examples are the systematic rape of predominantly Tutsi women during the genocide in Rwanda, as well as the systematic rape 'in a formalized facility' such as the rape camps in the former Yugoslavia, see Askin, *War Crimes against Women* (n 43) 16.

during armed conflict constituted 'a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group ...'.³¹⁹

In several past conflicts, sexual violence was committed as torture with the aim of intimidating,³²⁰ or to subdue and control a group of people.³²¹ Furthermore, sexual violence may be committed to seek revenge and punish a certain group of people.³²² In doing so, sexual violence may be aimed at humiliating whole communities,³²³ for example by raping women in front of family and community members,³²⁴ or by forcing individuals to engage in sexual violence against their own family members.³²⁵ These acts may also form part of genocidal sexual violence, which was introduced in Chapter 1 as sexual violence that is committed with the intent to destroy a particular ethnic or social group. Other acts of sexual violence that are aimed at destroying a specific group of people include the deliberate infection of victims with HIV/AIDs,³²⁶ as well as forcible sterilisation of women to prevent them from giving birth to any child of their own ethnic group.³²⁷ In settings where it is believed that the ethnicity of a

³¹⁹ *Resolution 1820*, UN Doc S/RES/1820 (n 49) 1-2; Clotilde Pégorier, 'Denial, Impunity and Transitional Justice' in Lisa Yarwood (ed), *Women and Transitional Justice: The Experience of Women as Participants* (Routledge, 2012) 119-136, 122; Olonisakin (n 315) 6; Askin (n 43) 16. Bastick, Grimm and Kunz (n 3) 67, 73, 99; Elisabeth Jean Wood, 'Variation in Sexual Violence during War' (2006) 34(3) *Politics & Society* 307-342, 307; 312-13; 325; Cahn (n 289) 358; Lynn Stephen, 'Militarisation, Gender and Ethnicity in Southern Mexico' in Sharon Pickering and Caroline Lambert (eds), *Global Issues, Women and Justice* (The Sydney Institute of Criminology, 2004) 59, 59; Melanie O'Brien, 'Don't Kill Them, Let's Choose them as Wives': The Development of the Crimes of Forced Marriage, Sexual Slavery and Enforced Prostitution in International Criminal Law' (2016) 20(3) *The International Journal of Human Rights* 386, 387;

³²⁰ Beth Goldblatt and Sheila Meintjes, 'Gender and the Truth and Reconciliation Commission: A submission to the Truth and Reconciliation Commission' (1997) 36 *Agenda: Empowering Women for Gender Equity* 7; Bastick, Grimm and Kunz (n 3) 99; Cohen, Green and Wood (n 300) 2.

³²¹ Olonisakin (n 315) 6; Askin, *War Crimes against Women* (n 43) 16; Cahn (n 289) 358; Wood (n 289) 315; Stephen (n 319) 84; Bastick, Grimm and Kunz (n 3) 105.

³²² Bastick, Grimm and Kunz (n 3) 67; Wood (n 289) 307.

³²³ Stephen (n 319) 83. Bastick, Grimm and Kunz (n 3) 9. Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' (n 43) 45; O'Brien (n 44) 387; Wood (n 289) 312; Olonisakin (n 315) 6.

³²⁴ Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' (n 43) 34, 41-2; Bastick, Grimm and Kunz (n 3) 39, 55, 63, 117; Wood (n 289) 307.

³²⁵ Bastick, Grimm and Kunz (n 3) 35, 51, 55, 63, 65; Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' (n 43) 45; Wood (n 289) 314.

³²⁶ African Rights, *Broken Bodies, Torn Spirits - Living with Genocide, Rape and HIV/AIDS* (Report, April 2004), 19-20; AVEGA "AGAHOZO" (n 37) 22; Anderson (n 41) 10. International Panel of Eminent Personalities (n 34) 148 [16.19]; Olonisakin (n 315) 6.

³²⁷ See, e.g., Askin, 'Treatment of Sexual Violence in Armed Conflicts: A Historical Perspective and the Way Forward' (n 43) 35-7, discussing forced sterilisation during World War II; Elisabeth Porter, 'Ethical Commitment to Women's Participation in Transitional Justice' (2013) 6(1) *Global Justice: Theory, Practice, Rhetoric* 1-20, 5; *In-depth study on all forms of violence against women*, 61st sess, Agenda Item 60 (a), UN Doc A/61/122/Add.1 (6 July 2006) 44.

child is dictated by the ethnicity of the father, rape may also be perpetrated to impregnate the survivor as a means of 'ethnic cleansing'.³²⁸

Perpetrators of conflict-related sexual violence may be members of official armed and security forces, paramilitary groups, non-state armed groups, civilians or even humanitarian and peacekeeping personnel.³²⁹ The overwhelming majority of acts of conflict-related sexual violence are committed by male perpetrators,³³⁰ even though women have also been reported as perpetrators or inciters of conflict-related sexual violence.³³¹ While targets of conflict-related sexual violence include allied civilians, fellow combatants, and combatants of other belligerents, including men, transgender people and children,³³² most acts of conflict-related sexual violence are committed against female civilians.³³³ They may be targeted because they happen to live or reside in the territory where a conflict is unfolding, or because they form part of a specific ethnic or social group, as was the case during the Genocide against the Tutsi.

Conflict-related sexual violence causes serious harm and enduring consequences for victim-survivors, their families, their communities, as well as for international peace and security, as it can undermine conditions for post-conflict peace and reconstruction processes.³³⁴ Consequences for victim-survivors range from physical, and psychological to social, financial and economic repercussions, which may last for the rest of a victim-survivor's life.³³⁵ Direct

³²⁸ O'Brien (n 44) 387; Askin, *War Crimes against Women* (n 43) 16; Gingerich and Leaning (n 318) citing Human Rights Watch, *War Crimes In Bosnia-Herzegovina* (Volume II, April 1993) 215.

³²⁹ Kelly Dawn Askin, *War Crimes against Women* (Kluwer Law International 1997), 16; Bastick, Grimm and Kunz (n 3) 9; Cohen, Green and Wood (n 300).

³³⁰ Bastick, Grimm and Kunz (n 3) 14; Askin (n 43) 16; Dara Kay Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980-2009)' (Pt Cambridge University Press) (2013) 107(3) *American Political Science Review* 461, 462.

³³¹ Cohen, Green and Wood (n 300) 4-5; Bastick, Grimm and Kunz (n 3) 14, 55; Kaitesi (n 29) 241; Sara E. Brown, *Gender and the Genocide in Rwanda: Women as Rescuers and Perpetrators* (Routledge, 2018); *The Prosecutor v Pauline NYIRAMASUHUKO, Arsène Shalom NTAHOBALI, Sylvain NSABIMANA, Alphonse NTEZIRYAYO, Joseph KANYABASHI, Élie NDAYAMBAJE* (International Criminal Tribunal for Rwanda, Appeals Chamber, Case No ICTR-98-42-A, 14 December 2015) [482].

³³² See Bastick, Grimm and Kunz (n 3) 14; Kaitesi (n 29) 241; de Brouwer and Ruwebana (n 40) 938; Ka Hon Chu, de Brouwer and Roemkens (n 123) 532.

³³³ Madeline Morris, 'By Force of Arms: Rape, War, and Military Culture' (Pt Duke University School of Law) (1996) 45(4) *Duke Law Journal* 651, 654, n 5. See also Bastick, Grimm and Kunz (n 3) 29-137.

³³⁴ See, e.g., Cohen (n 123) 461.

³³⁵ World Health Organization, *World Report on Violence and Health* (n 335) 149, 162-3; Ka Hon Chu, de Brouwer and Roemkens (n 123) 537-9; Bastick, Grimm and Kunz (n 3) 15, 165; Bell (n 57) 115-20; Lambourne and Carreon (n 12); Human Security Research Group (n 50) 1, 38; Zraly and Nyirazinyoye (n 36) 1657; Cybèle Cochran, 'Transitional Justice: Responding to Victims of Wartime Sexual Violence in Africa' (2008) 9 *The Journal of International Policy Solutions* 33, 33; Askin, *War Crimes against Women* (n 43) 16; O'Brien (n 44) 387.

physical injuries of sexual violence, particularly rape, include chronic pain, infections, infertility and vaginal destruction such as gynaecologic fistula.³³⁶ Other physical consequences resulting from sexual violence, and rape in particular, include sexually transmitted diseases (STDs) such as HIV/AIDS,³³⁷ as well as unwanted pregnancies and miscarriages.³³⁸ Since abortion is prohibited or difficult to obtain in many countries emerging from conflict, some victim-survivors may try to arrange illegal abortions of unwanted pregnancies,³³⁹ resulting in further health issues.³⁴⁰

Besides physical consequences, victim-survivors suffer severe psychological effects, including low self-esteem and self-worth,³⁴¹ depression, insomnia, psychological trauma, post-traumatic stress disorder PTSD and suicidal thoughts and behaviour.³⁴² Herman describes trauma as an overload of 'the ordinary systems of care that give people a sense of control connection and meaning' in response to a very stressful event.³⁴³ She also introduces 'a spectrum of traumatic disorders, ranging from the effects of a single overwhelming event to the more complicated effects of prolonged and repeated abuse'.³⁴⁴ The exposure to 'prolonged repeated trauma', as is likely to be the case during times of conflict, leads to 'an insidious, progressive form of PTSD that invades and erodes the personality'.³⁴⁵ A victim-survivor who has been exposed to repeated acts of sexual violence and other traumatic events during conflict 'may feel herself changed irrevocably'.³⁴⁶ Besides a heightened intensity of PTSD, symptoms associated with continued and repeated trauma 'may persist

³³⁶ Ka Hon Chu, de Brouwer and Roemkens (n 123) 537-8. Gynaecologic fistula is a condition where 'a woman's vagina and her bladder or rectum, or both, are torn apart', Bastick, Grimm and Kunz (n 3) 15.

³³⁷ Cahn (n 289) 359; World Health Organization, *World Report on Violence and Health* (n 335) 163. According to Medicines Sans Frontières working in the Democratic Republic of Congo, 'at least one of the five women who went to the hospital in Bukavu for reconstructive surgery following a rape tested positive for HIV', see Cahn (n 289) 359.

³³⁸ Cahn (n 289) 359. Bastick, Grimm and Kunz (n 3) 27; World Health Organization, *World Report on Violence and Health* (n 335) 162; Ka Hon Chu, de Brouwer and Roemkens (n 123) 537.

³³⁹ Cahn (n 289) 359; Human Rights Watch, *The War within the War: Sexual Violence against Women and Girls in Eastern Congo* (Report, June 2002) 66.

³⁴⁰ Cahn (n 289) 359. Bastick, Grimm and Kunz (n 3) 27; Ward and Marsh (n 44) 10.

³⁴¹ Henry (n 5) 119; Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15).

³⁴² Judith Herman, *Trauma and Recovery* (BasicBooks, 1997); Cahn (n 289) 359; World Health Organization, *World Report on Violence and Health* (n 335) 163; Ka Hon Chu, de Brouwer and Roemkens (n 123) 537-8.

³⁴³ Herman, *Trauma and Recovery* (n 342) 33.

³⁴⁴ *Ibid* 3.

³⁴⁵ *Ibid* 86.

³⁴⁶ *Ibid* 87.

with little change for many years'.³⁴⁷ These and other sufferings of victim-survivors are further prolonged because of limited or no access to health care and counselling services in many post-conflict settings.³⁴⁸

Both psychological and physical consequences resulting from sexual violence lead to further social, economic and financial issues for victim-survivors, obstructing their reintegration into society.³⁴⁹ In settings where the sexual virtue of women is highly valued, survivors of rape are likely to suffer social stigma and ostracism.³⁵⁰ Unmarried women who are subjected to rape are likely to face difficulties in finding a husband, while married women may be left by their husbands and families.³⁵¹ Women who bear a child as a result of rape may reject their child if they view the child as a reminder of the atrocities committed against them.³⁵² Because of such rejection, children of rape are also likely to suffer. Those mothers who decide to keep their child may be abandoned by their families and risk social ostracism.³⁵³ Community ostracism is likely to result in additional economic consequences,³⁵⁴ and these further exacerbate the more immediate psychological and physical sufferings associated with sexual violence.

³⁴⁷ Ibid 87. There is controversy over whether the Western definition of trauma can be used to explain and treat trauma in non-Western contexts, see e.g. Henry (n 5) 122 n 42. However, these concerns appear to have been countered by the increasing application of community-oriented psychosocial programs to complement individualistic psychiatric model of diagnosis and treatment in places such as Rwanda and Burundi. For example, Rwandan organisations such as AVEGA, IBUKA and Never Again have been providing individual counselling, therapy groups and other interventions to support women to deal with trauma experienced during the genocide, see, e.g., Lambourne and Gitau (n 109); AVEGA "AGAHOZO" (n 37).

³⁴⁸ Bastick, Grimm and Kunz (n 3) 10; Cahn (n 289) 359.

³⁴⁹ Cahn (n 289) 359; Ka Hon Chu, de Brouwer and Roemkens (n 123) 538-9.

³⁵⁰ Lambourne and Carreon (n 12); Bastick, Grimm and Kunz (n 3) 3, 165; Olonisakin (n 315) 7; Human Security Research Group (n 50) 1, 38; Zraly and Nyirazinyoye (n 36) 1657; Cochran (n 335) 33; Ka Hon Chu, de Brouwer and Roemkens (n 123) 538-9; O'Brien (n 44) 387.

³⁵¹ See, e.g., Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 722; Byamukama (n 260) 161 n 574; Kaitesi (n 29) 209; Human Rights Watch, *The War within the War: Sexual Violence against Women and Girls in Eastern Congo* (n 339) 65-6. As a specific physical issue, Bastick, Grimm and Kunz explain that women suffering from fistula may be unable to control the flow of urine and/or faeces that leak from the tear', resulting in many of these women being 'divorced by their husbands, shunned by their communities, and unable to work or care for their families', Bastick, Grimm and Kunz (n 3) 15;

³⁵² Cahn (n 289) 360.

³⁵³ Human Rights Watch, *The War within the War: Sexual Violence against Women and Girls in Eastern Congo* (n 339) 65-6.

³⁵⁴ As HRW notes, in the Congo '[u]nmarried women and girls who became pregnant as a result of rape were far less likely to find husbands in the future and so risked remaining always on the margins of society', see *ibid* 65-6.

Regardless of social consequences, any physical and psychological consequences are likely to result in material and financial costs.³⁵⁵ These costs may relate to medical and therapeutic care for physical and psychological sufferings, including medication to treat STDs, depression and anxiety.³⁵⁶ Especially in conflict or post-conflict settings, services to treat both physical and mental consequences resulting from sexual violence may not be available and this further prolongs and exacerbates the sufferings of victim-survivors.³⁵⁷ Long-term physical and psychological consequences may prevent victim-survivors from continuing in their previous profession altogether, resulting in long-term financial issues.³⁵⁸ Because of the economic repercussions resulting from rape, women and girls are particularly vulnerable to sexual exploitation and trafficking.³⁵⁹ Godden refers to the range of consequences suffered by victim-survivors as the 'consequential and material harm of rape'.³⁶⁰ This thesis will use the term 'material harm of sexual violence' to refer to the financial costs and economic repercussions resulting from the physical, psychological and social consequences of sexual violence.

3.2 Sexual Violence Committed during the Genocide against the Tutsi

This thesis focuses on Rwandan victim-survivors who suffered sexual violence during the Genocide against the Tutsi. Most acts of sexual violence committed during the genocide were not a 'by-product' that occurred because of a lack of law and order but instead formed part of the strategy to destroy the Tutsi as a group. To understand better the victimisation experiences of Rwandan victim-survivors, the sexual violence committed against them should be contextualised by considering Rwanda's history and the genocide as a whole.

³⁵⁵ Ka Hon Chu, de Brouwer and Roemkens (n 123) 539

³⁵⁶ Ilene Seidman and Susan Vickers, 'The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform' (2005) XXXVIII *Suffolk University Law Review* 465-489, 474; Godden (n 51) 61.

³⁵⁷ Ka Hon Chu, de Brouwer and Roemkens (n 123) 538-40.

³⁵⁸ Ibid 539

³⁵⁹ Bastick, Grimm and Kunz (n 3); Olonisakin (n 315) 6.

³⁶⁰ Godden (n 51) 61. Godden distinguishes these from the "'core" harm of rape', which relates to 'the violation of an individual's sexual autonomy', Ibid 63.

3.2.1 Historical Background

To comprehend the genocide that unfolded in Rwanda in 1994 and its legacy, Rwanda's history should be taken into account, particular in terms of politics, culture and past relationships between Hutu and Tutsi.³⁶¹ Differing interpretations of Rwanda's history in the discourse of foreigners and internal politics played a major role in widening the gap between Hutu and Tutsi in the lead-up to the genocide. Modern historian Prunier, for example, argues that 'the type of writing' about Tutsi and Hutu origins by colonial anthropologists and the 'heavy bombardment with highly value-laden stereotypes for some sixty years ended by inflating the Tutsi cultural ego inordinately and crushing Hutu feelings until they coalesced into an aggressively resentful inferiority complex'.³⁶² Various elements of Rwanda's past formed the basis of genocide ideology and were deliberately used by Hutu extremists to incite hatred against Tutsi.³⁶³ Summarising Rwanda's history, particularly the pre-colonial relationships between the three main groups living in Rwanda – Hutu, Tutsi and Twa – requires a careful approach to what is known as 'facts' and what information has been constructed in various discourses from the time when the colonial powers arrived.

While Hutu, Tutsi and Twa have been living all over the Central African Great Lake region for centuries,³⁶⁴ Uvin notes a 'profound lack of agreement on the matter [of precolonial history of Rwanda] among Rwandans as well as among outside specialists on the region'.³⁶⁵ Some believe that Hutu, Twa and Tutsi were never distinct ethnic groups with differing origins, but that they reflect socioeconomic divisions within one overarching ethnic group.³⁶⁶ Others think that Twa, Tutsi and Hutu settled in Rwanda at different times, holding that the Twa arrived

³⁶¹ For example, Taylor suggests that

we cannot make sense of the Rwandan tragedy through political and historical analysis alone, although these are certainly necessary. Indeed something political and historical happened in Rwanda in 1994 but something cultural happened as well. The violence which occurred there ... was not merely symptomatic of a fragmented social order succumbing to externally and internally generated tensions. Beneath the aspect of disorder there lay an eerie order to the violence of 1994 Rwanda. Many of the actions followed a cultural patterning, a structuring logic, as individual Rwandans lashed out against a perceived internal other that threatened in their imaginations both their personal integrity and the cosmic order of the state.

Christopher C. Taylor, *Sacrifice as terror: The Rwandan Genocide of 1994* (Berg, 1999) 101.

³⁶² Prunier (n 31) 9.

³⁶³ See Taylor (n 361) 104. Based on Hamitism, Tutsi were denounced as 'invaders from Ethiopia', 'lazy', 'shrewd and conniving'. Tutsi women were assumed to seduce Hutu men into working for Tutsi.

³⁶⁴ Bornkamm (n 76) 9.

³⁶⁵ Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Kumarian Press, 1998) 13-14.

³⁶⁶ Ibid 13; Taylor (n 361) 73-4.

first,³⁶⁷ followed by Bantu-speaking Hutu horticulturists who settled around 1000 AD.³⁶⁸ Tutsi allegedly began to move into the region afterwards – according to Magnarella approximately 100 years later – most likely from southern Ethiopia.³⁶⁹

Another debated question centres on each group's contributions to the development of the sophisticated state system that the colonial powers found in Rwanda by the end of the 19th century.³⁷⁰ Magnarella maintains that the cattle-herding Tutsi, despite being a minority, eventually conquered the majority of Rwanda and established a monarchy ruled by a Tutsi king (*mwami*).³⁷¹ Taylor acknowledges that Tutsi (as well as Hutu) may have descended from north-eastern Africa but argues that there is 'virtually nothing' to support the claim that Tutsi conquered and civilised the Bantu speakers of the area.³⁷² On the contrary, Taylor holds that Rwanda's first political organisation was more likely to be of Hutu origin.³⁷³

By the end of the 19th century, when the colonial powers arrived in Africa, Rwanda had developed into a highly organised administrative system, governed primarily by the Tutsi *mwami*.³⁷⁴ The system has been interpreted as a hierarchical structure consisting of three classes headed by pastoralist Tutsi and followed by the agriculturalist Hutu and Twa, who were hunter-gatherers and potterers.³⁷⁵ Irrespective of the debated origin of these three groups, upon arrival of the colonial powers in Rwanda, the three groups were believed to be

³⁶⁷Taylor (n 361) 69, 72.

³⁶⁸ Ibid 64, 72; Paul J. Magnarella, 'The Background and Causes of the Genocide in Rwanda' (2005) 3(4) *Journal of International Criminal Justice* 801, 802. According to Magnarella, these Hutu allegedly physically resembled other Bantu-speakers of central Africa. See also Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 15;

³⁶⁹ Magnarella (n 368) 802. According to Clark, Tutsi settled in Rwanda sometime in the 16th century, see Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 15. Taylor notes, however, that non-Bantu speaking pastoralists may have already been present in Africa's Great Lakes area before Bantu speakers followed, see Taylor (n 361) 65.

³⁷⁰ Uvin (n 365) 13.

³⁷¹ Tutsi men were allegedly historically armed, accustomed to fighting, and better organized for military purposes than the Hutu farmers, Magnarella (n 368) 802; Kaitesi (n 29) 28. This version of the 'conquest' and development of a political and administrative system was shared by many of the early explorers of Rwanda, who argued that 'it seemed unthinkable at the time that 'totally savage negroes' could have achieved such a degree of political and religious sophistication', Prunier (n 31) 10. For that reason, the dominant theory used assumed 'kingship as having originated from Ethiopia and having been brought by 'pastoral invaders'', quoting Dir Harry Johnston, *The Uganda Protectorate* (Hutchinson, 1902), 2, 486-610.

³⁷²Taylor (n 361) 65.

³⁷³ Ibid 65. Taylor further notes that kingship rituals seem to have originated from Hutu.

³⁷⁴ Prunier (n 31) 9-10; Knust (n 58) 10. Taylor notes, however, that at the time of colonisation, some areas in Rwanda's west were still independent Hutu kingdoms, while acephalous polities continued 'well into the 20th century', see Taylor (n 361) 66.

³⁷⁵ Prunier (n 31) 5-6; Bornkamm (n 76) 9; Kaitesi (n 29) 31; Taylor (n 361) 70.

distinguished more according to occupation and socioeconomic status, and less rigidly along ethnic lines.³⁷⁶ Depending on their wealth, generally measured in terms of the ownership of cattle, it was reportedly possible for Hutu and Tutsi to move between these groups or classes.³⁷⁷ Clark notes that Hutu resented the socio-economic hierarchy, but that no violent conflict between Hutu and Tutsi was recorded during this pre-colonial period.³⁷⁸ Referring to other commentators, Clark holds that Rwanda was characterised by a 'remarkable culture of peaceful obedience toward the *mwami* and his court' at that time'.³⁷⁹

Prunier, however, notes that several Hutu principalities had resisted integration into the kingdom of the *mwami* until the 19th century, some even until after the arrival of the colonial powers.³⁸⁰ According to Prunier, the reign of King Rwabugiri in the second half of the 19th century marks a particular period during which resentments of the Hutu population against the 'centralist oppression' of the king grew.³⁸¹ Furthermore, Taylor argues that the specialisations in production served to 'demarcate and perpetuate differences' between Hutu, Tutsi and Twa.³⁸² The relationships between Tutsi and Hutu reportedly became strained throughout Rwanda by an increase of land shortages at the end of the 19th century.³⁸³ At that time, many Hutu were forced to enter into more rigid 'patron-client' relationships, which are said to have increased feelings of exploitation and resulted in a number of insurgences by the Hutu population.³⁸⁴

³⁷⁶ See Amstutz (n 74) 543; Bornkamm (n 76) 9, citing Jan Vansina, *Le Rwanda ancient* (Karthala, 2001), 178; Kaitesi (n 29) 29; Uvin (n 365) 13.

³⁷⁷ Taylor (n 361) 66. Taylor holds that the colonial powers did not understand the fluid nature of the class system, which contributed to the emergence of a more rigid classification according to ethnic lines later. See also de Brouwer and Ka Hon Chu (n 32) 12.

³⁷⁸ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 16; Prunier (n 31) 16-23. Magnarella (n 368) 803.

³⁷⁹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 16. See also Prunier (n 31) 16-23. Magnarella (n 368) 803.

³⁸⁰ Prunier (n 31) 17, 19.

³⁸¹ As an example, Prunier discusses that King Rwabugiri introduced a new and specific form of compulsory work (*ubuletwa*), Prunier (n 31) 12-13.

³⁸² Taylor (n 361) 70.

³⁸³ Bornkamm (n 76) 10. According to Magnarella, Rwanda has historically had the highest population density in Africa, Magnarella (n 368) 802.

³⁸⁴ Prunier (n 31) 20-22; Bornkamm (n 76) 10; Taylor notes that in early Rwanda, patron-client like relationships (*ubuhake*) worked as a fluid, mutually beneficial system, where clients could choose which patron they wanted to be associated with, Taylor (n 361) 42-3.

When the colonial powers divided the continent, Rwanda and Burundi were placed under German control.³⁸⁵ Germany took an 'indirect rule' approach, utilising and supporting the existing hierarchical and administrative system in Rwanda,³⁸⁶ which served to strengthen Tutsi leadership and position of power.³⁸⁷ At this time, a racial distinction between Tutsi and Hutu manifested in a 'biologically determinist sense'.³⁸⁸ The Germans advanced the so-called Hamitic theory in which the governing Tutsi elite were seen as 'a superior race more closely related to Europeans'.³⁸⁹ The Europeans used the Hamitic theory (also called 'Hamitic Hypothesis' or 'Hamitism') to explain the 'seemingly anomalous advanced civilization traits found south of the Sahara in central Africa'.³⁹⁰ According to the theory, Tutsi were regarded as ancestors of Ham, Noah's son and thus of Caucasian origin emigrating south towards Africa from Israel.³⁹¹ Considered to have Caucasian origin, Tutsi were thought to have brought civilisation to the Great Lakes region in Africa to conquer and civilise those who, according to the theory, were 'the less intelligent negroid peoples'.³⁹² Despite being widely discredited, this theory has had significant implications for the evolution of relations between Hutu and Tutsi, including the conduct of the Genocide against the Tutsi.

Following the defeat of the German Reich at the end of World War I, the administration of Rwanda and Burundi was assigned to Belgium.³⁹³ Like Germany, Belgium decided to make use of the existing political and administrative system in Rwanda and supported the Tutsi monarchy.³⁹⁴ However, in contrast to the German approach, the Belgians became more directly involved in Rwandan affairs, including in the installation of public officials,³⁹⁵ and pushed for a replacement of any remaining Hutu chiefs with a Tutsi.³⁹⁶ Tutsi were offered

³⁸⁵ Bornkamm (n 76) 10; Knust (n 58) 12.

³⁸⁶ Amstutz (n 74) 543.

³⁸⁷ Prunier (n 31) 25; Knust (n 58) 11-2.

³⁸⁸ Taylor (n 361) 71. Bornkamm (n 76) 10; Magnarella (n 368) 806; Kaitesi (n 29) 28. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 16; Prunier (n 31) 6.

³⁸⁹ Taylor (n 361) 71. Bornkamm (n 76) 10; Magnarella (n 368) 806; Kaitesi (n 29) 28.

³⁹⁰ Taylor (n 361) 39.

³⁹¹ Prunier (n 31) 6-8. Taylor notes that the Hamitic Theory was used in combination with the 'Great Chain of Being Theory', according to which Europeans were closer to God than others. Besides, Europeans considered themselves as biologically and intellectually superior and thus on the top of all civilisations with the inherent mission to bring civilisation to all those who were less intelligent and uncivilised, Taylor (n 361) 39.

³⁹² Taylor (n 361) 39.

³⁹³ Knust (n 58) 12; Magnarella (n 368) 807.

³⁹⁴ Magnarella (n 368) 807; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 16.

³⁹⁵ Amstutz (n 74) 543.

³⁹⁶ Prunier (n 31) 26-7; Magnarella (n 368) 807; Knust (n 58) 12.

better work opportunities and access to a distinct and separate educational system.³⁹⁷ Like the Germans, the Belgians emphasised 'physical difference' between Tutsi and Hutu to justify their policies favouring one group over the other.³⁹⁸ Belgium also introduced and expanded a system of forced labour on the Hutu population, further disrupting social relations between Hutu and Tutsi and increasing Hutu perception of the Tutsi as their oppressors.³⁹⁹ The Belgians conducted a census from 1933 to 1934, during which they introduced an identity card system that indicated 'ethnicity', classifying each Rwandan as a Tutsi, Hutu or Twa.⁴⁰⁰ The census determined that 85 per cent of the population were Hutu, 14 per cent Tutsi and 1 per cent Twa.⁴⁰¹ Clark evaluates the introduction of the identity cards as 'the most significant contribution by the Belgians to the widening social, cultural and economic divide between Hutu and Tutsi'.⁴⁰² The division into three ethnic categories using identity cards cemented the focus on a racial distinction and emphasised 'Tutsi supremacy'.⁴⁰³ The identity cards were used until the genocide in 1994, facilitating the identification and thus the killing of hundreds of thousands of Tutsi.⁴⁰⁴

After the end of World War II, the political situation in Rwanda underwent several significant changes, during which the Hutu majority overthrew the Tutsi minority rule.⁴⁰⁵ This change was enabled by a number of factors, including an alteration of Belgium's administrative strategy.⁴⁰⁶ While the Belgians had originally supported the Tutsi monarchy, they changed to

³⁹⁷ De Brouwer and Ka Hon Chu (n 32) 11.

³⁹⁸ Ibid 12; Kaitesi (n 29) 34.

³⁹⁹ Knust (n 58) 13; Magnarella (n 368) 807-8; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 17.

⁴⁰⁰ Magnarella (n 368) 808. According to African Rights, everyone owning ten cows or more was classified as a Tutsi: at 808, citing African Rights, *Rwanda: Death, Despair, and Defiance* (London: African Rights, 1995), 9. Clark notes that besides the ownership of cattle, numerous other factors were used to determine someone's 'ethnicity, citing Nigel Eltringham, *Accounting for Horror: Post-Genocide Debates in Rwanda* (Pluto Press, 2004) 18-9. See also Taylor (n 361) 39.

⁴⁰¹ Magnarella (n 368) 808; Taylor (n 361) 39.

⁴⁰² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 17.

⁴⁰³ Amstutz (n 74) 543.

⁴⁰⁴ Knust (n 58) 12-3; de Brouwer and Ka Hon Chu (n 32) 12.

⁴⁰⁵ Bornkamm (n 76) 10-1.

⁴⁰⁶ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 17.

favouring the Hutu majority instead.⁴⁰⁷ By the end of 1950, political parties ‘divided along ethnic fault lines’ began to be formed in Rwanda,⁴⁰⁸ including the Hutu political party ‘Parti du Mouvement de l’Emancipation des Bahutu (PARMEHUTU)’.⁴⁰⁹ In 1959, the PARMEHUTU successfully overthrew the Tutsi *mwami*.⁴¹⁰ Fuelled by former policies discriminating against Hutu and resentment of special treatment of Tutsi,⁴¹¹ the first major anti-Tutsi violence broke out in Rwanda in the same year, resulting in 100,000 Tutsi seeking refuge in neighbouring countries.⁴¹²

In 1962, Rwanda became formally independent.⁴¹³ The period after independence was characterised by the authoritarian rule of President Kayibanda, as well as a culture of fear and oppression created by Hutu leaders who reportedly willingly engaged in violent suppression of people who opposed or questioned the Hutu leadership.⁴¹⁴ In 1963 border incursions by militant Tutsi exiles resulted in reprisal attacks against the ordinary Tutsi population and by January 1964, more than 10,000 Tutsi had been killed and around 130,000 had fled from Rwanda.⁴¹⁵

In 1973, Habyarimana, a Hutu from northern Rwanda, ousted President Kayibanda and declared himself the new president of Rwanda.⁴¹⁶ Habyarimana initially seemed to support an end to Tutsi persecution but over the years his approach reportedly changed and policies and activities targeting Tutsi became more frequent and violent.⁴¹⁷ Bornkamm explains that under Habyarimana, the influence of northern clans, which later formed the core of the ‘Hutu

⁴⁰⁷ This change of strategy was in part a response to decreasing cooperation by the Tutsi in the wake of Rwanda’s move towards independence in the 1950s, see Knust (n 58) 13; Magnarella (n 368) 809; Kaitesi (n 29) 28; Taylor (n 361) 67. Taylor notes that Tutsi nationalists were not only calling for independence, but also seemed to favour socialistic ideologies. To stop a possible drift to the left, Belgium ceased its support for the Tutsi elite and started favouring the ‘safer’ Hutu majority instead: at 44, 77. The favouritism of Hutu was also supported by the Catholic Church, which, at around the same time, started to veer their support towards Hutu who accounted for the majority of converts: at 78. See also Prunier (n 31) 44.

⁴⁰⁸ Knust (n 58) 11.

⁴⁰⁹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 18.

⁴¹⁰ Ibid 18.

⁴¹¹ Taylor notes that after having enjoyed the reputation of intellectual and physical superiority for decades, Tutsi were increasingly depicted as the ‘lazy coloniser’, the ‘invader from Ethiopia’ and ‘foreign oppressors’ of the Hutu people, see Taylor (n 361) 82.

⁴¹² Bornkamm (n 76) 11; Nagarajan (n 32) 110; Kaitesi (n 29) 28; de Brouwer and Ka Hon Chu (n 32) 12.

⁴¹³ Prunier (n 31) 54.

⁴¹⁴ Ibid 56-61; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 18; Magnarella (n 368) 809.

⁴¹⁵ Magnarella (n 368) 809-10; Bornkamm (n 76) 12; Prunier (n 31) 56.

⁴¹⁶ Magnarella (n 368) 810; Bornkamm (n 76) 12.

⁴¹⁷ Taylor (n 361) 79-80; Magnarella (n 368) 810.

Power' movement,⁴¹⁸ increased.⁴¹⁹ Hutu Power reportedly comprised the 'masterminds of the genocidal ideology'.⁴²⁰

In 1990, soldiers of the Rwandan Patriotic Army (RPA) – the RPA is the military arm of the Rwandan Patriotic Front (RPF), founded in 1987 by a group of previously exiled Tutsi aiming to return to Rwanda – invaded Rwandan territory.⁴²¹ This invasion caused the displacement of hundreds of thousands of Hutu farmers, which again led to reprisal attacks during which an estimated 2000 Tutsi were killed.⁴²² Between 1990 and 1994, as multiparty politics took over in Rwanda, a number of radical anti-Tutsi parties were founded and anti-Tutsi propaganda was openly spread.⁴²³ This propaganda is said to have fuelled fears by the Hutu population that the Tutsi would return to take over power again unless they could be defeated and destroyed.⁴²⁴ For example, in 1990 the Rwandan extremist newspaper *Kangura* published a modified version of the 'Ten commandments of the Hutu',⁴²⁵ which articulated the resentment and hatred of the Hutu population against Tutsi.⁴²⁶ According to these commandments, any Hutu who had a personal or business relationship with a Tutsi was declared a traitor.⁴²⁷ The commandments warned all Hutu against Tutsi women, depicting them as malicious and less worthy than Hutu women.⁴²⁸ Members of Hutu Power began to develop media institutions, including 'Radio-Télévision Libre des Mille Collines' (RTLM), to disseminate hate propaganda against Tutsi in the lead-up to and during the genocide. According to African Rights, the radio station consistently referred to Tutsi as cockroaches (*inyenzi*) and snakes (*inzoka*).⁴²⁹ Various militia were formed, including the *Interahamwe* ('those who attack together'),⁴³⁰ who took a leading role in the killing, rape and torture of

⁴¹⁸ According to Des Forges, this movement 'cut across party lines and embodied the ethnic solidarity that Habyarimana had championed for three years', Des Forges (n 31) 4.

⁴¹⁹ Bornkamm (n 76) 12; Uvin (n 365) 205; Magnarella (n 368) 813.

⁴²⁰ Bornkamm (n 76) 12; Uvin (n 365) 205.

⁴²¹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 13. Prunier (n 31) 72, 93-9.

⁴²² Magnarella (n 368) 812.

⁴²³ Prunier provides a detailed account of all the political parties that were formed, see Prunier (n 31).

⁴²⁴ Kaitesi (n 29) 28-9; Taylor (n 361) 138-9.

⁴²⁵ 'Appel à la Conscience des Bahutu', (1990) 6 *Kangura* 6. The original commandments were written by the author Gitera in 1950, see Kaitesi (n 29) 71.

⁴²⁶ Magnarella (n 368) 812.

⁴²⁷ 'Appel à la Conscience des Bahutu' (n 425).

⁴²⁸ Ibid.

⁴²⁹ African Rights (n 326) n 5.

⁴³⁰ Magnarella (n 368) 814; Bornkamm (n 76) 15, citing Mahmood Mamdani, *When Victims Become Killers* (Princeton University Press, 2001) 206.

Tutsi during the genocide.⁴³¹ Des Forges reports that young men were recruited to form a Hutu 'civilian self-defence' force.⁴³² These men were allegedly trained by former soldiers or commanders to attack Tutsi directly in their communities.⁴³³

While tensions in Rwanda were increasing from 1990 due to anti-Tutsi propaganda and activities as well as attacks by RPF soldiers, various international actors were engaged in efforts to stop the violence in Rwanda, encouraging negotiations between the Rwandan Government and the RPF.⁴³⁴ In 1993, Habyarimana and representatives of the RPF signed a peace agreement in Arusha, Tanzania.⁴³⁵ These so-called 'Arusha Accords' would have permitted a return of Tutsi refugees to Rwanda and allowed for a coalition government between the RPF and Habyarimana's party.⁴³⁶ Some scholars have argued that Habyarimana had never intended to abide by the peace agreement,⁴³⁷ and, according to Bornkamm, members of Hutu Power were outraged by the Arusha Accords, fearing a threat to their power positions.⁴³⁸ Des Forges reports that by late March 1994, Hutu Power leaders were prepared to start the massacres of large numbers of Tutsi and moderate Hutu opposing Habyarimana and his party, with the aim 'to rid themselves of these "accomplices" and to shatter the peace agreement'.⁴³⁹

⁴³¹ Prunier (n 31) 165.

⁴³² Des Forges (n 31) 5.

⁴³³ Ibid 5.

⁴³⁴ Knust (n 58) 18.

⁴³⁵ In the same year, events in neighbouring Burundi significantly influenced the political developments in Rwanda. According to the United States Institute of Peace, Burundi's population at that time included, like Rwanda, approximately 85% Hutu and 14% Tutsi, see The United States Institute of Peace, *Rwanda: Accountability for War Crimes and Genocide* (Special Report, January 1995), 20. The United States Institute of Peace also notes that 'many observers' believe that a clear justice and accountability response to the violence in Burundi may have prevented the Genocide against the Tutsi in Rwanda the following year'. See also Taylor (n 361) 39. In June 1993, Burundi underwent its first democratic elections, resulting in a victory of Burundi's first Hutu leader, President Melchior Ndadaye, who was known as a political moderate. The allegedly 'free and fair' elections, followed by a peaceful transition to a broad-based government set an example that peaceful co-existence of Hutu and Tutsi was possible. However, only a few months after the elections, President Ndadaye was assassinated by Tutsi military, triggering mass killings of Burundian Hutu and tens of thousands of people fleeing to neighbouring Rwanda. Rwandan Hutu extremists used the violent escalation in Burundi to fuel hatred against Tutsi in Rwanda, arguing that it was yet another example of Tutsi trying to reclaim power and thus needed to be stopped, see Bornkamm (n 76) 15; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 13.

⁴³⁶ Knust (n 58) 19.

⁴³⁷ According to Taylor, the Arusha Accords were 'a farce', since the Habyarimana regime allegedly had never intended to implement the conditions of the peace agreement, Taylor (n 361) 110. Similarly, Prunier holds that Habyarimana had not signed the agreement with genuine intentions, but 'as a tactical move to buy time, shore up the contradictions of the opposition and look good in the eyes of the foreign donors', Prunier (n 31) 194-5.

⁴³⁸ Bornkamm (n 76) 15.

⁴³⁹ Des Forges (n 31) 5.

3.2.2 The Genocide against the Tutsi

In the early evening of the 6th April 1994, President Habyarimana was killed when his aeroplane was shot down during its approach to Kigali airport.⁴⁴⁰ Until today, it remains unknown and debated who planned and executed the attack.⁴⁴¹ During the same night, raids against Tutsi civilians began all over Rwanda, incited by propaganda disseminated via RTLM. Many of the first killings targeted carefully selected Tutsi and Hutu opponents who had been identified several months earlier and who were sought out and killed in their homes.⁴⁴² The targeted killings of selected individuals was followed by large-scale massacres of Tutsi, including in churches and other public buildings.⁴⁴³ Tutsi were prevented from escaping through 'a dense network of road blocks' established by Hutu groups.⁴⁴⁴ The most 'devastating massacres of the genocide' were reportedly committed in April during the first few weeks of the genocide.⁴⁴⁵ By mid-July, according to Rwandan sources, more than 1 million people had been killed.⁴⁴⁶ Another several hundred thousand people had fled Rwanda and sought refuge in neighbouring countries.⁴⁴⁷

While the genocide had been planned on the national and regional level, the violent attacks were ordered and executed locally by political, military and civic leaders as well as by the *Interahamwe* and Hutu civilians.⁴⁴⁸ Overall, the 'well organized, coordinated, and administered' planning and execution of the genocide, as well as the widespread participation of Rwanda's Hutu population in the violence against their Tutsi neighbour along with 'the use of low-technology weaponry' such as machetes, hammers and clubs have been cited as

⁴⁴⁰ Prunier (n 31) 212; Magnarella (n 368); Bornkamm (n 76) 15; Des Forges (n 31) 6.

⁴⁴¹ Prunier (n 31) 213; Knust (n 58) 19.

⁴⁴² Prunier (n 31) 230; Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 723; Des Forges (n 31) 6, 9-10, 294-5; International Panel of Eminent Personalities (n 34) 109 [14.20-1].

⁴⁴³ Des Forges (n 31) 9. See also International Panel of Eminent Personalities (n 34) 110 [14.24].

⁴⁴⁴ Des Forges (n 31) 671. See also Magnarella (n 368) 815. Taylor notes that road blocks and barriers were the most frequent locations where Tutsi and moderate Hutu were killed. Barriers were erected almost ubiquitously and many by different groups, including Rwandan Government Forces, *Interahamwe*, communal police, neighborhood protection groups, etc. Along some roads, a myriad of barriers were erected every 100 meters, making it nearly impossible to escape for any person who identified as or looked like a Tutsi. According to Taylor, these road blocks were 'the space of both ritual and transgression', Taylor (n 361) 130-1.

⁴⁴⁵ Des Forges reports that most massacres took place between the 11th April and 1st of May, see Des Forges (n 31) 301. The International Panel of Eminent Personalities notes that 'the full-blown genocide' started around the 12th April, entailing the killing of an 'overwhelming number of Tutsi ... in large-scale massacres', see International Panel of Eminent Personalities (n 34) 110 [14.23-4].

⁴⁴⁶ Ministry of Local Government (n 31) 1-38.

⁴⁴⁷ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 12.

⁴⁴⁸ Amstutz (n 74) 541; Des Forges (n 31) 10-1; Nyseth Brehm, Uggen and Gasanabo (n 31) 334.

distinct characteristics of the genocide.⁴⁴⁹ In a detailed report about the genocide events, Des Forges outlines the strategies used by Habyarimana's supporters to urge the Hutu population to engage in the violence against their Tutsi neighbours.⁴⁵⁰ According to Des Forges, 'little convincing' was needed in some regions of Rwanda. In other areas,⁴⁵¹ coercive tactics, including 'public criticism and harassment, fines, destruction of property, injury and threat of death' were required to involve the Hutu population in anti-Tutsi violence.⁴⁵²

Meanwhile, the international community was slow to condemn the violence or recognise it as genocide. Rather than send in additional troops to stop the killings, the UN Security Council voted to reduce the size of the peacekeeping mission that was in Rwanda to implement the 1993 peace agreement.⁴⁵³ On the 8th April, the RPF started a counterattack of its own in the north of Rwanda, reaching Kigali by the 11th April, where they united 'with a small battalion' that had been cantoned in Kigali as a result of the Arusha Accords.⁴⁵⁴ However, it was not until early July that the RPF managed to take overall control of Kigali and a few weeks later, the RPF officially assumed power throughout Rwanda.⁴⁵⁵ While it is widely accepted that the RPF ended the genocide, it has also been accused of killing civilians.⁴⁵⁶ RPF soldiers also have been accused of sexual violence against Hutu women.⁴⁵⁷

3.2.3 Sexual violence during the genocide

Sexual violence during the genocide occurred on an extreme scale.⁴⁵⁸ The Special Rapporteur of the Commission on Human Rights noted in a report in 1996 that during the genocide, 'rape

⁴⁴⁹ Amstutz (n 74) 541; Mark A. Drumbl, 'Postgenocide: From Guilt to Shame to Civis in Rwanda' (2000) 75 *New York University Law Review* 1221, 1245; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 12; Des Forges (n 31) 4, 8; Haskell n 98); Clark (n 60) 12.

⁴⁵⁰ Des Forges (n 31) 8, 10-1.

⁴⁵¹ According to Des Forges, Habyarimana's party had little standing in areas where Tutsi were numerous and well integrated, like in central and southern Rwanda, see *ibid* 11.

⁴⁵² *Ibid* 11. See also Taylor (n 361) 131-2.

⁴⁵³ Colin Keating, 'An Insider's Account' in David M. Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Lynne Rienner, 2004) 500-11; *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, 1257, UN Doc S/1999/1257 (16 December 1999).

⁴⁵⁴ Bornkamm (n 76) 16; Knust (n 58) 19-20; International Panel of Eminent Personalities (n 34) 109 [14.20].

⁴⁵⁵ Prunier (63) 294-9; Bornkamm (n 76) 16; Knust (n 58) 20.

⁴⁵⁶ Prunier (63) 305-6; Des Forges (n 31) 1109-10, 1118-9.

⁴⁵⁷ As outlined in the research limitations in Chapter 1, sexual violence perpetrated against Hutu women by the RPF cannot be considered in this thesis, because *gacaca* only covered acts of sexual violence that were committed as part of the Genocide against the Tutsi.

⁴⁵⁸ See Nagarajan (n 32) 111; Wells (n 32) 182; Kaitesi (n 29) 77; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2; Bastick, Grimm and Kunz (n 3) 55; Amnesty International (n 32) 2; de Brouwer and Ka Hon Chu (n 32) 14.

was the rule and its absence was the exception'.⁴⁵⁹ Women were reportedly raped in their own homes, in the fields, at road blocks, in public buildings such as government buildings, hospitals and churches, as well as in other public places.⁴⁶⁰ The main targets of sexual violence were Tutsi women because of their gender and their ethnicity,⁴⁶¹ ranging from very young girls to the elderly,⁴⁶² including pregnant women, physically handicapped persons and even corpses.⁴⁶³ Some Hutu women who were affiliated with Tutsi, for example through marriage, as well as some Tutsi boys and men, were also subjected to sexual violence.⁴⁶⁴ Perpetrators included government officials, members of militia groups (primarily the *Interahamwe*) and civilians, who were, in many cases, neighbours or relatives of the victims.⁴⁶⁵ While perpetrators were predominantly male adults, children and women were also involved in encouraging, instigating and actively participating in sexual violence.⁴⁶⁶

Des Forges described the sexual violence committed against women during the genocide as having been of 'outrageous brutality'.⁴⁶⁷ Acts of sexual violence included rape, sexual torture,

⁴⁵⁹ *Report on the Situation of Human Rights in Rwanda* (n 34) 7 [16]. Similarly, HRW notes that 'some observers believe that almost every woman and adolescent girl who survived the genocide was raped', Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 18, citing Catherine Bonnet, 'Le viol des femmes survivantes du génocide du Rwanda,' in Rwanda: Un génocide du XXe siècle, Raymond Verdier, Emmanuel Decaux, Jean-Pierre Chrétien eds., (Paris: Editions L'Harmattan, 1995), 18.]. Similar estimates are made by International Panel of Eminent Personalities (n 34) 149 [16.20].

⁴⁶⁰ See, e.g., AVEGA "AGAHOZO" (n 37) 13; International Panel of Eminent Personalities (n 34) 149 [16.20].

⁴⁶¹ Kaitesi (n 29) 76; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29); International Panel of Eminent Personalities (n 34) [16.24.]; Odeth Katengwa, 'How Motherhood Triumphs over Trauma among Mothers with Children from Genocidal Rape in Rwanda' (2014) 2(1) *Journal of Social and Political Psychology* 417, 419.

⁴⁶² Kaitesi (n 29) 76; de Brouwer and Ka Hon Chu (n 32) 14.

⁴⁶³ See, e.g., *Report on the Situation of Human Rights in Rwanda* (n 34) 7 [17]; *The Prosecutor v Eliézer Niyitegeka (2003) ICTR-96-14-T 1*, 6779 [463-5].

⁴⁶⁴ Kaitesi (n 29) 22, 76-7, 80; Sivakumaran (n 33) 257-8; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; International Panel of Eminent Personalities (n 34) [16.4]; Amick (n 32) 8; de Brouwer and Ka Hon Chu (n 32) 15.

⁴⁶⁵ Kaitesi (n 29) 76-7. See, e.g., African Rights (n 326) 18-9; Bastick, Grimm and Kunz (n 3) 55; Amick (n 32) 7. Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2.

⁴⁶⁶ Wood (n 289) 325; Nicole Hogg, 'Women's Participation in the Rwandan Genocide: Mothers or Monsters?' (2010) 92(877) *International Review of the Red Cross* 69-102, 92; AVEGA "AGAHOZO" (n 37) 18; Brown (n 331). Kaitesi (n 29) 166-9. Kaitesi mentions more than 2000 women who served prison sentences for Category 1 crimes, including rape and sexual torture, at 167. As an example, Pauline Nyiramasuhuko, who was prosecuted by the ICTR, was found guilty of rape as crimes against humanity, *The Prosecutor v Pauline NYIRAMASUHUKO, Arsène Shalom NTAHOBALI, Sylvain NSABIMANA, Alphonse NTEZIRYAYO, Joseph KANYABASHI, Élie NDAYAMBAJE* (n 331), 2 [12], 11 [48-9].

⁴⁶⁷ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 22; Kaitesi (n 29) 77.

mutilation, forced incest, sexual slavery and forced 'marriage'.⁴⁶⁸ Women were raped by individuals, gang-raped and raped with objects, such as sharpened sticks, knives, bottles, tree trunks and gun barrels.⁴⁶⁹ Many women were raped in front of community and family members.⁴⁷⁰ In many cases, rape was committed with the intent to infect the survivor with HIV to ensure 'a slow, painful death'.⁴⁷¹ Women were frequently both raped and subjected to 'extreme physical torment', such as cutting off breasts,⁴⁷² slashing of the pelvis area, and other forms of mutilation of sexual organs.⁴⁷³ Many women died of these mutilations;⁴⁷⁴ others were deliberately killed after rape,⁴⁷⁵ including with a spike through their sexual organs.⁴⁷⁶ A former UN peacekeeping force commander explained during a trial at the ICTR:

[M]any women and young girls had their breasts chopped off and their genitals crudely cut apart. They died in a position of total vulnerability, flat on their backs, with their legs bent and knees wide apart. It was the expressions on their dead faces that assaulted me the most, a frieze of shock, pain and humiliation.⁴⁷⁷

Pregnant women were particularly targeted and frequently had their wombs cut open to be eviscerated.⁴⁷⁸ Some women were captured and held in sexual slavery.⁴⁷⁹ Houses were set aside specifically for the purpose of keeping women to rape over the period of the

⁴⁶⁸ See *Report on the Situation of Human Rights in Rwanda* (n 34) 13; AVEGA "AGAHOZO" (n 37); Zraly and Nyirazinyoye (n 36) 1657; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2; Amick (n 32) 8; Kaitesi (n 29) 22, 76; de Brouwer and Ka Hon Chu (n 32) 15.

⁴⁶⁹ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2, 23; Mukamana and Collins (n 34) 144. Shiva Eftekhari, *Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda* (Report, Human Rights Watch, September 2004) 7; Nagarajan (n 32) 108; Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57) 60; AVEGA "AGAHOZO" (n 37) 22; Nduwimana (n 34) 189.

⁴⁷⁰ African Rights (n 326) 20-2.

⁴⁷¹ Ibid 19-20; AVEGA "AGAHOZO" (n 37) 22; Anderson (n 41) 10. International Panel of Eminent Personalities (n 34) 148 [16.19]; Olonisakin (n 315) 6. Kaitesi (n 29).

⁴⁷² Taylor (n 361) 140, 176.

⁴⁷³ See Penal Reform International, *Gacaca Juridictions and its Preparations* (Report No 1, January 2002) 43; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2; Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57) 60; AVEGA "AGAHOZO" (n 37) 22; de Brouwer and Ka Hon Chu (n 32) 15; International Panel of Eminent Personalities (n 34) 148 [16.19].

⁴⁷⁴ Nduwimana (n 34) 22.

⁴⁷⁵ Kaitesi (n 29) 22; de Brouwer and Ka Hon Chu (n 32) 11.

⁴⁷⁶ National Service of *Gacaca* Courts (n 75) 218; Taylor (n 361) 176; Amnesty International (n 32) 6; Amick (n 32) 8-9; Mukamana and Collins (n 34) 144.

⁴⁷⁷ Anderson (n 41) 9, citing LT. GEN. (RET.) Roméo Dallaire, Former UNAMIR Force Commander, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Random House Canada, 2003) 430.

⁴⁷⁸ Taylor (n 361) 176; Kaitesi (n 29) 22.

⁴⁷⁹ Mukamana and Collins (n 34) 144; African Rights (n 326) 22-4.

genocide.⁴⁸⁰ During ‘forced marriage’, a specific form of sexual slavery, women were coerced into living with one rapist for an extended period.⁴⁸¹ Mukamana and Collins describe how this type of suffering ‘lasted through the genocide, and in some cases even longer’.⁴⁸² Some women were forced to commit incest with a family member, including with their own children.⁴⁸³ Many women had to witness the killing and torture of family members and were then left alive to prolong their suffering.⁴⁸⁴

Most acts of sexual violence committed during the genocide were distinct from sexual violence during other armed conflicts, because they were ordered by the leaders of the genocide and committed to destroy the Tutsi group. Such sexual violence has been referred to as genocidal sexual violence. Sexual violence assisted in the extermination of the Tutsi in a number of ways,⁴⁸⁵ including through physical and psychological injuries, deliberate infection with the HIV virus,⁴⁸⁶ enforced pregnancies and destruction of the social cohesion of families and communities through forced incest and rape in front of family and community members.⁴⁸⁷ Besides genocidal sexual violence, Mullins identifies and distinguishes cases of opportunistic rapes and sexual enslavements involving detainment and repeated rapes committed during the genocide.⁴⁸⁸ Opportunistic rapes, according to Mullins, were committed as ‘a product of the widespread chaos and disorganization of the ongoing genocide’, but were not controlled or organised like the genocidal rapes.⁴⁸⁹ Some women were subjected to sexual enslavement and were held captive in specific locations where they were repeatedly raped and sexually tortured.⁴⁹⁰ Mullins distinguishes these cases of sexual enslavement from genocidal rapes because ‘[t]he added element of confinement with the

⁴⁸⁰ See, for example, the testimony of Stéphanie in African Rights (n 326) 22.

⁴⁸¹ Mukamana and Collins (n 34) 144; Taylor (n 361) 176.

⁴⁸² Mukamana and Collins (n 34) 145.

⁴⁸³ Amick (n 32) 9; Taylor (n 361) 176; Ibid 141.

⁴⁸⁴ Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (n 57) 60; Mukamana and Collins (n 34) 148.

⁴⁸⁵ The Trial Chamber in *Akayesu* held that sexual violence fell within the scope of ‘serious bodily or mental harm’, which is a constituent element of genocide, see *The Prosecutor v Akayesu* (n 34) [688].

⁴⁸⁶ Nduvimana notes that in the view of Hutu perpetrators, infecting Tutsi women with HIV was a ‘triple effective weapon’, since HIV had the potential to harm the survivor, harm any future sexual partners and harm any children born after the infection, see Nduvimana (n 34) 18; Donovan (n 34) 17.

⁴⁸⁷ See, e.g., AVEGA “AGAHOZO” (n 37) 13. Kaitesi (n 29) 76; African Rights (n 326) 20. See e.g. Bastick, Grimm and Kunz (n 3) 3, 55, 63, 65.

⁴⁸⁸ Mullins, ‘We Are Going to Rape You and Taste Tutsi Women’: Rape during the 1994 Rwandan Genocide’ (n 29) 726.

⁴⁸⁹ Ibid 726.

⁴⁹⁰ Ibid 726.

intent to continue forced sexual interactions makes these events qualitatively different from other rapes during the genocide'.⁴⁹¹ He explains that while these opportunistic rapes and sexual enslavements did not fall within the definition of genocidal rapes, they still 'included the use of ethnicist language (i.e. ethnic-specific insults)'.⁴⁹²

An analysis of the genocide requires a consideration not only of ethnic but also of gender issues.⁴⁹³ Taylor explains that the Genocide against the Tutsi was different from previous violent incidents in Rwanda, because Tutsi women 'suffered the brunt of extremist violence'.⁴⁹⁴ To explain the scale and scope of the sexual violence committed against Tutsi women, both the racial divide between Tutsi and Hutu that was solidified by the colonial powers and the propaganda spread by Hutu extremists to raise hatred and resentment towards Tutsi need to be considered.⁴⁹⁵ Genocide propaganda specifically targeted Tutsi women,⁴⁹⁶ including the earlier published 'Hutu Ten Commandments'.⁴⁹⁷ Such propaganda emphasised the alleged devious and deceitful nature of Tutsi women and created a feeling of supremacy of Hutu women and men.⁴⁹⁸ Tutsi women were portrayed as 'sexual weapons' and 'malevolent beings with the power to make men lose the head to divert them from their wives'.⁴⁹⁹ For example, the Hutu Ten Commandments warned Hutu women of the seductive nature of a Tutsi woman and urged them to 'bring back ... [their] husbands ... brothers and ... sons to reason'.⁵⁰⁰

⁴⁹¹ Ibid 723.

⁴⁹² Ibid 726.

⁴⁹³ Taylor (n 361) 176. See also Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2-3; Lisa Sharlach, 'Gender and Genocide in Rwanda: Women as Agents and Objects of Genocide' (Pt Routledge) (1999) 1(3) *Journal of Genocide Research* 387; Nduwimana (n 34).

⁴⁹⁴ Taylor (n 361) 177.

⁴⁹⁵ Ibid 170-6. See also Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2-3.

⁴⁹⁶ Taylor (n 361) 170-6. See also Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2-3; International Panel of Eminent Personalities (n 34) [16.2]; 2-3; Sharlach (n 521); Nduwimana (n 34).

⁴⁹⁷ These Ten Commandments were published in both Kinyarwanda and French in the Rwandan Newspaper Kangura in 1990, see 'Appel à la Conscience des Bahutu' (n 425).

⁴⁹⁸ Des Forges (n 31) 307; AVEGA "AGAHOZO" (n 37) 12; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2-3; Taylor (n 361) 171; International Panel of Eminent Personalities (n 34) [16.2-3]. AVEGA "AGAHOZO" (n 37) 12.

⁴⁹⁹ AVEGA "AGAHOZO" (n 37) 12; Kaitesi (n 29) 22; de Brouwer and Ka Hon Chu (n 32) 15; Taylor (n 361) 104; Mukamana and Collins (n 34) 145.

⁵⁰⁰ AVEGA "AGAHOZO" (n 37) 12; International Panel of Eminent Personalities (n 34) [16.2].

The colonial powers had determined an alleged superiority of Tutsi, including Tutsi women, describing them as more intelligent and beautiful than Hutu women.⁵⁰¹ Europeans allegedly preferred Tutsi women to Hutu women as their romantic partners or wives and this was viewed as another example of the alleged superiority of Tutsi women.⁵⁰² Taylor holds that Tutsi women were considered as more beautiful by not only Europeans but also Hutu men,⁵⁰³ and even many Hutu extremists are assumed to have had relationships with Tutsi women.⁵⁰⁴ Taylor highlights the psychological ambivalence resulting from the fact that Hutu men resented Tutsi women's 'subversive capacity to undermine boundaries between Hutu and Tutsi', while not being able to fully oppress their attraction to Tutsi women.⁵⁰⁵ This 'cognitive dissonance', as noted by Taylor, as well as feelings of resentment, envy and jealousy is likely to have contributed, at least to some degree, to the extreme sexual violence perpetrated against Tutsi women during the genocide.⁵⁰⁶

AVEGA explains that 'the nature of violence inflicted on Tutsi women originated mainly from a widespread complex among militiamen according to which Tutsi women were physically and morphologically different'.⁵⁰⁷ Militia and civilian perpetrators were reported to have frequently 'assessed' the genitalia and the inside of the womb of Tutsi women,⁵⁰⁸ which is why many women had their sexual organs and wombs cut open.⁵⁰⁹ As part of the anti-Tutsi propaganda, militia and civilian perpetrators had been made to believe that Tutsi women felt superior to them and did not consider Hutu men as worthy of them.⁵¹⁰ Such sentiments are evident in comments that survivors heard from their perpetrators, including '[y]ou Tutsi girls are too proud', '[y]ou Tutsi women think you are too good for us', and '[i]f there were peace,

⁵⁰¹ Amick (n 32) 11-4.

⁵⁰² Taylor (n 361) 171; Amick (n 32) 11-2.

⁵⁰³ Taylor (n 361) 170.

⁵⁰⁴ Ibid 174.

⁵⁰⁵ Ibid 177.

⁵⁰⁶ Ibid 176.

⁵⁰⁷ AVEGA "AGAHOZO" (n 37) 18. See also Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 13.

⁵⁰⁸ Similar accounts can be found in the AVEGA interviews with victim-survivors, AVEGA "AGAHOZO" (n 37) 19; see also Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 729.

⁵⁰⁹ AVEGA "AGAHOZO" (n 37) 18-9.

⁵¹⁰ De Brouwer and Ka Hon Chu (n 32) 15; Des Forges (n 31) 307.

you would never accept me'.⁵¹¹ These examples suggest that raping and torturing Tutsi women served as a means to subjugate Tutsi women and punish them for their 'purported arrogance'.⁵¹²

Rwandan victim-survivors have been suffering from physical, psychological and social consequences because of their experiences of sexual violence during the genocide.⁵¹³ Many affected victim-survivors contracted STDs, including HIV.⁵¹⁴ Several sources report that the percentage of HIV positive women among victim-survivors after the genocide was as high as 67 per cent,⁵¹⁵ even though not all cases of HIV/AIDS among victim-survivors may have resulted from rape.⁵¹⁶ Amnesty International (AI) explains that the widespread rape during the genocide dramatically increased the number of HIV infections in Rwanda.⁵¹⁷ Many women were raped to deliberately infect them with the virus.⁵¹⁸

Pregnancies resulting from these rapes, as well as the direct bodily injuries, contributed to the hardship of affected victim-survivors and to the destruction of the Tutsi population through 'ethnic cleansing'.⁵¹⁹ In Rwandan culture, a child assumed automatically the ethnicity of the father. Therefore, any child born as a result of rape of a Tutsi woman by a Hutu man was regarded as a Hutu, which is why impregnation of women through rape was meant to help with the elimination of the Tutsi population.⁵²⁰ The Rwandan National Population Office estimated that between 2,000 and 5,000 children were born from rape committed during the genocide.⁵²¹ A later study by the International Rescue Committee (IRC) assumed a much

⁵¹¹ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 13-4. Similar accounts are reported in National Service of *Gacaca* Courts (n 75) 218, as well as in Mullins, 'He Would Kill me with his Penis': Genocidal Rape in Rwanda as a State Crime' (n 29) 24.

⁵¹² Sharlach (n 521) 394. De Brouwer and Ka Hon Chu (n 32) 15; Des Forges (n 31) 307.

⁵¹³ See Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 6; Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39) 20; AVEGA "AGAHOZO" (n 37) 22-7. Amnesty International (n 32) 5; Uwigabye (n 15) 275.

⁵¹⁴ AVEGA "AGAHOZO" (n 37) 23; Penal Reform International (n 473) 43; Wells (n 32) 187; Nduwimana (n 34) 20-1.

⁵¹⁵ AVEGA "AGAHOZO" (n 37) 24; Penal Reform International (n 473) 43; Wells (n 32) n 15.

⁵¹⁶ The HIV virus was already widespread in Rwanda before the genocide, see Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 73.

⁵¹⁷ Amnesty International (n 32) 2.

⁵¹⁸ *Ibid* 2; International Panel of Eminent Personalities (n 34) 148 [16.19].

⁵¹⁹ Leslie Shanks and Michael J. Schull, 'Rape in War: The Humanitarian Response' (2000) 163(9) *CMAJ: Canadian Medical Association Journal* 1152-1156, 1153.

⁵²⁰ Penal Reform International (n 473) 44.

⁵²¹ Quoted in Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4.

higher number of rape-related pregnancies, estimating that around 30,000 women fell pregnant as a result of rape.⁵²² Pregnancies resulting from rape created a range of issues for affected Rwandan victim-survivors. African Unity reports that many victim-survivors aborted, including by way of 'self-induced or clandestine abortions', which required 'treatment for serious complications' in many cases.⁵²³ Many of those victim-survivors who did not abort faced challenges associated with raising a child of rape, including the risk that both mother and child were HIV positive.⁵²⁴ Some mothers referred to these children as 'enfants mauvais souvenir', meaning 'children of bad memories'.⁵²⁵ According to Nowrojee, some victim-survivors abandoned or killed their babies born from rape.⁵²⁶ Other victim-survivors kept their child and in some cases this led to 'deep divisions in the family'.⁵²⁷ Nevertheless, some victim-survivors are said to have raised their child born out of rape 'without problems within the community'.⁵²⁸ Besides rape, women during the genocide were subjected to blows, injuries, amputations and mutilation of genital parts, resulting in various infirmities, disabilities and incurable diseases.⁵²⁹ These sufferings led not only to chronic pain but also to a reduction of the women's capability to work and provide for their families.⁵³⁰

In addition to physical injuries, many Rwandan victim-survivors suffered psychologically. Sexual violence severely impacts on a survivor's psyche, resulting in acute physical and psychological trauma, depression, insomnia and in some cases even suicide.⁵³¹ AVEGA's study from 1999 revealed that Rwandan women who had experienced sexual violence during the genocide presented 'some very deep ... mental sufferings'.⁵³² Even five years after the

⁵²² Penal Reform International (n 473) citing a study by the IRC.

⁵²³ International Panel of Eminent Personalities (n 34) [16.25.].

⁵²⁴ Katengwa (n 461) 2196; International Panel of Eminent Personalities (n 34) 16.26].

⁵²⁵ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; Ka Hon Chu, de Brouwer and Roemkens (n 123) 538; International Panel of Eminent Personalities (n 34) 16.25-6.]

⁵²⁶ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; Taylor (n 361) 141.

⁵²⁷ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; International Panel of Eminent Personalities (n 34) 13.26.].

⁵²⁸ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4. Katengwa holds that motherhood played a positive role for many women who fell pregnant as a result of rape during the genocide, providing the women with a reason to live again after the violence, Katengwa (n 461).

⁵²⁹ For example, victim-survivors suffered chronic pain, incapacities to use limbs, partial and total paralysis, blindness, etc., see AVEGA "AGAHOZO" (n 37). 23.

⁵³⁰ Nagarajan (n 32) 115.

⁵³¹ World Health Organization, *World Report on Violence and Health* (n 335) 163. Cahn (n 289) 359; International Panel of Eminent Personalities (n 34) 359; Bastick, Grimm and Kunz (n 3) 15.

⁵³² AVEGA "AGAHOZO" (n 37) 26.

genocide, more than 80 per cent of the women interviewed by AVEGA reported experiencing trauma symptoms,⁵³³ including that they frequently felt incapable of mental organisation, requiring guidance from another person. Such assistance was in many cases not available, since victim-survivors lived alone or with very young children.⁵³⁴ Many victim-survivors suffered from ‘survivor’s guilt’, since they were still alive while their family members and friends were killed.⁵³⁵ According to AVEGA, the trauma of some victim-survivors was so severe that it could not be predicted whether the women would ever be able to recover.⁵³⁶

Shanks and Schull argue ‘that the effectiveness of rape as a weapon of war relies on the pervasive cultural norms that value the sexual virtue of women’.⁵³⁷ In the Rwandan culture, the sexual virtue of women is reportedly expected and highly valued.⁵³⁸ Derogatory attitudes of both men and women towards victim-survivors are deeply entrenched.⁵³⁹ Therefore, women who suffered sexual violence during the genocide are likely to carry a social stigma and face marginalisation if their experiences become known to others.⁵⁴⁰ During the genocide, many women were raped in public view and are known as victim-survivors in their communities.⁵⁴¹ Amnesty International reports that women who were exposed as victim-survivors were isolated from their communities and experienced humiliation by men, women and children, including their own families.⁵⁴² Besides the general stigma that is likely to attach to victim-survivors in Rwanda, African Unity explains that ‘rape victims [were] often perceived as collaborators with the enemy, women who traded sex for their lives while their families

⁵³³ Ibid 26.

⁵³⁴ Ibid.

⁵³⁵ African Rights (n 326) 55; Nagarajan (n 32) 115.

⁵³⁶ AVEGA “AGAHOZO” (n 37) 26.

⁵³⁷ Shanks and Schull (n 519) 1153.

⁵³⁸ Ibid 1153; Kaitesi (n 29) 209-10; Kaitesi and Haveman (n 36) 399

⁵³⁹ Amnesty International (n 32) 5; Mullins, ‘We Are Going to Rape You and Taste Tutsi Women’: Rape during the 1994 Rwandan Genocide’ (n 29) 725; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 3; AVEGA “AGAHOZO” (n 37) 22; Eftekhari (n 469) 24; Haskell (n 96) 115; Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39) 20.

⁵⁴⁰ Amnesty International (n 32) 7; Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 3; Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39) 20. Kaitesi and Haveman confirm derogatory attitudes in the Rwandan social context, noting that ‘victims of these crimes are stigmatised by their families whenever they learn that one is a victim of rape or sexual torture’, Kaitesi and Haveman (n 36) 398. Similarly, Emilienne, the psychotherapist interviewed for this thesis, explained: ‘In our culture, even today, if a young girl gets raped, arrangements are made to cover everything up. That is because if the incident becomes known, it means shame for the family.’

⁵⁴¹ See, e.g., African Rights (n 326) 20-1.

⁵⁴² Amnesty International (n 32) 5.

were being murdered'.⁵⁴³ When their experiences become known, some already married victim-survivors were consequently left by their husbands, while unmarried women had their marital desirability destroyed because of the stigma, which again worsened their socioeconomic status.⁵⁴⁴ Those victim-survivors whose rape was not publicly known feared that their rape might be revealed in the future.⁵⁴⁵ The fear of stigma prevented many victim-survivors from reporting the crimes committed against them and from seeking medical assistance, further worsening their situation.⁵⁴⁶ Infection with the HIV virus led to additional marginalisation and ostracism.⁵⁴⁷ According to Amnesty International, identifying as HIV-positive could result in victim-survivors losing their employment as well as their civil and political rights.⁵⁴⁸ Particular stigma also attached to victim-survivors who gave birth to a child resulting from the rape.⁵⁴⁹

Rape may not only lead to shame and degradation for the affected victim-survivors but also for their communities, including male community members 'who have failed to protect "their" women'.⁵⁵⁰ Sexual violence directed against Tutsi women during the genocide led to humiliation of the victim-survivor, as well as their families and whole communities, therefore destroying the social cohesion of Tutsi communities.⁵⁵¹

All physical, psychological and social sufferings of victim-survivors were aggravated by the genocide's immense death toll among the men, which left many women as widows, often with few essential resources.⁵⁵² Rombouts explains that many women struggled to access their husband's or father's property because of Rwanda's inheritance laws at the time of the genocide.⁵⁵³ An inferior public position, and low levels of literacy and education, also

⁵⁴³ International Panel of Eminent Personalities (n 34) 16.23.]

⁵⁴⁴ See, e.g., Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 722; Byamukama (n 260) 161 n 574; Kaitesi (n 29) 209;

⁵⁴⁵ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 3.

⁵⁴⁶ *Ibid* 4-5.

⁵⁴⁷ Amnesty International (n 32) 2, 20, 25; African Rights (n 326) 68.

⁵⁴⁸ Amnesty International (n 32) 2.

⁵⁴⁹ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4; African Rights (n 326) 55; Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57) 66; Amnesty International (n 32) 5.

⁵⁵⁰ See Melandri (n 6) 11, quoting Skjelsbaek (2006), 388. See also Stephen (n 319) 83. Bastick, Grimm and Kunz (n 3) 9. Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2.

⁵⁵¹ See Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 2.

⁵⁵² Rombouts (n 87).

⁵⁵³ *Ibid* 204-5.

contributed to women's vulnerability overall.⁵⁵⁴ After 1994, many women were the single providers for their families and were in charge of rebuilding their destroyed properties and raising their children.⁵⁵⁵ Women suffering from long-term disabilities and diseases thus found themselves in extreme economic and financial hardship and, as a consequence, many still struggle to feed their children or to pay school fees.⁵⁵⁶

3.3 Conclusion

This chapter introduced conflict-related sexual violence as the broad offending-victimisation context and discussed some typical consequences. The chapter highlighted that sexual violence committed during times of armed conflict tends to be particularly brutal, reflecting 'extraordinary violence'. Victim-survivors of conflict-related sexual violence are likely to suffer severe physical and psychological injuries, as well as material harm. Since stigma and subsequent social issues for victim-survivors constitute persistent issues in many conflict settings, victim-survivors are likely also to suffer socially, leading to further economic hardship.

The chapter discussed particularities of the sexual violence committed during the Genocide against the Tutsi. To contextualise the experiences of affected victim-survivors, the chapter discussed the historical relationship between Hutu and Tutsi as well as the main events of the genocide. This discussion showed that while certain differences between Hutu and Tutsi appear to have existed from the time when people arrived in Rwanda, real hostility between the two groups started with the colonisation of Rwanda by the Europeans and consistently worsened in the lead-up to the genocide. Based on these animosities, malicious propaganda that formed part of the well-planned and organised genocide was directed particularly against Tutsi women. As a result, Tutsi women (or Hutu women who were married to Tutsi) were doubly targeted because of their gender and group membership. Sexual violence was used as a specific strategy against these women to destroy the Tutsi as a group, which is why the term genocidal sexual violence is used to refer to the sexual atrocities that were committed during the genocide.

⁵⁵⁴ Ibid.

⁵⁵⁵ Nowrojee, *Shattered Lives - Sexual Violence during the Rwandan Genocide and its Aftermath* (n 29) 4.

⁵⁵⁶ Field research conducted by the author in Rwanda, December 2015-January 2016.

The extreme brutality of the sexual violence that was repeatedly committed against predominantly Tutsi women over the course of the genocide, as well as other genocide-related atrocities, led to multiple and severe consequences. These have included physical, psychological and social consequences, as well as associated material harm. These consequences majorly affected the victim-survivors' attitudes towards *gacaca* and their experiences with the courts discussed in Chapters 7-10.

4 CHAPTER 4: THE JUSTICE MECHANISM

This chapter outlines in detail the justice process analysed in this thesis, namely Rwandan *gacaca*. The chapter provides the theoretical and practical context for *gacaca* and discusses its functioning, with a focus on its handling of sexual violence cases. Detailed information about the background and operation of *gacaca* is essential for the subsequent analysis of victim-survivors' experiences with the courts, because *gacaca* was a unique justice measure, created by the Rwandan Government to deal with genocide-related crimes. The chapter is divided in two. The first part introduces transitional justice as the justice context that informed the establishment of *gacaca*. In doing so, this part discusses key concepts of transitional justice as they relate to *gacaca* and to the analysis of the primary data in this thesis. The key concepts also provide an important theoretical background to the conceptual framework of victim-survivors' justice needs discussed in Chapter 5.

The second part of the chapter discusses transitional justice in Rwanda, introducing the ICTR, Rwanda's ordinary courts and *gacaca* as transitional justice initiatives that were established to deal with genocide-related crimes, including sexual violence. While the ICTR and its handling of sexual violence is only briefly introduced, Rwanda's ordinary courts and their contribution to trying sexual violence cases is given more attention. An understanding of the ordinary courts is important, since several laws passed for the ordinary courts were later adapted by *gacaca*. Furthermore, *gacaca* and the ordinary courts collaborated in various ways in dealing with sexual violence.

After the overview of the ordinary courts, the second part of the chapter sets out the objectives and functioning of *gacaca* and its handling of sexual violence cases. Special attention is given to the *in-camera trials* at *gacaca*, because victim-survivors' experiences with these trials lie at the heart of this thesis. The various laws and regulations that guided the reporting and trying of sexual violence cases at *gacaca* are considered in this part of the chapter, providing a basis for the analysis of the primary data in Chapters 7-9. For example, Chapter 7 outlines *gacaca's* functioning as described by the victim-survivors interviewed as part of this research, comparing the interviewees' experiences with the intended features of *gacaca*. *Gacaca* procedures determined by *gacaca* law and regulations are also considered throughout the analysis of the interviewees' justice needs and experiences with *gacaca* in

Chapters 8 and 9, as well as in the conclusion of this thesis. This section of the chapter concludes with a brief discussion of some critique of relevant *gacaca* law and *gacaca*'s handling of sexual violence cases as raised by scholars and organisations working with victim-survivors.

4.1 Transitional Justice

Transitional justice is a field of theory and practice that has developed primarily since the end of the Cold War to support states following periods of war or repression to provide some kind of accountability or justice for past mass human rights violations. It is argued that societies that have experienced periods of conflict and mass violence among their citizens need to deal with past atrocities 'in order to come to terms with their past' and to create conditions that prevent future conflict and support lasting peace.⁵⁵⁷ Transitional justice can thus be thought of as combining a past and future focus by dealing with past abuses in a manner that supports a more peaceful future.⁵⁵⁸ This future focus can involve reconstruction of a society and rebuilding the rule of law, as well as psychosocial goals of healing and reconciliation.⁵⁵⁹

Transitional justice is not a special type of justice but refers to the range of measures undertaken in times of transition from armed conflict and/or state repression.⁵⁶⁰ Therefore, transitional justice activities are expected to be limited to a particular period of time (the time of transition),⁵⁶¹ and are intended to support societies 'to respond to a specific need that overwhelms the means of normal justice procedures'.⁵⁶² The initiatives that a society may select to address past atrocities depend on the society's 'specific needs, capacities, culture, history, political realities and their legal systems'.⁵⁶³ The various goals of transitional justice

⁵⁵⁷ Andrieu (n 73) 1; David Bloomfield, *On Good Terms: Clarifying Reconciliation* (Berghof Report No 14, Berghof Research Center for Constructive Conflict Management, 2006) 9; Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (n 8) 7.

⁵⁵⁸ See Andrieu (n 73) 1. However, this is not always the case in practice. Transitional justice mechanisms such as the ICTR may prioritise legal justice for past wrongs over building peace for the future, see Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 77).

⁵⁵⁹ Andrieu (n 73); Wendy Lambourne and David Niyonzima, 'Breaking Cycles of Trauma and Violence Psychosocial Approaches to Healing and Reconciliation in Burundi' in Pumla Gobodo-Madikizela (ed), *Breaking Intergenerational Cycles of Repetition* (Verlag Barbara Budrich, 1 ed, 2016) 291.

⁵⁶⁰ 'What is Transitional Justice?' (n 60). See also Bickford (n 60).

⁵⁶¹ Transitional justice mechanisms can still be set up many years after the transition period. For example, the Extraordinary Chambers in the Courts of Cambodia (ECCC) was created in 2001 'to try serious crimes committed during the Khmer Rouge regime 1975-1979', 'Witnesses - FAQs', *International Criminal Tribunal for the former Yugoslavia* (Web Page) <<https://www.icty.org/en/about/registry/witnesses/faq#4>>.

⁵⁶² Mani, 'Integral Justice for Victims' (n 3) 187.

⁵⁶³ Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (n 8) 7.

cannot be achieved by one single transitional justice instrument but require the collaboration and combination of multiple political, social and legal institutions.⁵⁶⁴ The UN, the International Center for Transitional Justice and various scholars have introduced frameworks that envision transitional justice as a holistic approach, combining a suite of both judicial and non-judicial initiatives.⁵⁶⁵ These initiatives can include one or more of the following:

1. Criminal prosecutions – involving punishment of perpetrators, including in international, hybrid or domestic courts⁵⁶⁶
2. Truth recovery processes – including truth commissions⁵⁶⁷
3. Reparation programs – including the restitution of goods, financial compensation, rehabilitation and guarantees of non-repetition⁵⁶⁸
4. Reconciliation processes – restoring relationships and building community⁵⁶⁹
5. Institutional reform – including ‘fair and efficient public institutions’ and vetting or removal of former perpetrators from public office⁵⁷⁰
6. Memorialisation/commemoration efforts – including museums, memorial sites and commemorations.⁵⁷¹

Ideally, the suite of initiatives chosen as part of an approach to transitional justice is interlinked. For example, reparation efforts require documentation and acknowledgment of truth to avoid being interpreted as insincere.⁵⁷² As another example, Boraine holds that to be successful, reconciliation processes require acknowledgment and acceptance of

⁵⁶⁴ Andrieu (n 73) 2; Hansen (n 59); Boraine (n 59); International Center for Transitional Justice (n 59); Phil Clark, 'Hybridity, Holism, and "Traditional" Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda' (2007) 39(4) *The George Washington International Law Review* 765, 765.

⁵⁶⁵ 'What is Transitional Justice?' (n 60); Bickford (n 60); Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 48. Boraine (n 59); Andrieu (n 73) 1; Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (n 8) 7; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 220-2; Buckley-Zistel and Zolkos (n 63) 1; Rama Mani, *Looking Back and Moving Forward: The Nexus between Development and Transitional Justice* (Expert Paper, FriEnt Working Group on Development and Peace, June 2007) 2.

⁵⁶⁶ Bickford (n 60); Boraine (n 59) 26.

⁵⁶⁷ Bickford (n 60); Boraine (n 59) 28-9.

⁵⁶⁸ Bickford (n 60); Boraine (n 59) 32-4.

⁵⁶⁹ Michael G. Wessells and Di Bretherton, 'Psychological Reconciliation: National and International Perspectives' (Pt Taylor & Francis) (2000) 35(2) *Australian Psychologist* 100, 101; Bloomfield (n 557); Bickford (n 60).

⁵⁷⁰ (n, 9; Boraine (n 59) 31-2; Bickford (n 60).

⁵⁷¹ Bickford (n 60).

⁵⁷² Boraine (n 59).

responsibility, as well as sincere dealings with truth recovery, institutional reform and reparation.⁵⁷³ And as a practical example, transitional justice in Rwanda focused on criminal prosecution through various mechanisms, as well as reconciliation and truth recovery through the *gacaca* courts, but the Rwandan Government also established other measures to promote reconciliation, reparation and memorialisation. These measures have included: the National Unity and Reconciliation Commission (NURC), which was engaged in community education and other programs designed to counter Hutu-Tutsi ideology;⁵⁷⁴ the creation of a fund for the support of genocide survivors (called FARG);⁵⁷⁵ annual commemorations and establishment of memorials.⁵⁷⁶

Transitional justice is intended to promote justice for past mass atrocities,⁵⁷⁷ while also fulfilling various intertwined objectives including the recognition of victims, truth recovery, accountability, redress, reconciliation, democracy and peace.⁵⁷⁸ A holistic approach to transitional justice would ideally achieve the whole range of goals but individual measures are likely to be established on the basis of a number of selected objectives. For example, *gacaca* was designed to promote accountability, justice, truth and reconciliation.⁵⁷⁹ At times, some of the objectives of transitional justice appear to be in tension with each other, such as

⁵⁷³ Boraine (n 59) 30.

⁵⁷⁴ Republic of Rwanda, *National Unity and Reconciliation Commission* (Web Page, n.d.) <<https://www.nurc.gov.rw>>. See also Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 228-9; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 79, 103-7.

⁵⁷⁵ Michel Nkurunziza, 'FARG', *SURF Survivors Fund* (Web Page, 13th April 2016) <<https://survivors-fund.org.uk/news/farg-2/>>.

⁵⁷⁶ The author of this thesis visited several memorial sites during her fieldwork, including the Kigali Genocide Memorial, Nyamata and Ntarama.

⁵⁷⁷ Hansen (n 59); Andrieu (n 73) 1; Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 117.

⁵⁷⁸ United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (n 61) 4. See also 'What is Transitional Justice?' (n 60). For example, truth recovery is meant to promote the recognition of victims, while justice responses are meant to enable accountability of offenders and some form of redress for the harms experienced by victims, see Van der Merwe, Baxter and Chapman (n 114) 1-2. The recognition of victims, in combination with justice processes, is again aimed at enabling the ultimate goals of peace, reconciliation and democracy. Bloomfield further highlights the connection between reconciliation and democracy, explaining that reconciliation is a necessary precondition for the long-term survival of democracy, see Bloomfield (n 557) 8-9.

⁵⁷⁹ Bornkamm (n 76) 26-7. Bornkamm notes that immediately after the genocide, accountability and justice lay at the centre of attention of the Rwandan government, but that need for truth and reconciliation was recognised by the end of the 1990s. See also Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 228-9.

justice on the one hand, and peace, reconciliation and truth recovery on the other.⁵⁸⁰ This tension also applied to *gacaca*, and several authors have noted that *gacaca* fell short in promoting reconciliation because of its focus on individual legal accountability linked to the domestic court system.⁵⁸¹

Justice, truth and reconciliation were core objectives of *gacaca*,⁵⁸² as well as key concepts in transitional justice, and as such are analysed in detail in the following section. Two additional concepts are introduced for detailed analysis – namely forgiveness and healing – as they emerged in the analysis of primary data for this research and are integrally connected with the stated objectives of *gacaca*,⁵⁸³ even though they play a less dominant role in the field of transitional justice.

4.1.1 Justice

Justice is an integral part of transitional justice and is also central to this thesis.⁵⁸⁴ Therefore, the topic of justice deserves specific attention in this section and is discussed in more detail than other concepts. Van der Merwe emphasises the ambiguity of the term ‘justice’, stating that the perceived purpose of justice heavily depends on the cultural and ideological context in which justice is sought.⁵⁸⁵ Lambourne acknowledges the complexity of justice, proposing that it has ‘substantive and symbolic, economic and social, legal and psychological meanings’.⁵⁸⁶ Chapter 1 noted that justice may be pursued in various forms, introducing

⁵⁸⁰ Bloomfield (n 557) 17-8; Teitel (n 64) 79, 81-85; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 33; Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 23. Lambourne notes the tension between ‘the moral and legal arguments of justice’ on one hand, and the ‘political requirements of peace’ on the other hand, Lambourne, ‘Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice’ (n 73) 216. According to Lambourne, various past peace agreements involved alleged offenders in the negotiation process, resulting in amnesties being granted, which were viewed as ‘unjust’ by affected victims, see Lambourne, ‘Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation’ (n 67) 5. The tension between justice and peace, as well as justice and reconciliation, appears to apply predominantly to retributive justice, since the goals of restorative justice closely align with reconciliation and peace. For example, Lambourne highlights that ‘[r]econciliation... values the justice which restores community, rather than the justice which destroys it’: at 24.

⁵⁸¹ Lambourne, ‘Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice’ (n 73) 234-6. See also Schabas (n 80) 3-4.

⁵⁸² Clark emphasises that particularly justice and reconciliation are fundamental to the analysis of *gacaca*, Clark, ‘Hybridity, Holism, and “Traditional” Justice: The Case of the *Gacaca* Courts in Post-Genocide Rwanda’ (n 564) 768-9.

⁵⁸³ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 26.

⁵⁸⁴ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 115.

⁵⁸⁵ Ibid 121.

⁵⁸⁶ Lambourne, ‘Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation’ (n 67) 7.

retributive justice and restorative justice, the two approaches most commonly discussed in the context of transitional justice and *gacaca*.

The meaning of restorative justice has been much debated in the literature.⁵⁸⁷ One popular definition was provided by Marshall who describes restorative justice as ‘a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future’.⁵⁸⁸ Parties with a stake in a specific offence may include victims, perpetrators and by-standing communities.⁵⁸⁹ Marshall’s definition emphasises the importance of the active involvement of multiple parties, particularly the victim and the offender, in addressing the consequences of a past offence, guided by a future focus. In the context of mass atrocities, not only individuals but whole communities are likely to be majorly affected by violence, which is why in these settings the involvement of the community becomes particularly important. The importance of the community in dealing with past mass violence is also highlighted by Clark, who identifies reconciliation of ‘individual perpetrators and survivors and of entire communities as the ultimate objective’ of restorative justice.⁵⁹⁰

In restorative justice practices, decisions on how an offence is dealt with – for example whether and how it should be punished – rest with the parties affected by the offence. Therefore, restorative justice allows for the active contribution of both victims and perpetrators, guided by the objective of ‘healing of relationships between all parties involved’,⁵⁹¹ which may or may not involve punishment of the perpetrator. In contrast, retributive justice involves a third party, such as a court, judging guilt and determining appropriate punishment of perpetrators to sanction wrongdoing.⁵⁹² In criminology and criminal law, retributive justice tends to be defined in terms of state-centred systems,⁵⁹³ while transitional justice scholars identify retributive justice in both formal and informal justice

⁵⁸⁷ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 119.

⁵⁸⁸ Chris Cunneen, ‘Restorative justice’ in Eugene McLaughlin and John Muncie (eds), *The Sage Dictionary of Criminology* (Sage Publications, 3rd ed, 2013) 384-386, 384 citing Marshall, T. (1999) *Restorative Justice: An Overview*. London: Home-Office, 5.

⁵⁸⁹ Bastick, Grimm and Kunz (n 3) 156. See also Hoyle (n 72) 2; Marshall (n 72) 37.

⁵⁹⁰ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 38.

⁵⁹¹ Cunneen, ‘Restorative Justice’ (n 588) 384.

⁵⁹² Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 119; Bastick, Grimm and Kunz (n 3) 156; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 38.

⁵⁹³ Cunneen, ‘Restorative Justice’ (n 588) 384.

mechanisms.⁵⁹⁴ Western legal criminal justice systems rely predominantly on retributive justice, and determine appropriate punishment based on the law that applies to an offence.⁵⁹⁵ Retributive justice processes in Western criminal justice systems are typically perpetrator-focused and victims play a rather marginalised role, for example as witnesses.

Considering the retributive dimension of justice, each post-conflict society engaging in transitional justice needs to address the question of whether it is 1) necessary and 2) feasible to punish past human rights violations.⁵⁹⁶ Furthermore, societies need to be clear about the purpose of punishment as well as its limitations in achieving the goals of transitional justice. Considering the broad range of objectives of transitional justice, punishment alone appears insufficient and needs to be complemented by restorative elements, particularly with a view to rebuilding damaged relationships.⁵⁹⁷ Supporters of restorative justice believe that the collective dealing with the consequences of the harm by all affected parties will ultimately enable reconciliation.⁵⁹⁸ Supporters of retributive justice believe that reconciliation is not possible without the inclusion of punishment,⁵⁹⁹ or that punishment may assist reconciliation.⁶⁰⁰ For example, in the resolution that established the ICTR, the Security Council notes that prosecutions 'would contribute to 'the process of national reconciliation' in

⁵⁹⁴ Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73).

⁵⁹⁵ Cunneen, 'Restorative Justice' (n 588) 384.

⁵⁹⁶ See, e.g., Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 37.

⁵⁹⁷ Ibid 38. Cunneen holds that, in practice, restorative justice has been 'primarily an add-on to existing and increasingly punitive criminal justice policies in the West, and a top-down process in transitional societies', Cunneen, 'The Limitations of Restorative Justice' (n 72) 182. He further notes that restorative justice has only been given little attention, particularly in 'Western' penal systems, while retributive elements of justice have continuously been increased, which is why a considerable imbalance between restorative and retributive justice remains overall: at 183. See also Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 222-3; Mark A. Drumbl, 'Restorative Justice and Collective Responsibility: Lessons for and from the Rwandan Genocide' (Pt Routledge) (2002) 5(1) *Contemporary Justice Review* 5, 8. Therefore, despite increased attention being paid to restorative justice and associated theories, it appears that, in practice, restorative justice has not yet lived up to its potential.

⁵⁹⁸ Cunneen, 'Restorative Justice' (n 588) 384. Bastick, Grimm and Kunz (n 3) 3, 156; Andrieu (n 73) 7-8.

⁵⁹⁹ Discussed, e.g., by Luc Huyse, 'Justice' in David Bloomfield, Teresa Barnes and Luc Huyse (eds), *Reconciliation After Violent Conflict* (International Institute for Democracy and Electoral Assistance, 2003) 97. See also Steven Sampson, 'From Reconciliation to Coexistence' (2003) 15(1) *Public Culture* 181, 181.

⁶⁰⁰ Andrieu (n 73) 5; United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies* (n 61) 13 [38].

Rwanda.⁶⁰¹ Others suggest that to be most effective in achieving the objectives of transitional justice, both retributive and restorative justice need to be considered as part of transitional justice.⁶⁰² Boraine, for example, introduces a holistic approach to transitional justice where retributive and restorative justice complement one another.⁶⁰³

One challenge associated with restorative justice is that it 'require[s] the active participation of an offender, and that offender is required to admit some culpability'.⁶⁰⁴ If a perpetrator is not willing to take any responsibility, then restorative justice efforts are likely to be fruitless. Herman holds that this challenge limits 'the number of ... cases eligible for restorative justice interventions'.⁶⁰⁵ Nevertheless, she proposes that 'for those few victims with identified offenders who acknowledge some responsibility for the harms they have caused, restorative justice may present a far more appealing option than the traditional criminal justice system',⁶⁰⁶ which focuses on retributive justice. The question of how perpetrators' willingness to assume responsibility for their crimes may affect victim-survivors' justice needs is discussed in the analysis of the primary data and the conclusion of this thesis. Furthermore, because *gacaca* incorporated both retributive and restorative components, this thesis also assesses victim-survivors' experiences with retributive and restorative justice elements.

Both retributive and restorative justice tend to deal with the most direct, physical harm experienced by victims of mass violence.⁶⁰⁷ Both approaches to justice have been criticised for failing to address the whole range of injustices – including social, economic and political injustices – that are likely to have led to the occurrence of the physical violence in the first place.⁶⁰⁸ Various scholars argue that additional forms of justice are needed as part of a holistic

⁶⁰¹ *Resolution 955*, 955, 3454th mtg, UN Doc S/RES/955, adopted 8 November 1994). As another example in the context of Rwanda and *gacaca*, Clark notes that 'the government ... [and] large segments of the population, including some survivors, argue that punishment at *gacaca* may also help achieve restorative end', including reconciliation, see Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 243. At the same time, Clark highlights the role that 'the forms of dialogue and collaboration that are attached to the pursuit of retributive justice' play to support the process of reconciliation.

⁶⁰² Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 77) 74. See also Boraine (n 59).

⁶⁰³ Boraine (n 59).

⁶⁰⁴ Susan Herman, 'Is Restorative Justice Possible Without A Parallel System for Victims' in Howard Zehr and Barb Toews (eds), *Critical Issues in Restorative Justice* (Criminal Justice Press, 2004) 75, 78.

⁶⁰⁵ *Ibid* 78.

⁶⁰⁶ *Ibid* 78.

⁶⁰⁷ Mani, Rama, *Looking Back and Moving Forward: The Nexus between Development and Transitional Justice* (n 565) 1; Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 117.

⁶⁰⁸ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 117. Mani, 'Integral Justice for Victims' (n 3) 187.

approach to transitional justice.⁶⁰⁹ Distributive justice, also called social justice,⁶¹⁰ is concerned with addressing socioeconomic, political and structural inequalities that are likely to have given rise to the conflict.⁶¹¹ Lambourne highlights the importance of the socioeconomic component and introduces 'socioeconomic justice' as its own form of justice.⁶¹² She proposes that socioeconomic justice combines 'various elements of justice that relate to financial or other material compensation, restitution or reparation for past violations or crimes and ...[for] socioeconomic justice in the future'.⁶¹³

4.1.2 Truth

Truth recovery constitutes a core objective of a holistic approach to transitional justice and is a concept closely related to dealing with the past.⁶¹⁴ For a full and thorough reckoning with the past, societies are required to 'uncover, in precise detail, who did what to whom, and why and under whose order'.⁶¹⁵ Similarly, on the individual level, victims of human rights abuses are concerned with the truth about what happened, both to their loved ones and themselves, and why they were targeted.⁶¹⁶ Victims are also likely to want to learn the truth about who instigated and executed the human rights abuses, which may be driven by the desire to have both the immediate perpetrators and the organisers of the violence punished or otherwise held accountable for their wrongdoing. However, the pursuit of truth may be in tension with retributive justice,⁶¹⁷ since perpetrators may choose not to reveal the truth about their abuses if this revelation may result in formal punishment. Truth commissions may incorporate 'a promise of amnesty in exchange for full disclosure of the truth',⁶¹⁸ demonstrating that truth does not necessarily lead to justice, if justice is defined in terms of punishment of wrongdoing

⁶⁰⁹ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 117. Mani, 'Integral Justice for Victims' (n 3) 187.

⁶¹⁰ Andrieu (n 73) 3.

⁶¹¹ Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (n 8) 8-9. See also Andrieu (n 73) 3.

⁶¹² Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 77) 41.

⁶¹³ *Ibid* 41.

⁶¹⁴ Wessells and Bretherton (n 569) 101.

⁶¹⁵ Robert Rotberg, 'Truth Commissions and the Provision of Truth, Justice and Reconciliation' in Robert Rotberg and Dennis Thompson (eds), *Truth v. Justice* (Princeton University Press, 2000) 3, 3.

⁶¹⁶ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 33.

⁶¹⁷ Teitel (n 64) 81; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 33.

⁶¹⁸ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 33. For example, the SA TRC provided for conditional amnesty (from retributive justice through criminal prosecution) and a process of restorative justice for those who acknowledged their crimes, and they were accepted as politically motivated.

through criminal proceedings.⁶¹⁹ Nevertheless, truth recovery may be encouraged through the process of truth-telling, which is an integral part of truth commissions, but may also be part of testifying at a criminal trial. Truth-telling involves affected parties articulating 'their truth',⁶²⁰ which may occur in a public or in a more private forum, depending on the characteristics of the truth-telling process. Truth-telling can serve several objectives, including the provision of evidence (factual truth),⁶²¹ which may be part of a criminal justice process, thereby linking the two overarching transitional justice objectives of truth and justice. Sharing one's truth may also serve as a form of personal catharsis (personal truth), assisting victims to come to terms with the past,⁶²² connecting the concepts of truth and healing.⁶²³

Besides truth-telling, Clark distinguishes truth-hearing as an important component of truth recovery.⁶²⁴ Truth-hearing, as defined by Clark, refers to the process by which different audiences receive truth-telling associated with the past, which may include both factual truth and personal truth.⁶²⁵ Through the acknowledgment of individual stories of victims by an audience, victims may be provided with a sense of dignity, worth and importance.⁶²⁶ Truth-telling and truth-hearing constitute complementary components of the post-conflict dialogue, which can take place at various transitional justice processes, including truth commissions and, to a limited extent, in criminal proceedings.⁶²⁷

4.1.3 Forgiveness

The concept of forgiveness has gained attention in the study and practice of transitional justice in recent years.⁶²⁸ Having said that, forgiveness is a highly controversial concept.⁶²⁹

⁶¹⁹ See, e.g., Kevin Avruch and Beatriz Vejarano, 'Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography' (2002) 4(2) *OJPCR: The Online Journal of Peace and Conflict Resolution* 37, 40.

⁶²⁰ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 34.

⁶²¹ Ibid 34.

⁶²² See, e.g., Sharratt (n 15) 115; Elizabeth Stanley, 'What Next? The Aftermath of Organised Truth Telling' (2002) 44(1) *Race & Class* 1, 3; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 34.

⁶²³ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 34, 47. The term healing is more fully discussed below (4.1.5).

⁶²⁴ Ibid 34.

⁶²⁵ Ibid 34.

⁶²⁶ Stanley (n 622) 3. See also Audrey R. Chapman, 'Truth Finding in the Transitional Justice Process' in Hugo van der Merwe, Vicki Baxter and Audrey R. Chapman (eds), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (United States Institute of Peace Press, 2009) 91-113, 107.

⁶²⁷ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 34.

⁶²⁸ Ibid 42; Brandon Hamber, 'Forgiveness and Reconciliation: Paradise Lost or Pragmatism?' (Pt Taylor & Francis) (2007) 13(1) *Peace and Conflict: Journal of Peace Psychology* 115, 115.

⁶²⁹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 42; Bloomfield (n 557). Ibid 23.

Clark holds that one reason for the ambiguity of the term derives from its religious connotation 'to which many people do not subscribe'.⁶³⁰ Some critiques argue that forgiveness implies condoning or excusing wrongs, which may ultimately result in an omission of punishment.⁶³¹ Others have questioned the impact of forgiveness on the dignity and self-respect of those who are requested, or offer, to forgive.⁶³² Some ethicists and political theorists have raised ethical concerns about forgiving those who have committed gross human rights violations.⁶³³ Finally, some critiques argue that forgiveness is too emotionally costly or coercive to be incorporated in dealings with past violence.⁶³⁴

Having said that, it appears that there is no universal agreement of what the term forgiveness means and what it entails.⁶³⁵ Daicoff inextricably links forgiveness to an apology, explaining that forgiveness requires the acceptance of an apology (provided an apology has been offered), followed by an explicit expression by the person who was harmed 'that they are no longer angry with the apologizer, or extend mercy to the apologizer'.⁶³⁶ In contrast, Luskin views forgiveness as a discrete process of letting go of anger and resentment, which may occur regardless of whether the wrongdoer has apologised or not.⁶³⁷ He proposes that this approach to forgiveness has psychological and physical benefits for people, since it helps to 'hurt less, experience less anger, feel less stress and suffer less depression'.⁶³⁸ Andrews considers both scenarios (forgiveness preceded by an apology and not preceded by an apology), distinguishing between negotiated and unilateral forgiveness.⁶³⁹ Negotiated forgiveness is forgiveness that is granted in return for an apology, while unilateral forgiveness

⁶³⁰ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 42. See also Bloomfield (n 557) 23.

⁶³¹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 42-3.

⁶³² Audrey R. Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' in Hugo van der Merwe and Audrey R. Chapman (eds), *Truth and Reconciliation in South Africa* (University of Pennsylvania Press, 2008) 67.

⁶³³ *Ibid* 67.

⁶³⁴ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 43.

⁶³⁵ Frederic Luskin, 'Nine Steps to Forgiveness' (2004) 25(4) *Aging Today* 13, 13. Bloomfield (n 557) 5; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 42.

⁶³⁶ Susan Daicoff, 'Apology, Forgiveness, Reconciliation & Therapeutic Jurisprudence' (2013) 13(1) *Pepperdine Dispute Resolution Law Journal* 131-180, 137.

⁶³⁷ Luskin (n 635) 13.

⁶³⁸ *Ibid* 13. In contrast, some experts believe that 'expression of anger and even the desire for revenge on the part of victims can be more functional to substantive recovery than forgiveness', Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' (n 632), 81, quoting Graeme Simpson, Director of the Centre for the Study of Violence and Reconciliation.

⁶³⁹ Molly Andrews, 'Forgiveness in Context' (2000) 29(1) *Journal of Moral Education* 75, 76, 78.

does not require an encounter with the wrongdoer, and even to a lesser degree an understanding or accepting of the wrongdoer's position.⁶⁴⁰ Unilateral forgiveness, according to Andrews, is 'contained entirely within one individual',⁶⁴¹ and is given without expecting anything in return.⁶⁴²

Power suggests that forgiveness may be the first step to enabling an apology, explaining that forgiveness 'puts the forgiven in a positions that allows ... [the offender and the person harmed] to interact as equals'.⁶⁴³ This equilibrium may create a forum for accountability,⁶⁴⁴ which may again encourage the perpetrator to apologise. Some scholars suggest that while forgiveness does not require an apology to occur, it still needs to be preceded by an event that enhances the equilibrium between the perpetrator and the victim. For example, Chapman proposes that the ability to forgive requires the harmed person to have something in common with the perpetrator.⁶⁴⁵ Such commonality could be enhanced if the victim understands the circumstance or factors that motivated the perpetrator to commit the offence in the first place,⁶⁴⁶ which would again require the perpetrator to explain their actions.⁶⁴⁷ Alternatively, North proposes that forgiveness may be facilitated by repentance and/or punishment of the wrongdoer.⁶⁴⁸

4.1.4 Reconciliation

The term reconciliation has many different connotations, which can create issues due to differing expectations.⁶⁴⁹ Bloomfield argues that the term reconciliation is 'grossly over-packed' and notes that there is no clarity about whether reconciliation is embedded in a national, societal, political, individual, psychological or theological context.⁶⁵⁰ Furthermore, he argues that people seem to disagree about whether reconciliation refers to a process or

⁶⁴⁰ Ibid 79.

⁶⁴¹ Ibid 76; 78; Luskin (n 635) 13.

⁶⁴² Andrews (n 639) 76, 78.

⁶⁴³ Ibid 77, quoting F.C. Power, 'Commentary' (1994), 37 *Human Development* 81, 83.

⁶⁴⁴ Ibid 78.

⁶⁴⁵ Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' (n 632) 72.

⁶⁴⁶ Ibid 72.

⁶⁴⁷ Ibid 72

⁶⁴⁸ Joanna North, 'Wrongdoing and Forgiveness' (1987) 62(242) *Philosophy* 499, 503, 505. At the same time, she acknowledges that neither repentance nor retribution are necessary conditions for forgiveness to occur.

⁶⁴⁹ Bloomfield (n 557) 4; David Mellor, Di Bretherton and Lucy Firth, 'Aboriginal and Non-Aboriginal Australia: The Dilemma of Apologies, Forgiveness, and Reconciliation' (2007) 13(1) *Peace and Conflict: Journal of Peace Psychology* 11; Lambourne, 'Post-Conflict Peacebuilding: Meeting Human Needs for Justice and Reconciliation' (n 67) 6; Wessells and Bretherton (n 569) 101.

⁶⁵⁰ Bloomfield (n 557) 4.

an end-state.⁶⁵¹ Defining reconciliation as an end-state raises some issues, since such a definition may alienate affected conflict parties. For example, victim groups have reportedly viewed the end-state of reconciliation as an idealistic and non-achievable vision, making them suspicious of the overall process of reconciliation.⁶⁵² For that reason, many definitions of reconciliation suggest that it is an incremental process, rather than a final result.⁶⁵³ For example, Lederach describes reconciliation as 'dynamic, adaptive processes aimed at building and healing' as well as 'a process of change and redefinition of relationships'.⁶⁵⁴

Lederach's description of reconciliation emphasises the need for rebuilding relationships between parties in a protracted conflict setting, rather than simply focusing on resolving substantive issues.⁶⁵⁵ Clark specifies that such rebuilding of relationships involves 'meaningful interaction and cooperation between former antagonists'.⁶⁵⁶ Therefore, reconciliation is distinct from peaceful coexistence, a term that has been regarded by scholars as denoting the mere absence of violence between former conflict parties.⁶⁵⁷ Coexistence, according to Kriesberg, involves at a minimum 'an accommodation between members of different communities ... who live together without one collectivity trying to destroy or severely harm the other'.⁶⁵⁸ Kriesberg further explains that 'beyond this minimal level' coexistence may 'include a sense of mutual tolerance and even respect'.⁶⁵⁹ Reconciliation includes coexistence, but goes beyond it,⁶⁶⁰ since it requires more active (positive) engagement of former conflict parties with each other.

⁶⁵¹ Ibid 6.

⁶⁵² Ibid 6-7.

⁶⁵³ Ibid 6.

⁶⁵⁴ Lederach, John Paul, 'Civil Society and Reconciliation' in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds.) *Turbulent Peace: the Challenges of Managing International Conflict* (United States Institute of Peace, 2001) 841, 847.

⁶⁵⁵ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (United States Institute of Peace Press, 2008) 26-7. Lederach suggests that the engagement of conflict parties with each other requires direct encounters of the parties. Ideally, these encounters would take place on multiple levels, including the top level, middle-range and grassroots level on both sides of the conflict: at 31-32; Wessells and Bretherton (n 569) Bloomfield (n 557) 25-6.

⁶⁵⁶ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 44.

⁶⁵⁷ Ibid 44.

⁶⁵⁸ Louis Kriesberg, 'The Process of Reconciliation' in Mohammed Abu-Nimer (ed), *Reconciliation, Justice and Coexistence: Theory And Practice* (Lexington Books, 2001) 47, 48.

⁶⁵⁹ Ibid.

⁶⁶⁰ David Bloomfield, Teresa Barnes and Luc Huyse, *Reconciliation After Violent Conflict* (International Institute for Democracy and Electoral Assistance, 2003) 19-20.

Clark notes that Lederach highlights the importance of reconciliation at the individual level.⁶⁶¹ He explains that repairing relations between individuals is crucial to support communal and national reconciliation,⁶⁶² which are again particularly relevant in the context of rebuilding after mass violence. Building on Lederach's definition, Clark distinguishes reconciliation from healing (discussed in the next section).⁶⁶³ He suggests that while healing may be a precondition for reconciliation, the process of repairing broken relationships 'constitutes much more' than the process of overcoming trauma, which is central to healing.⁶⁶⁴

Various scholars specifically point out the close connection between forgiveness, apology and reconciliation.⁶⁶⁵ Some consider the combination of apology and forgiveness as crucial ingredients to enable true reconciliation as an end-state.⁶⁶⁶ However, Bloomfield cautions that 'in the early stages of a reconciliation process, few victims are keen to forgive'.⁶⁶⁷ He further highlights that '[f]orgiveness is something ... that remains in the power of victims to give or withhold', and should thus not be viewed as an expected outcome of a reconciliation process.⁶⁶⁸ Nevertheless, victims engaging in a reconciliation process may feel that forgiveness is not regarded as their choice but as an expected outcome of the process.⁶⁶⁹ Victim advocates have raised concerns that an expectation that victims will forgive may be harmful for the victim.⁶⁷⁰ Therefore, a fair reconciliation process may need to be set up in a manner where victims do not feel pressured to grant forgiveness.⁶⁷¹

⁶⁶¹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 44.

⁶⁶² Ibid.

⁶⁶³ Clark, 'Hybridity, Holism, and "Traditional" Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda' (n 564) 771.

⁶⁶⁴ Ibid 771.

⁶⁶⁵ Bloomfield (n 557) 23. Daicoff (n 636) 5. Marshall (n 72Mellor, Bretherton and Firth (n 649) 11.

⁶⁶⁶ Marshall (n 72Mellor, Bretherton and Firth (n 649) 11; Avruch and Vejarano (n 619) 41. In contrast, Dwyer, holds that 'reconciliation is conceptually independent from forgiveness', Dwyer, 2003, 95, as cited in Bloomfield (n 557) 23.

⁶⁶⁷ Bloomfield (n 557) 23.

⁶⁶⁸ Ibid 23. See also Andrews (n 639); Herman, 'Justice from the Victim's Perspective' (n 9) 592-3.

⁶⁶⁹ See, e.g., Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' (n 632) 67.

⁶⁷⁰ Ibid 81. Herman, for example, discusses that one of her informants, a woman who had been battered, regarded 'the expectation of forgiveness as an additional injustice imposed on victims for the comfort and convenience of others', Herman, 'Justice from the Victim's Perspective' (n 9) 593.

⁶⁷¹ Boraine, Alex, *A Country Unmasked: South Africa's Truth and Reconciliation Commission* (Oxford University Press, 2000) cited in Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' (n 632) 77; Bloomfield (n 557) 23.

4.1.5 Healing

Members of post-conflict societies such as Rwanda are likely to suffer from severe physical, emotional and psychological trauma.⁶⁷² In light of these sufferings, it has been suggested that processes are needed to specifically assist affected individuals in healing, which involves rebuilding 'a sense of psychological or emotional wholeness that conflict has shattered'.⁶⁷³ Andrieu suggests that this need has recently been recognised by policy makers, who are increasingly valuing restorative approaches to transitional justice, shifting the focus from the perpetrators to the relationships within a society 'with the explicit goal of healing'.⁶⁷⁴

Clark explains that trauma may originate from both the direct and indirect consequences of violent conflict, including material deprivation, and recommends a holistic approach to healing.⁶⁷⁵ Such an approach requires a rebuilding of a person with consideration of the whole range of issues that contributed to the individual's trauma experience in the first place. One step in contributing to a victim's recovery and psychological healing, seen by many as essential, includes bringing perpetrators to justice,⁶⁷⁶ which links the two concepts of healing and justice. Furthermore, processes that assist victims in creating meaning relating to harm experienced, including truth-telling and truth-hearing, are reportedly conducive to healing, connecting the concepts of healing and truth.⁶⁷⁷ Some scholars see truth-telling and the public acknowledgment of what has happened as a crucial step before healing can occur.⁶⁷⁸ Besides justice and truth, Lederach emphasises the value of reconciliation for the promotion of healing, linking healing and reconciliation.⁶⁷⁹ Daicoff, similarly claims that reconciliation is an important element in the healing experience of individuals, groups or institutions who have experienced conflict.⁶⁸⁰

Clark distinguishes between individual and societal healing and explains that societal healing and reconciliation can only be achieved if more attention is paid to the healing of each

⁶⁷² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 40.

⁶⁷³ Ibid 40.

⁶⁷⁴ Andrieu (n 73) 2. See also Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 41.

⁶⁷⁵ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 40.

⁶⁷⁶ Hamber (n 628) 120; Avruch and Vejarano (n 619) 41.

⁶⁷⁷ Wessells and Bretherton (n 569) 101.

⁶⁷⁸ Ibid 101; Avruch and Vejarano (n 619) 41.

⁶⁷⁹ Lederach (654), 842.

⁶⁸⁰ Daicoff (n 636) 165.

individual affected by past violence.⁶⁸¹ At the same time, he acknowledges that addressing each individual's trauma is a complex endeavour, since each case is likely to be different.⁶⁸² Herman also notes that the importance of individual healing highlights therapeutic processes to support such healing.⁶⁸³ The fact that 'trauma counsellors and other psychological experts now play a greater role in helping individuals come to terms with their personal experiences of conflict' demonstrates that there is growing recognition of individual needs associated with trauma.⁶⁸⁴ Some argue that individual healing can be enhanced by giving individuals structure in their life and allowing them to (re-)build a sense of control and hope.⁶⁸⁵ These shifts can be supported by 'economic and physical reconstruction' as well as by creating an environment that allows for the 'resumption of normal patterns of living'.⁶⁸⁶ Considering societal healing, Lambourne and Gitau suggest a holistic approach to psychosocial interventions, involving not only individual therapy but also group processes.⁶⁸⁷ This range of processes is meant to address individual and collective trauma to promote both personal healing and community-building, and is especially appropriate to consider in a non-Western context where individual psychotherapy is less likely to be a widely accepted or available approach.⁶⁸⁸

4.2 Transitional Justice in Post-Genocide Rwanda

Following the end of the Genocide against the Tutsi in July 1994, many more than 100,000 suspects were arrested and accused of participating in the atrocities.⁶⁸⁹ Bornkamm explains that the transitional government in Rwanda, shortly after its formation in 1994, declared its

⁶⁸¹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 41. See also Lambourne and Gitau (n 109) 24.

⁶⁸² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 41.

⁶⁸³ Herman, *Trauma and Recovery* (n 342) 133-36. See also Wessells and Bretherton (n 569) 101.

⁶⁸⁴ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 41.

⁶⁸⁵ Wessells and Bretherton (n 569) 101.

⁶⁸⁶ Ibid 101, citing Sara Gibbs 'Postwar Social Reconstruction in Mozambique: Reframing Children's Experiences of Trauma And Healing' in K. Kumar (ed.), *Rebuilding War-Torn Societies: Critical Areas for International Assistance* (Lynne Rienner, 1997) 227.

⁶⁸⁷ Lambourne and Gitau (n 109) 24.

⁶⁸⁸ Ibid 24. Lambourne and Niyonzima (n 587) 299.

⁶⁸⁹ National Service of *Gacaca Courts* (n 75) 14; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 50; Haskell (n 96). Bornkamm notes that many people were kept in detention without any formal charges being brought against them, cautioning that a large part of prisoners were innocent, see Bornkamm (n 76) 23. See also Nyseth Brehm, Uggen and Gasanabo (n 31) 335.

desire to ‘prosecute every single perpetrator involved in the genocide’.⁶⁹⁰ The presumed leadership accused of the most serious violations of international humanitarian law were prosecuted by the ICTR,⁶⁹¹ while all other genocide suspects, including the majority of sexual violence cases, were tried by Rwandan justice mechanisms.

Due to various legislative changes to Rwandan law, sexual violence cases were tried by different Rwandan judicial institutions between 1996 and 2008, including by the specialised chambers within Rwanda’s ordinary courts.⁶⁹² In 2008, any remaining cases of rape and sexual torture that had previously been dealt with by the ordinary courts were transferred to *gacaca*.⁶⁹³ After the official closure of *gacaca* in 2012, the mandate to try any outstanding sexual violence cases committed during the genocide – apart from those that were prosecuted by the ICTR – was assigned to Rwanda’s primary courts.⁶⁹⁴ Before the functioning of the *gacaca* courts is explained in detail, the next two sections provide an overview of the ICTR and Rwanda’s ordinary courts and a short analysis of their contributions to trying sexual violence cases.

4.2.1 ICTR

International legislation contributes to the shaping of ‘norms, mores and attitudes’ and influences ‘gender relations, justice, normative culture and reparation for women in post-conflict settings’.⁶⁹⁵ Therefore, an analysis of the ICTR’s contributions to the prosecution of sexual violence and rape is important for an understanding of the political and gendered context in which the *gacaca* courts trying sexual violence operated. The ICTR was established by the UN Security Council in November 1994 as the international community’s response to the atrocities committed in Rwanda during the genocide.⁶⁹⁶ The mandate of the ICTR was to

⁶⁹⁰ Bornkamm (n 76) 22. See also Alison Des Forges and Timothy Longman, ‘Legal Responses to the Genocide in Rwanda’ in Eric Stover and Harvey M. Weinstein (eds), *My Neighbor My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge University Press, 2004) 49. As discussed earlier (4.1), the Rwandan government did not solely focus on criminal prosecution, but also established several other measures to deal with the legacies of the genocide.

⁶⁹¹ Kaitesi (n 29) 50-1; Amstutz (n 74) 3, 552.

⁶⁹² Kaitesi (n 29) 189. In 1996, rape and sexual torture were placed under the mandate of Rwanda’s specialised chambers. According to Kaitesi, these chambers were disestablished in 2004 and all remaining cases were allocated to Rwanda’s provincial courts, which were again replaced by intermediate courts in 2006.

⁶⁹³ Ibid 224. Bornkamm (n 76) 44; IRIN News (n 96).

⁶⁹⁴ Kaitesi (n 29) 189. See also Phil Clark and Nicola Palmer, *Testifying to Genocide: Victim and Witness Protection in Rwanda* (Report, REDRESS, October 2012) 12.

⁶⁹⁵ Catherine O’Rourke, *Gender Politics in Transitional Justice* (Routledge, 2013).

⁶⁹⁶ Kaitesi (n 29) 50-1; Amstutz (n 74) 552.

‘prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring states, between 1 January 1994 and 31 December 1994’. During its 21 years of operation, the ICTR prosecuted 93 individuals, including ‘high-ranking military and government officials, politicians, businessmen, as well as religious, militia and media leaders’.⁶⁹⁷ While the mandate and capacity of the ICTR allowed the court to try only a small fraction of those accused of genocide crimes,⁶⁹⁸ the ICTR trials have been praised for playing a leading role in revealing information about the genocide,⁶⁹⁹ including about crimes of sexual violence,⁷⁰⁰ and ending impunity for mass atrocities in Rwanda.⁷⁰¹ Furthermore, the ICTR, particularly the case of Rwandan mayor Jean Paul Akayesu, contributed to considerable progress in prosecuting crimes of sexual violence and particularly rape, setting some significant precedents to advance relevant substantive law.⁷⁰²

During the case of *Akayesu*, the first international criminal definitions of sexual violence and rape were established.⁷⁰³ The Tribunal in *Akayesu* provided a broad definition of rape,⁷⁰⁴

⁶⁹⁷ United Nations, ‘The ICTR in Brief’, *Legacy website of the International Criminal Tribunal for Rwanda*, n.d) <<https://unictr.irmct.org/en/tribunal>>. Out of these, 62 were sentenced, 14 were acquitted, ten were referred to national jurisdiction for trial, three are fugitives referred to the MICT, two died before their judgment and two indictments were withdrawn before trial.

⁶⁹⁸ Nyseth Brehm, Uggen and Gasanabo (n 31) 335.

⁶⁹⁹ Bornkamm (n 76) 28.

⁷⁰⁰ Kaitesi (n 29) 182; Bianchi (n 36) 148-9.

⁷⁰¹ Kaitesi (n 29) 125.

⁷⁰² Bianchi (n 36) 148-9. See also Kaitesi (n 29) 181-4.

⁷⁰³ Martha Walsh, ‘Gendering International Justice: Progress and Pitfalls at International Criminal Tribunals’ in Donna Pankhurst (ed), *Gendered Peace* (Routledge & UNRISD, 2008) 31, 40. The judgement of the *Akayesu* case was rendered in 1998. The ICTR took a broad approach to defining sexual violence, determining that sexual violence ‘is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive’, *The Prosecutor v Akayesu* (n 34) [598]. The ICTR’s indictment against Akayesu acknowledged that sexual violence was not limited to physical invasion of the human body but could include acts which do not involve physical contact, such as forced nudity. The Chamber determined sexual violence to include ‘forcible sexual penetration of the vagina, anus or oral cavity by a penis and/or of the vagina or anus by some other object, and sexual abuse, such as forced nudity’: at [10A]. See also Bianchi (n 36) 143; Mullins, ‘We Are Going to Rape You and Taste Tutsi Women’: Rape during the 1994 Rwandan Genocide’ (n 29) 729.

⁷⁰⁴ Rape was defined as ‘a physical invasion of a sexual nature, committed on a person under circumstances which are coercive’. *The Prosecutor v Akayesu* (n 34) [598]. Prior to the case of *Akayesu*, certain national jurisdictions had provided a rather restricted description of rape as ‘non-consensual intercourse’: at [596]. The shortcomings and limitations of relying on a determination of the ‘lack of consensus’ to prove rape are well known, especially for rape committed during violent conflict. According to de Brouwer et al., ‘the recognition that ... consent is virtually meaningless in a context of structural force and subjugation’ constituted one of the most important jurisprudential contributions of ICTR to substantive international criminal law, see De Brouwer et al. (n 122) 5. This recognition was also made by the ICTY, which operated concurrently to the ICTR. Many scholars who discuss jurisprudential achievements in relations to the crimes of sexual violence acknowledge both the ICTR and ICTY. Therefore, a definition going beyond ‘non-consensual’ was widely applauded by the international community engaged in the advancement of legislation relating to sexual violence.

acknowledging that there may be ‘variations on the act of rape’, including ‘acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual’.⁷⁰⁵ Such acts were committed on numerous occasions against Tutsi women, which is why the consideration of these acts as rape were particularly important in the context of the genocide.⁷⁰⁶

The case law of the ICTR also contributed significantly to the development of a jurisprudential framework to recognise sexual violence in armed conflict by setting significant precedents.⁷⁰⁷

⁷⁰⁵ *The Prosecutor v Akayesu* (n 34) [596].

⁷⁰⁶ The ICTR’s definitions of sexual violence and rape largely influenced the definition of these terms in the Rome Statute in 1998, which is the treaty that established the International Criminal Court (ICC), *Rome Statute of the International Criminal Court* (n 293).

⁷⁰⁷ *Pégorier* (n 50) 121,130.

Recognition of sexual violence and rape was enhanced in particular in the following categories: war crimes,⁷⁰⁸ torture,⁷⁰⁹ crimes against humanity,⁷¹⁰ and genocide.⁷¹¹

Despite these achievements, various scholars have criticised the ICTR for failing to meet its potential in terms of prosecuting and accounting for genocidal sexual violence in all cases.⁷¹²

⁷⁰⁸ Sriram, Martin-Ortega and Herman (n 46) 54; Cahn (n 46); Walsh (n 703). Any violation of elements listed in the Geneva Conventions and its Additional Protocols constitutes a war crime, International Criminal Court (ICC), *Rome Statute of the International Criminal Court* (n 293) 5 art 8 (2) (a). The ICTR was allocated power to prosecute 'rape, enforced prostitution and any form of indecent assault' as a 'serious violation' against Article 3 of the Geneva Conventions and its Additional Protocol II, *Resolution 1717*, UN Doc S/RES/1717 (n 287) art 4(e). The ICTR established 'that rape could fall under the ambit of "serious bodily and mental harm" prohibited by Article II (b) of the Convention', see Pégorier (n 50) 129-30. Sexual violence could also be punished as a war crime under section 4 (a) 'Violence to life, health and physical or mental well-being of persons, in particular ... cruel treatment such as torture, mutilation or any form of corporal punishment'.

⁷⁰⁹ Sriram, Martin-Ortega and Herman (n 46) 54; Cahn (n 46); Walsh (n 703). The ICTR concluded that rape constituted a form of torture 'when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'. This finding constituted an important precedent, because torture had never been interpreted to include sexual violence before, Michelle Jarvis and Elena Martin Salgado, 'Future Challenges to Prosecuting Sexual Violence under International Law: Insights from ICTY Practice' in Anne-Marie de Brouwer et al. (eds), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia, 2013) vol 12, 101104. The ICTR argued, for example, that rape needed to be regarded as a multipurpose concept, used to intimidate, degrade, humiliate, discriminate, punish, control or destroy a person. Furthermore it was acknowledged that rape, like torture, was a violation of a person's dignity, *Resolution 1717*, UN Doc S/RES/1717 (n 287) art 3(g).

⁷¹⁰ Sriram, Martin-Ortega and Herman (n 46) 54; Cahn (n 46); Walsh (n 703). The ICTR in *Akayesu* was the first tribunal to prosecute rape as a crime against humanity: at 40. The ICTR Statute had specifically enumerated rape as a crime against humanity if the rape was 'committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious ground', *Resolution 1717*, UN Doc S/RES/1717 (n 287) art 3(g). *Akayesu* was convicted criminally for crimes against humanity for multiple acts of rape (Article 3(g) of the Statute) as well as for other inhuman acts of a sexual nature (Article 3 (i) of the Statute), *The Prosecutor v Akayesu* (n 34) [696-7]. Following the ICTR (and ICTY), the Rome Statute expanded the list of sexual violence offenses that constitute a crime against humanity to 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity', *Rome Statute of the International Criminal Court* (n 293) art 7(g).

⁷¹¹ Sriram, Martin-Ortega and Herman (n 46) 54; Cahn (n 46); Walsh (n 703). The ICTR in *Akayesu* also determined that sexual violence and rape could constitute genocide 'as long as [such actions] were committed with the specific intent to destroy', *The Prosecutor v Akayesu* (n 34) [731]. The ICTR Statute had adopted the definition of genocide from Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide, *Genocide Convention* (n 28). This definition of genocide included (amongst others) the following elements: 1) Causing serious bodily or mental harm to members of the group and 2) Imposing measures intended to prevent births within the group. The ICTR in *Akayesu* held that sexual violence fell within the scope of 'serious bodily or mental harm', *The Prosecutor v Akayesu* (n 34) [688]. *Akayesu* was judged for 'the infliction of serious bodily harm and mental harm on [numerous Tutsi] and was found guilty of genocide': at [707- 8, 734]. The ICTR in *Akayesu* also held that 'measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages': at [507]. The Chamber explained that rape could be considered as genocide '[i]n patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group.': at [507].

⁷¹² Kaitesi (n 29) 52, 124-5, 181-4; Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15).

According to Kaitesi, ‘less than a handful of cases have included indictments for genocide on the basis of ... acts [of sexual violence] and even fewer have been convicted’.⁷¹³ The ICTR has also been criticised for its manner of dealing with sexual violence witnesses, which in many cases led to re-traumatisation and re-victimisation.⁷¹⁴ The ICTR has also been more generally criticised for being disconnected from the Rwandan people and the locations where the violence took place – the ICTR was not based in Rwanda but operated out of Arusha, Tanzania – so that its potential impact on the ground was lost.⁷¹⁵ For example, Lambourne explains that there were no simultaneous translations of proceedings into Kinyarwanda, and ‘only a short summary of each day’s proceedings was being broadcast on Rwandan radio each day’.⁷¹⁶ These observations suggest it was unlikely that the ICTR’s achievements regarding sexual violence would have had any significant practical impact for victim-survivors at the time of the trials.⁷¹⁷

4.2.2 Rwanda’s ordinary courts

When assessing the achievements of Rwanda’s ordinary courts in prosecuting sexual violence cases, it needs to be considered that Rwanda’s courts were initially operating under extreme conditions.⁷¹⁸ Rwanda’s justice system, which was reportedly weak before the genocide, barely existed afterwards.⁷¹⁹ Many former justice system employees were killed, had fled the country or were themselves accused of having participated in the genocide.⁷²⁰ Consequently, the Rwandan justice system was left with 12 prosecutors and 244 judges (compared with 70

⁷¹³ Kaitesi (n 29) 124. In one case, the ICTR declined to consider charges of sexual violence ‘despite spontaneous testimony’ and an *Amicus Curie* by a women’s rights coalition: at 200-1. The same suspect was later convicted for sexual torture and rape by one of Rwanda’s ordinary courts.

⁷¹⁴ See, e.g., Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15). See also Kaitesi (n 29) 171-4.

⁷¹⁵ Des Forges and Longman (n 690) 49; Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 127; Lambourne, ‘Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice’ (n 73) 215; Andrieu (n 73) 4;

⁷¹⁶ Lambourne, ‘Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice’ (n 73) 215. Lambourne also raises concern about the safety and lack of care of witnesses testifying at the ICTR when travelling in and out of Rwanda.

⁷¹⁷ Alam, however, notes that the ICTR’s conviction of the female Rwandan Nyiramasuhuko in 2011 ‘has been influential at the national and local levels of transitional justice within Rwanda’, holding that ‘[n]umerous women have been charged with and convicted of extreme human rights abuses’, Alam (n 118) 41.

⁷¹⁸ Kaitesi (n 29) 58. See also National Service of *Gacaca* Courts (n 75) 15; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 20; Bornkamm (n 76) 23; Knust (n 58) 38.

⁷¹⁹ Kaitesi (n 29) 58; National Service of *Gacaca* Courts (n 75) 15; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 20; Bornkamm (n 76) 23; Knust (n 58) 38.

⁷²⁰ Kaitesi (n 29) 58; National Service of *Gacaca* Courts (n 75) 15; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 20; Bornkamm (n 76) 23; Knust (n 58) 38.

prosecutors and 758 judges before the genocide).⁷²¹ Furthermore, public buildings, equipment and stationery had been destroyed during the genocide.⁷²² Supported by international donors, the basic justice infrastructure was re-built by 1996 and discussions were held to determine how to deal with the myriad of genocide suspects.⁷²³ Based on suggestions made at the international conference on 'Genocide, Impunity and Accountability' in Rwanda in 1995, the government adopted a law in 1996 (Organic law 08/96), which provided the framework to prosecute perpetrators of the genocide.⁷²⁴ Under this law, specialised chambers were established within the ordinary and military courts to try cases of genocide, crimes against humanity and crimes in relation to these committed between October 1990 and the end of 1994.⁷²⁵ Two core elements of the law were used to determine penalties for crimes committed during the genocide. These core elements were later adapted to *gacaca* law. The first element was the division of crimes into categories.⁷²⁶ According to this categorisation scheme, those accused of sexual violence were classified as Category 1 suspects.⁷²⁷ The second element central to Organic law 08/96 was the procedures for confessions, guilty pleas, repentance and apologies,⁷²⁸ allowing reduced sentences for most of those who pleaded guilty.⁷²⁹

The Rwandan judicial apparatus was almost entirely destroyed during the genocide and faced an incredible number of genocide accused, leading to an inevitable delay in processing cases.⁷³⁰ According to Kaitesi, the specialised chambers of both the ordinary and military

⁷²¹ Nyseth Brehm, Uggen and Gasanabo (n 31) 335.

⁷²² National Service of *Gacaca* Courts (n 75) 15; Bornkamm (n 76) 23.

⁷²³ Bornkamm (n 76) 23.

⁷²⁴ *Organic Law N° 08/96* (n 83). See also Bornkamm (n 76) 23-4; Knust (n 58) 39.

⁷²⁵ *Organic Law N° 08/96* (n 83) art 19. See also Bornkamm (n 76) 23-4; Maya Sosnov, 'The Adjudication of Genocide: *Gacaca* and the Road to Reconciliation in Rwanda' (2008) 36 *Denver Journal of International Law and Policy* 125-153, 131; Amstutz (n 74) 552; Knust (n 58) 39. While these specialised chambers were created within Rwanda's ordinary and military courts, this thesis will use 'Rwanda's ordinary courts' when referring to genocide proceedings undertaken by Rwanda's national justice system for reasons of convenience and consistency. Furthermore, most other sources viewed for this thesis do not distinguish between Rwanda's ordinary and military courts, but refer to Rwanda's ordinary or national courts only.

⁷²⁶ *Organic Law N° 08/96* (n 83) art 2. See also Clark, 'Hybridity, Holism, and "Traditional" Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda' (n 564) 790-1; Bornkamm (n 76) 24; Kaitesi (n 29) 62-3; Sosnov (n 725) 131.

⁷²⁷ *Organic Law N° 08/96* (n 83). This law only lists sexual torture, which was meant to include rape. Later changes to the law, as discussed in this chapter, extended the wording to rape and sexual torture.

⁷²⁸ *Ibid* art 4-9. Initially, confession or guilty plea could be entered at any time as long as it was made before the accusation was officially made to the court.

⁷²⁹ See National Service of *Gacaca* Courts (n 75) 19-23.

⁷³⁰ Omaar et al. (n 99) 22-3.

courts heard ‘some cases of rape and sexual violence’ without any specific figures being provided.⁷³¹ Amnesty International reports that ‘significantly less than 100 women’ had their sexual violence cases tried by an ordinary court by 2004.⁷³² According to Eftekhari, only 32 cases including charges of sexual violence were heard before the ordinary courts between 1996 and 2003.⁷³³ Despite the low numbers of cases tried, Kaitesi explains that some early convictions of persons accused of sexual violence had signalled a commitment to sanction sexual violence.⁷³⁴ However, she further notes that after these initial convictions, many persons accused of rape and sexual violence were acquitted.⁷³⁵

The classification of rape and sexual torture as Category 1 crimes has been both complimented and critiqued. On the one hand, this classification constitutes an achievement, since it highlighted that sexual violence was considered as one of the most serious crimes committed during the genocide and that such violence was condemned in Rwanda.⁷³⁶ Furthermore, the explicit inclusion of both sexual torture and rape acknowledged the range of experiences of victim-survivors.⁷³⁷ Nevertheless, in an initial proposal of Organic law 08/96, the Rwandan Government had listed rape as the only gender and sexual crime committed during the genocide and had classified it as a Category 3 crime, ‘being only superior to property crime’ (since rape was (mistakenly) assumed to not lead to death).⁷³⁸ This proposal was rejected by Parliament and subsequent ‘passionate discussions’ highlighted that experiences of victim-survivors went far beyond the traditional definition of rape as outlined in Rwanda’s penal code.⁷³⁹ These discussions resulted in the decision to use the term sexual torture instead of rape (sexual torture was meant to include rape) to be listed in the categorisation of genocide crimes and to move these crimes to Category 1.⁷⁴⁰ Since sexual torture was the only explicit term used in the categorisation of genocide crimes of 1996,

⁷³¹ Kaitesi (n 29) 196.

⁷³² Amnesty International, referring to an interview with the women’s rights organization Haguruka in March 2004, report that ‘significantly less than 100 women’ had their sexual violence cases tried by an ordinary court by 2004, see Amnesty International (n 32) 16.

⁷³³ Eftekhari (n 469) 18.

⁷³⁴ See Kaitesi’s discussion of the cases of Gatanazi and Bizimana, Kaitesi (n 29) 197.

⁷³⁵ Ibid 197.

⁷³⁶ Ibid 194.

⁷³⁷ Ibid 192-4.

⁷³⁸ Kaitesi explains that sexual violence was discussed in great detail during the drafting of *Organic Law N° 08/96*, see ibid 191-4.

⁷³⁹ Ibid 191-4.

⁷⁴⁰ *Organic Law N° 08/96* (n 83) art 2. See also Kaitesi (n 29) 191-4.

Kaitesi notes that some confusion was created for courts trying to apply the law in the beginning.⁷⁴¹ In cases where obvious physical torture could not be proven as part of a rape case, some accused were (mistakenly) tried for a Category 3 crime instead (since rape had been classified as a Category 3 crime in the first proposal of Organic law 08/96) and received much more lenient sentences than those convicted for sexual torture.⁷⁴² These rather lenient sentences are likely to have sent the message that rape was not regarded as a serious crime. To remedy this shortcoming, both rape and sexual torture were explicitly listed as crimes of the first category in the law amendment of 2001.⁷⁴³

The classification of rape and sexual torture (from here on referred to as sexual violence) as Category 1 offences brought about logistical challenges for women. Category 1 crimes were heard by Rwanda's ordinary courts until the law amendment of 2008 transferred competency to *gacaca* to try the majority of remaining Category 1 crimes. Victim-survivors who had raised allegations of sexual violence either had their cases delayed until 2008 when *gacaca* was made competent to hear these crimes, or if their case was tried before 2008 by Rwanda's ordinary courts, faced several issues at the ordinary courts. For example, Rombouts explains that victim-survivors were unable to cover the costs for legal representation for trials at the ordinary courts and struggled to receive and understand documents relating to their cases.⁷⁴⁴ Furthermore, female judges, prosecutors and lawyers who, based on their gender, would have appeared more appropriate to deal with crimes of a sexual nature committed against women, were largely unavailable.⁷⁴⁵ According to de Brouwer and Ruvebana, 12 specialised chambers across Rwanda were dealing with genocide-related crimes.⁷⁴⁶ Attending hearings at one of the courts in which the chambers operated required many victim-survivors, especially those living in rural areas, to travel long distances,⁷⁴⁷ and paying for long distance transport caused financial difficulties for affected victim-survivors.⁷⁴⁸ Rombouts further reports that communication between the courts and the victim-survivors was difficult, especially those victim-survivors who lived in rural areas, which is why some of them were

⁷⁴¹ Kaitesi (n 29) 195. See also Amick (n 32) 39-40.

⁷⁴² Kaitesi (n 29) 195.

⁷⁴³ Ibid 196.

⁷⁴⁴ Rombouts (n 87) 230.

⁷⁴⁵ Ibid; Nagarajan (n 32) 118.

⁷⁴⁶ De Brouwer and Ruvebana (n 40) 939.

⁷⁴⁷ Omaar et al. (n 99) 24 ; Rombouts (n 87) 230.

⁷⁴⁸ Rombouts (n 87).

reportedly unaware of the date of their trial.⁷⁴⁹ Furthermore, according to the human rights organisation REDRESS, many hearings were suspended or delayed, which caused further financial strains on victim-survivors.⁷⁵⁰ Since only four appellate courts operated in Rwanda at that time, attending appeals hearings was particularly costly and time consuming.⁷⁵¹ REDRESS reports that in various appeals cases, verdicts were delivered in the absence of the victim-survivor without any notification of the outcome.⁷⁵²

When *gacaca* was first introduced, victim-survivors could raise allegations of sexual violence during *gacaca* but the case was then referred to Rwanda's ordinary courts. Various courts within the ordinary courts handled sexual violence between 1996 and 2008.⁷⁵³ Therefore, victim-survivors had to deal with different legal institutions, which may have seemed confusing to victim-survivors and may have deterred them from raising their cases.⁷⁵⁴ Another issue associated with sexual violence constituting a Category 1 crime relates to the early guilty plea rules. Until a change to the law in 2001, persons accused of Category 1 crimes could not benefit from reduced sentences through confessions.⁷⁵⁵ Pleading guilty to a Category 1 crime before 2001 resulted in the death penalty.⁷⁵⁶ Therefore, there was little incentive for anyone to confess to sexual violence. Confessions and guilty pleas were considered an important tool to promote reconciliation.⁷⁵⁷ Given that confessions were initially not encouraged for people accused of sexual violence, victim-survivors did not benefit from the guilty plea provision in the sense that their perpetrators showed responsibility for their crimes. Guilty-plea rules were changed as part of the Organic law of 2001, extending reduced sentences for confession of Category 1 crimes.⁷⁵⁸

According to Kaitesi, in all cases that were tried before the specialised chambers, victim-survivors reportedly also sued for damages as civil parties.⁷⁵⁹ Those victim-survivors whose

⁷⁴⁹ Ibid.

⁷⁵⁰ Omaar et al. (n 99) 24.

⁷⁵¹ Ibid 24.

⁷⁵² Ibid 24.

⁷⁵³ See n 692 for more detail.

⁷⁵⁴ Kaitesi (n 29) 203; Nagarajan (n 32) 118; Rombouts (n 87).

⁷⁵⁵ Kaitesi (n 29) 63. National Service of *Gacaca* Courts (n 75) 19. See also Kaitesi (n 29) 202-3.

⁷⁵⁶ National Service of *Gacaca* Courts (n 75) 19; Kaitesi (n 29) 202-3. The death penalty was not executed after 1998 and was abolished in 2007; see Nyseth Brehm, Uggen and Gasanabo (n 31) 348).

⁷⁵⁷ Kaitesi (n 29) 63-4; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 234.

⁷⁵⁸ National Service of *Gacaca* Courts (n 75); 42. Kaitesi (n 29) 63; 202-3.

⁷⁵⁹ Kaitesi (n 29) 200.

cases were heard by a specialised chamber were reportedly awarded compensation and damages.⁷⁶⁰ Nevertheless, Kaitesi explains that none of these judgements were ever executed, leading to anger and frustration among affected victim-survivors.⁷⁶¹

4.2.3 *Gacaca*

In 1998, Rwanda's 19 prisons were seriously over-crowded, accommodating around 130,000 detainees in spaces that were designed for significantly fewer inmates.⁷⁶² As the specialised chambers had only managed to try approximately 1300 suspects between 1996 and 1998,⁷⁶³ it was estimated that genocide trials would continue for about 200 years if dealt with at the same pace by the ordinary courts.⁷⁶⁴ In response to the slow process of the ordinary courts, Rwanda's government sought alternative mechanisms that would allow the handling of genocide-related cases in a timelier manner. A general amnesty for everyone involved in the violence of 1994 was rejected for various reasons. Firstly, the government had made a commitment to end the 'culture of impunity', which was regarded as one of the main factors that had caused the genocide.⁷⁶⁵ Secondly, a general amnesty was rejected to prevent reprisal attacks by genocide survivors.⁷⁶⁶ After intensive discussions and deliberation,⁷⁶⁷ the Rwandan Government made the decision to establish the *gacaca* court system.⁷⁶⁸ This system involved

⁷⁶⁰ Ibid 203. See also Jean-Rodolphe W. Fiechter, 'The Role of Traditional Justice in Uganda, given Rwanda's Experience of *Gacaca*' (2009) *ExpressO* 8.

⁷⁶¹ Kaitesi (n 29) 203.

⁷⁶² Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 228. According to Nyseth Brehm, Uggen and Gasanabo (n 31) 335, Rwandan prisons at that time were meant to hold 45,000 prisoners. See also Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 50. Haskell notes that in 1998, 130,000 detainees were kept in spaces designed for about 12,000, see Haskell (n 96) 2.

⁷⁶³ According to Nyseth Brehm, Uggen and Gasanabo, the national courts had processed 'only a few thousand cases' by 2000, see Nyseth Brehm, Uggen and Gasanabo (n 31) 336. Nevertheless, Schabas notes that the specialised chambers tried almost 7200 cases between 1997 and 2002, see William A. Schabas, 'Post-Genocide Justice in Rwanda: A Spectrum of Options' in Phil Clark and Zachary D. Kaufman (eds), *After Genocide, Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (Hurst, 2008) 207, 218, referring to numbers quoted by J. Fierens, 'Les Juridictions *Gacaca* entre Rêve et Réalité', *Journal of International Criminal Justice*, 3 (2005), 896. Bornkamm evaluates this figure as a 'remarkable number', Bornkamm (n 76) 25.

⁷⁶⁴ Wells (n 32). See also Haskell (n 96) 19; Bornkamm (n 76) 25.

⁷⁶⁵ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 35-6.

⁷⁶⁶ Ibid 55.

⁷⁶⁷ For a detailed description of these discussions, see *ibid* 55-63.

⁷⁶⁸ Haskell (n 96) 19. The *gacaca* system was established based on *Organic Law No 40/2000*, see Bornkamm (n 76) 26.

around 12,000 local community courts that supported Rwanda's specialised chambers by hearing the majority of genocide cases.⁷⁶⁹

These *gacaca* courts were based on Rwanda's traditional conflict resolution process, also called *gacaca* (and referred to here as 'traditional *gacaca*').⁷⁷⁰ In the aftermath of the genocide, traditional *gacaca* was amended to assist with genocide-related crimes.⁷⁷¹ Some of the core features of the traditional *gacaca* were continued in 'modern' *gacaca* (also called *inkiko gacaca*).⁷⁷² These features included the location of *gacaca* proceedings (traditional *gacaca* was usually held outside in communal spaces, reflective of the importance of community participation in the proceedings) and the incorporation of some elements that were aimed at fostering reconciliation.⁷⁷³ Having said that, *inkiko gacaca* differed in many ways from the former customary courts.⁷⁷⁴ Traditional *gacaca* was typically conducted by male community elders to settle minor civil disputes such as property and inheritance relations.⁷⁷⁵ In contrast, *inkiko gacaca* was established with the specific objective to try genocide suspects.⁷⁷⁶ All modern *gacaca* proceedings were heard and judged by a panel of *Inyangamugayo*, which consisted of community members who were elected by their

⁷⁶⁹ National Service of *Gacaca* Courts (n 75) 64.

⁷⁷⁰ National Service of *Gacaca* Courts (n 75) 12. See also Knust (n 58) 20. Kaitesi explains that *gacaca* means 'a green lawn commonly grown in traditional homesteads in Rwanda', Kaitesi (n 29) 64. These lawns were traditionally used by community members to meet, including to resolve disputes.

⁷⁷¹ Phil Clark, 'The Rules (and Politics) of Engagement: The *Gacaca* Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda' in Phil Clark and Zachary D. Kaufman (eds), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (Columbia University Press, 2009) 297, 279; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 3; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 218. Amstutz (n 74) 542; Haskell (n 96); Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 230-1.

⁷⁷² Ewa Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute* (Research Paper, United Nations Development Programme, Oslo Governance Centre, December 2006) 27. See also Kaitesi (n 29) 64. This section compares traditional and *inkiko gacaca*, which is why both terms are used to distinguish the two processes. For the rest of the thesis, the term *gacaca* is used to refer to *inkiko gacaca*.

⁷⁷³ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 70; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 230-1. While Lambourne agrees that some of the elements of traditional *gacaca* were indeed maintained, she questions the reconciliatory value of *gacaca* due to its 'overemphasis on retributive justice': at 234.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ Kaitesi (n 29) 64; Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39).

⁷⁷⁶ Clark, 'The Rules (and Politics) of Engagement: The *Gacaca* Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda' (n 711) 279; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 3; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 218; Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39) 1; Amstutz (n 74) 542.

communities.⁷⁷⁷ In contrast to the solely male community elders who conducted traditional *gacaca*, the panel of *Inyangamugayo* who presided over *inkiko gacaca* included women and non-elders.⁷⁷⁸ *Inkiko gacaca* also involved women as participating community members, unlike the traditional *gacaca* that allowed only participation of men.⁷⁷⁹ Traditional *gacaca* occasionally included corporal punishment or temporary banishment.⁷⁸⁰ However, its main focus lay on the reconciliation of the disputing parties, restoration of the social order and reintegration of those who had caused social disorder.⁷⁸¹ While *inkiko gacaca* was also intended to foster reconciliation through restorative elements,⁷⁸² one main objective of these courts was to punish genocide-related crimes based on the aforementioned sentencing scheme that had been adapted from Rwanda's ordinary courts. Furthermore, *inkiko gacaca* represented a hierarchical state-directed initiative, rather than a grassroots approach like traditional *gacaca* 'displaying a more systematic organisation between the administrative divisions of local government'.⁷⁸³ Finally, modern *gacaca* applied codified law, documented in writing, instead of verbally transmitted, customary law.⁷⁸⁴ It therefore reflected more of a Western penal system, rather than a traditional dispute resolution system. Because of its direct link to Rwanda's domestic court system and the focus on punishment, some scholars

⁷⁷⁷ Waldorf, *Transitional Justice DDR: The Case of Rwanda* (n 39). The characteristics of *Inyangamugayo* are discussed in more detail below in this chapter.

⁷⁷⁸ According to Bornkamm, 'a far greater number' of elected *Inyangamugayo* were male, even though the majority of candidates had been female, Bornkamm (n 76) 37-8. That said, Bornkamm notes that the number of female judges increased over the years since many elected candidates had to step down when genocide charges were laid against them: at 37-8. Male judges were more likely to be accused of genocide crimes, since men's engagement in the genocide was proportionally much higher than that of women.

⁷⁷⁹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 71. See also Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 17.

⁷⁸⁰ Bornkamm notes that 'theft and intentional destruction of property ... were considered such serious violations of communal solidarity that they would often be punished by death', Bornkamm (n 76) 32 citing OHCHR, *Gacaca: Le Droit Coutumier au Rwanda: Rapport Final de la Première Phase d'Enquête sur le Terrain* (1996) 17 *et seq.*

⁷⁸¹ Filip Reyntjens and Ste Vandeginste, 'Rwanda: An Atypical Transition' in Elin Skaar, Siri Gloppen and Astri Suhrke (eds), *Roads to Reconciliation* (Lexington Books, 2005) 101, 118; Bornkamm (n 76) 23-3. Clark notes that punishment by traditional *gacaca* had the primary purpose of re-establishing the social order and was usually accompanied by some additional restorative measures to re-integrate offenders into the community, see Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 52. See also Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 230-1.

⁷⁸² Judith Herrmann, 'A Critical Analysis of the Transitional Justice Measures Incorporated by Rwandan *Gacaca* and their Effectiveness' (2012) 19 *James Cook University Law Review* 90, 6.

⁷⁸³ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 71.

⁷⁸⁴ *Ibid.*

argue that the retributive nature of *inkiko gacaca* significantly outweighed its restorative side.⁷⁸⁵

When *gacaca* was launched, five core objectives were articulated which closely relate to the objectives of transitional justice discussed earlier:

1. Reveal the truth
2. Accelerate genocide trials
3. Eradicate the culture of impunity
4. Reconcile Rwandans and reinforce their unity
5. Prove the Rwandans' capacity to resolve their own problems.⁷⁸⁶

By speeding up genocide trials, *gacaca* was meant to reduce Rwanda's prison populations.⁷⁸⁷ Furthermore, *gacaca* was thought to enable both the delivery of justice and the promotion of reconciliation. These objectives were meant to be achieved by several features of *gacaca*, including its participatory and communal structure: *gacaca* courts depended on participation of local people as judges, witnesses, parties and representatives.⁷⁸⁸ Reconciliation was also meant to be fostered through the outcomes that *gacaca* supported, including compensation as punishment for property-related crimes and commutation of prison sentences to community service.⁷⁸⁹ Furthermore, special procedures for confessions, guilty pleas,

⁷⁸⁵ Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 233-6; Schabas, 'Genocide Trials and *gacaca* Courts' (n 80) 3-4.

⁷⁸⁶ National Service of *Gacaca* Courts (n 75) 33.

⁷⁸⁷ Ibid 33. As mentioned earlier, around 130,000 genocide accused reportedly were held in prisons at the time when *gacaca* was established. Many of them had been incarcerated since 1994 and had thus already spent up to eight years in prison. For those who confessed to Category 2 crimes, half of the time of imprisonment that they had been sentenced to was commuted to community service, see *Organic Law N° 16/2004* (n 84) art 73. When *gacaca* started its trial phase, many of those who confessed were released from prison, since they had already served the required time (sometimes more) in prison, see Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 232.

⁷⁸⁸ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 3. See also Lambourne and Gitau (n 109) 23, 28; Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 228-9.

⁷⁸⁹ *Organic Law N° 16/2004* (n 84) arts 54-6; 72-3; 75; Amstutz (n 74); Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 238. As will be explained in more detail further below, mitigation to community service was only possible for people who had committed and confessed to Category 2 crimes. The rule did not apply to crimes of sexual violence, which were classified as Category 1 crimes, as explained later in this chapter.

repentance and apologies specified in *gacaca* law allowed for reduced sentences for the majority of those who pleaded guilty to the crimes of which they had been accused.⁷⁹⁰

Clark, who provides one of the most comprehensive assessments of *gacaca*,⁷⁹¹ distinguishes several 'profound' objectives of *gacaca*.⁷⁹² The profound objectives that find application in this thesis involve truth, justice, reconciliation, forgiveness and healing,⁷⁹³ which overlap with the five transitional justice concepts introduced earlier in this chapter.

4.2.3.1 General functioning of *gacaca*

Describing the functioning of *gacaca* is a complex endeavour since *gacaca* is not 'a static, traditional structure readily comprehensible', but 'a highly dynamic socio-legal institution' that underwent numerous changes to address various shortcomings that arose during its operation.⁷⁹⁴ *Gacaca* courts were created by Organic law 40/2000, determining the courts' mandate to cover genocide and crimes against humanity committed in Rwanda between 1 October 1990 and 31 December 1994.⁷⁹⁵ *Gacaca* started as a pilot project in mid-2002,⁷⁹⁶ and in 2005, courts began operating throughout the country.⁷⁹⁷ On the 18th June 2012, one decade after its launch, the *gacaca* jurisdiction was formally closed, having tried nearly 2 million cases

⁷⁹⁰ *Organic Law N° 16/2004* (n 84) arts 54-6; 72-3; 75. In how far these procedures applied to suspects who were accused of crimes of sexual violence is discussed further below in this chapter.

⁷⁹¹ Clark notes that his work 'constitutes the first academic analysis of the entirety of the *gacaca* process', since his 'desk research spans nearly nine years, commencing in 2001 until the end of 2009, including extensive field research, Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 6.

⁷⁹² *Ibid* 26.

⁷⁹³ *Ibid* 26.

⁷⁹⁴ *Ibid* 27. *Gacaca* law was changed in 2001, 2004, 2006, 2007 and 2008: at 64.

⁷⁹⁵ *Organic Law N° 40/2000* (n 84). Based on Rwanda's Penal Code and from a legal point of view, the crimes that *gacaca* heard and tried were 'ordinary crimes': at art 1. However, since these crimes were committed 'with the intent to destroy... [an] ethnical [or] racial ... group' as defined in the Genocide Convention, these ordinary crimes were regarded and prosecuted as crimes of genocide and crimes against humanity: at 68. See also Kaitesi (n 29) 68.

⁷⁹⁶ The *gacaca* courts of the pilot phase were officially launched on the 18th June 2002, starting with the information collection in 12 selected sectors. On 25th November 2002, information collection started in another 106 sectors, while the trial phase started on the 10th March 2005 in all 118 courts involved in the pilot phase, see National Service of *Gacaca* Courts (n 75) 53-4, 78; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 68-9. See also Bornkamm (n 76) 62; Allison Corey and Sandra F. Joireman, 'Retributive Justice: The *gacaca* Courts In Rwanda' (2004) 103 *African Affairs* 73, 83.

⁷⁹⁷ While the *gacaca* courts were launched at national level on the 24th June 2004, the information collection at national level did not start until January 2005, National Service of *Gacaca* Courts (n 75) 86; Bornkamm (n 76) 39. The trial phase at national level started on the 15th July 2006, National Service of *Gacaca* Courts (n 75) 86, 91.

during its 10 years of existence,⁷⁹⁸ which included, according to Clark, around 400,000 genocide suspects.⁷⁹⁹

Gacaca courts operated on two administrative levels, including the cell and sector level.⁸⁰⁰ Each *gacaca* court, both at cell and at sector level, comprised a seat made up by seven *Inyangamugayo* and two substitutes,⁸⁰¹ a general assembly consisting of all residents aged 18 or older, and a coordination committee.⁸⁰² The implementation of the *gacaca* law started with the election of community members as *Inyangamugayo* to establish the seat of each *gacaca* court.⁸⁰³ *Inyangamugayo* were in charge of hearing and judging cases brought before *gacaca*.⁸⁰⁴ They had to meet certain criteria, including that they had not participated in the genocide and that they did not hold any official function.⁸⁰⁵ Service as *Inyangamugayo* was unpaid, which reportedly caused financial difficulties particularly for those who spent as much as two days per week on *gacaca* duties.⁸⁰⁶

Around 250,000 *Inyangamugayo* were elected to fill the seats of the *gacaca* courts that were created based on the law of 2000.⁸⁰⁷ Once elected, the *Inyangamugayo* underwent six weeks of training to learn about the *gacaca* system, basic principles of the law, group facilitation and

⁷⁹⁸ See National Service of *Gacaca* Courts (n 75); Nyseth Brehm, Uggen and Gasanabo (n 31) 340.

⁷⁹⁹ See Phil Clark, 'After Genocide: Democracy in Rwanda, 20 Years on' (2014) 20(4) *Juncture* 308, 309.

⁸⁰⁰ Bornkamm (n 76) 46. See also Nyseth Brehm, Uggen and Gasanabo (n 31) 336. In Rwanda, a cell was made up of ten or more extended families (on average 830 citizens), while about six cells (approximately 5000 citizens) formed a sector, Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 54. Initially *gacaca* was meant to operate at a number of administrative levels, including the cell, sector, district and province level, see *Organic Law N° 40/2000* (n 85) art 3. Following the pilot *gacaca*, various changes were made to the system, resulting in the decision to operate *gacaca* courts only at the cell and sector level, see Kaitesi (n 29) 67.

⁸⁰¹ The seat/bench initially consisted of 19 'honest people ... elected by and from among the Cell's inhabitants', *Organic Law N° 40/2000* (n 85) art 13. The number of persons on the seat was reduced various times as part of changes to *gacaca* law, resulting in the final amendment of seven 'persons of integrity and two deputies', *Organic Law N° 13/2008* (n 95) art 4.

⁸⁰² *Organic Law N° 40/2000* (n 85) art 6-10. A coordination committee was formed by a president, two vice presidents and two secretaries

⁸⁰³ Bornkamm (n 76) 37. The *Inyangamugayo* of the cell were elected by the Rwandan population in a nationwide election in October 2001. These *Inyangamugayo* of the cell would then elect, from their own numbers, the judges for the *gacaca* courts at sector level.

⁸⁰⁴ *Organic Law N° 40/2000* (n 85) art 25.

⁸⁰⁵ Ibid art 10-1. Bornkamm (n 76) 37. See also National Service of *Gacaca* Courts (n 75) 35; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 75.

⁸⁰⁶ Bornkamm (n 76) 37.

⁸⁰⁷ Ibid 37. See also Penal Reform International (n 473) 33; Nyseth Brehm, Uggen and Gasanabo (n 31) 336. Kirkby refers to 150,000 *Inyangamugayo*, see Coel Kirkby, 'Rwanda's *Gacaca* Courts: A Preliminary Critique' (Pt Cambridge University Press) (2006) 50(2) *Journal of African Law* 94. According to *Gacaca* Community Justice, by the end of *gacaca* in June 2012, 169,442 judges had heard cases at altogether 12,103 *gacaca* courts, see 'Gacaca Community Justice' (Web Page, n.d.) <http://gacaca.rw/>.

conflict resolution.⁸⁰⁸ Apart from this six-week training, most *Inyangamugayo* did not have any legal education, which is one of the reasons why *gacaca* has been criticised for enabling 'lay judges' to try serious crimes, including assault, torture, murder and sexual violence.⁸⁰⁹

In 2002, during *gacaca*'s pilot phase, 751 courts commenced their work at the cell level.⁸¹⁰ When *gacaca* was rolled out across the country, 9013 *gacaca* courts were established at the cell level and 1545 at sector level plus an additional 1545 courts of appeal at the sector level.⁸¹¹ *Gacaca* consisted of three stages, including the information gathering, the classification of genocide suspects and the trial stage. The information gathering stage was conducted predominantly at the cell level. *Inyangamugayo* and their communities met once a week to collect information about victims, perpetrators and crimes committed during the genocide.⁸¹²

Gacaca had adapted the guilty plea procedure from the genocide law of 1996.⁸¹³ Based on this procedure, perpetrators were encouraged to make confessions, which were later considered during the trial stage.⁸¹⁴ While perpetrators could still confess as late as during their actual trial, punishments were significantly reduced when confessions were made before a suspect was officially recorded as a genocide accused.⁸¹⁵ The guilty plea procedure was intended to help reveal information about the genocide and speed up genocide trials,

⁸⁰⁸ Bornkamm (n 76) 38.

⁸⁰⁹ Olivia Ward, 'Flawed Rwandan Courts Diminish Hope for Justice', *The Star* (online, 9 April 2009) <http://www.ictj.org/en/news/coverage/article/2507.html>, 4.

⁸¹⁰ Bornkamm (n 76) 39. The first *gacaca* courts started operations in 73 cells in 12 sectors as an early trial. The other 678 cell *gacaca* started later in the year, see Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 68-9.

⁸¹¹ National Service of *Gacaca* Courts (n 75) 86. Bornkamm (n 76) 46.

⁸¹² Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 76. A certain quorum of judges and community members was required for these meetings to proceed. For each *gacaca* meeting during the information gathering and the trial phase, a minimum of 100 community members had to be present, see *Organic Law N° 16/2004* (n 84) art 18. Regulations regarding the number of judges required were amended various times over the years of *gacaca*'s operation. Initially, 19 judges formed the bench of a *gacaca* court at cell level, see *Organic Law N° 40/2000* (n 85) art 8, out of which 15 were required for a legitimate *gacaca* hearing, *ibid* art 26. A change to *gacaca* law in 2004 reduced the number of judges required to attend to 7 out of 9, see *Organic Law N° 16/2004* (n 84) art 23. According to Kaitesi and Haveman, the final amendment of *gacaca* law required for five out of seven *Inyangamugayo* to be present to meet the quorum criteria for a trial, see Kaitesi and Haveman (n 36) 391. However, *Organic Law 13/2008* still mentions that the bench consists of seven *inyangamugayo* and two deputies, *Organic Law N° 13/2008* (n 95) art 4.

⁸¹³ *Organic Law N° 08/96* (n 83) art 4-9.

⁸¹⁴ Various rules applied as to how a confession was to be made, Kaitesi and Haveman (n 36) 392-3; Bornkamm (n 76) 67-8.

⁸¹⁵ See, e.g., *gacaca* sentencing scheme in National Service of *Gacaca* Courts (n 75); see also Bornkamm (n 76) 69.

while fostering reconciliation at the same time.⁸¹⁶ Bornkamm acknowledges that the guilty plea procedure ‘undoubtedly [played] a major role in fact-finding in *gacaca* courts’,⁸¹⁷ but cautions that ‘a system that trades confession and pardon against personal benefit in a criminal trial is of limited use as an instrument for genuine reconciliation between perpetrators and victims’.⁸¹⁸ For example, one point of critique raised by affected victims (and confirmed by perpetrators themselves) was that suspects confessed solely for the purpose of having their sentence reduced but not to genuinely assume responsibility and demonstrate remorse with a view to reconciling with the victims.⁸¹⁹

In *gacaca*’s second stage the judges put together case files of genocide suspects and categorised their crimes according to their severity. The *gacaca* system had adopted and further amended the aforementioned categorisation system from the genocide law of 1996.⁸²⁰ As per the final amendment to the categorisation scheme,⁸²¹ Category 1 suspects included persons who helped plan and execute the genocide as well as persons who committed rape and sexual torture.⁸²² Category 2 included persons who committed or participated in killings, acts of torture, serious violence and dehumanising acts on a dead body as well as other criminal acts against people. Category 3 comprised persons who had committed an offence against someone’s property.⁸²³ Once the categorisation of crimes was completed, these crimes were allocated to the respective courts for trial. Crimes of Category

⁸¹⁶ Bornkamm (n 76) 67; Kaitesi (n 29) 63-4.

⁸¹⁷ Bornkamm (n 76) 69.

⁸¹⁸ Ibid 69.

⁸¹⁹ Uwigabye (n 15) 276; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 244-5. Bornkamm discusses that the guilty plea procedure encouraged prison inmates to confess to crimes that they had actually not committed in order to be released from prison, Bornkamm (n 76) 69. Penal Reform International (PRI) reports that detainees made ‘only partial confessions or [assigned] themselves only minor offenses’, Penal Reform International, *Pilot Phase January 2002 – December 2004* (Report, December 2005) 23.

⁸²⁰ National Service of *Gacaca* Courts (n 75) 42-44.

⁸²¹ The categorisation of genocide crimes was changed several times from the start of *gacaca* to its last year of operation. The categorisation relevant to this thesis is based on the final amendment of the scheme as per *Organic Law N° 10/2007* of March 1st, 2007 outlined in ibid 98-99. The *gacaca* law of 2000 used four categories of genocide crimes, *Organic Law N° 40/2000* (n 85) art 51. According to *Organic Law N° 40/2000*, Category 1 suspects included those accused of helping to plan and execute the genocide, and of rape and sexual torture; while the remaining categories included people whose criminal acts or participation caused death (Category 2), who were guilty of other serious assault (Category 3), and those who committed an offense against someone’s property (Category 4). In 2004, Category 2 and 3 were merged to become Category 2, while the early Category 4 became Category 3, see National Service of *Gacaca* Courts (n 75) 66-75. See also Clark, ‘Hybridity, Holism, and “Traditional” Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda’ (n 564) 790-1.

⁸²² National Service of *Gacaca* Courts (n 75) Table 17.

⁸²³ Ibid. Kaitesi notes that property damage traditionally would not qualify as genocide. However, in the context of the Genocide against the Tutsi, destruction of property was part of the overall plan to destroy the Tutsi as a group, and was thus included in the crimes punishable as genocide-related offenses, Kaitesi (n 29) 69.

3 were tried by *gacaca* courts of the cell, while Category 2 crimes were allocated to *gacaca* courts at the sector level.⁸²⁴ Category 1 crimes, which included sexual violence, were tried by Rwanda's ordinary courts until an amendment to the law in 2008 assigned competency to *gacaca* courts to try the majority of the remaining Category 1 cases.⁸²⁵

During *gacaca*'s third stage, *Inyangamugayo* heard and judged the cases that were allocated to their *gacaca* jurisdiction.⁸²⁶ Suspects were usually tried by the cell or sector *gacaca* where the crime had geographically taken place.⁸²⁷ While all proceedings were held in public,⁸²⁸ deliberations and decisions by judges were made in private.⁸²⁹ Judgements were meant to be announced in public, if possible on the same day as the trial.⁸³⁰ Penalties for offences were determined according to the aforementioned categorisation and sentencing scheme of the *gacaca* law.⁸³¹ Crimes of Categories 1 and 2 resulted in prison sentences and the deprivation of certain rights but half of the prison sentences issued for crimes of Category 2 were commuted to community service.⁸³² Damage to property was usually addressed through civil compensation.⁸³³ If convicted perpetrators were unable to reimburse victims for stolen or destroyed property, some were required to work off their debts through unpaid labour.⁸³⁴ The categorisation and sentencing scheme considered the aforementioned guilty plea

⁸²⁴ *Organic Law N° 16/2004* (n 84) arts 34, 42.

⁸²⁵ *Organic Law N° 13/2008* (n 95) art 1.

⁸²⁶ Kaitesi and Haveman note that during a typical hearing, both the defendant(s) and the plaintiff(s) would be identified, and the charges laid against the defendant would be read out', Kaitesi and Haveman (n 36) 392-3. Where a confession had been made before the start of the trial, the confession would also be read out. The defendant(s) could then comment on the accusations, before the plaintiff(s) would be given time to describe in detail what had happened to them and what consequences they suffered resulting from the offence. The defendant(s) would then be given another opportunity to respond.

⁸²⁷ *Organic Law N° 16/2004* (n 84) art 44 assigned competence to deal with an offence to 'the *Gacaca* court of the area where it has been committed'. If a person committed offences in different cells of the same sector, they were meant to be tried by the court at the sector level for the various offenses. If a person committed offences in different sectors, then they would have several trials, each in the sector where they committed the specific crime, see Bornkamm (n 76) 50.

⁸²⁸ An exception to these public proceedings are the *gacaca* trials that dealt with sexual violence after competency to try these cases was transferred to *gacaca* courts in 2008.

⁸²⁹ *Organic Law N° 16/2004* (n 84) art 21. Decisions required consensus, or, at a minimum, an 'absolute majority', Kaitesi and Haveman (n 36) 393; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 77.

⁸³⁰ Kaitesi and Haveman (n 36) 393. See also Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 77. Sometimes trials went for more than one day and the judgements were announced the following day.

⁸³¹ For a detailed outline of crime categories and according sentence, see National Service of *Gacaca* Courts (n 75). See also Article 72, as modified by article 17 *Organic Law No 13/2008*, outlined in Bornkamm (n 76).

⁸³² See sentencing scheme, National Service of *Gacaca* Courts (n 75) 130.

⁸³³ See *ibid.*

⁸³⁴ *Ibid* 66-75.

procedure that allowed for reduced sentences for defendants who confessed, pleaded guilty, repented and apologised. Various criteria applied to be able to benefit from reduced sentences. These criteria included that the defendant had 1) given a detailed description of the confessed crime, 2) disclosed any accomplices, and 3) apologised for the offence(s) committed.⁸³⁵ Apologies had to be given ‘publicly to the victims in case they ... [were] still alive and to the Rwandan society’.⁸³⁶ In 2008, the criterion of an apology was changed to a request for forgiveness.⁸³⁷

Any judgement, except from those relating to offences against property, could be appealed.⁸³⁸ Each sector had a court of appeal that would deal with appeals of judgements that had been passed by the *gacaca* court of the same sector.⁸³⁹ Appeals could be made by the defendant, the victim and, with an amendment in 2007, by ‘any other interested person ... in the interest of justice’.⁸⁴⁰ By the time *gacaca* was formally concluded in 2012, it had completed close to 2 million cases, including 60,000 Category 1 cases, 600,000 cases of Category 2 and more than 1.3 million Category 3 offences (Table 4.1).⁸⁴¹

Table 4.1: *Gacaca* Case Completion⁸⁴²

<i>Gacaca</i> category	Number of cases	%	Number found guilty	%	Appeals
Category 1	60,552	3	53,426	88	19,177
Category 2	577,528	30	361,590	63	134,394
Category 3	1,320,554	67	1,266,632	96	25,170
Total	1,958,634	100	1,681,648	86	178,741

Choosing *gacaca* to process the vast majority of genocide suspects and cases, the Rwandan Government had to make some compromises, especially regarding the rights of the accused,

⁸³⁵ *Organic Law N° 40/2000* (n 85) art 54. See also Bornkamm (n 76) 187; Kaitesi and Haveman (n 36) 393.

⁸³⁶ *Organic Law N° 16/2004* (n 84) art 54.

⁸³⁷ *Organic Law N° 13/2008* (n 95) art 16.

⁸³⁸ National Service of *Gacaca* Courts (n 75) 80. Appeals had to be lodged within 15 days from the announcement of the judgment, *Organic Law N° 16/2004* (n 84) art 87. Based on statistics from the ‘*Gacaca* Case Completion’ (Table 4.1), nearly one quarter of all cases tried by the sector courts (including Category 1 and Category 2 cases) were appealed. Besides appeals, the law also specified that plaintiffs could request that a judgment was reviewed, *ibid* art 93.

⁸³⁹ See article 43 as modified by article 9 *Organic Law N° 10/2007*, outlined in Bornkamm (n 76) 183.

⁸⁴⁰ The inclusion of ‘any other interested person ... in the interest of justice’ was eventually limited to those cases where the victim’s side was not represented or ‘where the law had been applied in a blatant manner’, see *Ibid* 72.

⁸⁴¹ Nyseth Brehm, Uggen and Gasanabo (n 31) 340.

⁸⁴² *Ibid*.

qualifications of *gacaca* staff and applicable legal standards.⁸⁴³ One highly criticised feature of *gacaca* was that suspects did not have legal support and were unable to prepare an adequate defence.⁸⁴⁴ Having said that, plaintiffs also did not benefit from legal representation.⁸⁴⁵ Clark explains how the exclusion of lawyers was meant to have a positive impact on reconciliation by maximising ‘the community’s sense of ownership over the process’.⁸⁴⁶ The Rwandan Government believed that the transparency of the process and the participation of the community would legitimise the process and protect the rights of all participants.⁸⁴⁷ Another point that has been frequently criticised is that *gacaca* hearings were judged by people with no legal background who had received little formal training.⁸⁴⁸ Furthermore, since *Inyangamugayo* did not receive any compensation, some were reported to have been susceptible to bribery and manipulations of trials and verdicts.⁸⁴⁹ Although *gacaca* law required *Inyangamugayo* to be ‘Rwandans of integrity’ with ‘high morals and conduct’, critics have questioned their impartiality.⁸⁵⁰ *Inyangamugayo* frequently came from the same community as the accused and victims concerned in the cases they heard and judged, and were thus likely to be affected by the incidents and / or related to the accused or victim. In contrast, Clark regards the close ties of judges with their community as an important adoption from traditional *gacaca* legitimising the modern proceedings.⁸⁵¹

Another feature of *gacaca* that has frequently been criticised as a shortcoming and that has relevance to the primary data of this thesis was the lack of reparation by way of compensation provided by *gacaca*.⁸⁵² Material damages that were facilitated by *gacaca* were usually limited

⁸⁴³ Haskell (n 96) 112.

⁸⁴⁴ Ward (n 836); IRIN News (n 96).

⁸⁴⁵ Bornkamm notes that victims participating in a *gacaca* trial concerning crimes committed against them acquired the status of a party to the trial (‘plaintiff’), comparable to that of a ‘partie civile’, Bornkamm (n 76) 148.

⁸⁴⁶ Clark, ‘Hybridity, Holism, and “Traditional” Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda’ (n 564) 796.

⁸⁴⁷ Haskell (n 96).

⁸⁴⁸ Ward (n 836).

⁸⁴⁹ See Haskell (n 96) 19; Sosnov (n 725) 20; Ward (n 836).

⁸⁵⁰ See Sosnov (n 725) 148.

⁸⁵¹ Clark, ‘Hybridity, Holism, and “Traditional” Justice: The Case of the *gacaca* Courts in Post-Genocide Rwanda’ (n 564) 5.

⁸⁵² Some researchers who assessed *gacaca*’s overall contribution to reparation concluded that its achievements of material reparation ‘have been meagre’, Bornkamm (n 76) 131; Haskell (n 96) 80-2. The terms compensation and reparation are distinguished in Chapter 5 (5.1.2).

to Category 3 crimes, which included the destruction of houses and killing of animals.⁸⁵³ Facilitating compensation for ‘the loss of family members or bodily injury’, including sexual violence, did not form part of *gacaca*’s mandate, at least not at the time when sexual violence cases were tried by *gacaca*.⁸⁵⁴ Bornkamm explains that ‘various attempts’ were made between the end of the genocide and the end of the *gacaca* trials in 2012 to establish compensation for genocide survivors,⁸⁵⁵ demonstrating ‘the government’s conviction that reparation must be paid’.⁸⁵⁶ At the same time, Bornkamm holds that none of these attempts were successful.⁸⁵⁷ Initially, the government wanted to create a compensation fund (FIND) to grant compensation for harm suffered as well as additional assistance to the needy.⁸⁵⁸ The idea was that *gacaca* courts would allocate compensation paid out of the fund, which was again meant to be financed by contributions from various sources, including the Rwandan state, those convicted of genocide and the international community.⁸⁵⁹ However, according to various sources, the law establishing this compensation fund was never finalised.⁸⁶⁰ Instead, the independent assistance fund FARG was created in 1998. Bornkamm holds that the fund has a largely social character, since its beneficiaries are not limited to plaintiffs in *gacaca* trials, but all ‘survivors ... in need, especially orphans, widows and handicapped persons’.⁸⁶¹ Overall, Bornkamm suggests that with the introduction of *gacaca*, a shift was made away from ‘material redress towards moral forms of reparation’, including truth exposure and apologies.⁸⁶² Besides the initially intended compensation fund, an early law (Organic law 40/2000) provided for ‘comprehensive’ liability of perpetrators convicted for Category 1 crimes,⁸⁶³ which included perpetrators of sexual violence. However, a change to

⁸⁵³ Bornkamm (n 76) 137; Haskell (n 96) 80. Furthermore, as previously mentioned, for perpetrators convicted for Category 2 crimes, which included murder and bodily harm, half of the prison sentences could be turned into community service, which, according to Bornkamm, can be regarded as ‘a collective form of reparation’, Bornkamm (n 76) 157. The National Service of *Gacaca* Courts reports that some of the most local-level *gacaca* courts awarded restitution to genocide survivors for their loss of property, National Service of *Gacaca* Courts (n 75) 66-75

⁸⁵⁴ Bornkamm (n 76) 149; Haskell (n 96) 80.

⁸⁵⁵ Bornkamm (n 76) 137.

⁸⁵⁶ Ibid 132, 138.

⁸⁵⁷ Ibid 137.

⁸⁵⁸ Ibid 134.

⁸⁵⁹ Ibid 133, 135.

⁸⁶⁰ Ibid 137; SURF & REDRESS, *No Justice without Reparation: Recommendations for Reparation for Survivors of the 1994 Genocide* (Discussion Paper, July 2012) <<https://www.refworld.org/pdfid/50641a392.pdf>>, 9 [21].

⁸⁶¹ Bornkamm (n 76) 134.

⁸⁶² Ibid 135

⁸⁶³ Ibid 133; *Organic Law N° 40/2000* (n 85) art 91.

Organic law in 2004 ‘factually repealed’ the reparation regime, with the new law focusing nearly exclusively on compensation for property damage but not for personal injury or other violent crimes.⁸⁶⁴

4.2.3.2 Sexual violence in *gacaca*

Rape and sexual torture were classified as Category 1 crimes and thus initially placed under the mandate of Rwanda’s ordinary courts.⁸⁶⁵ However, sexual violence cases were raised as part of *gacaca*’s information gathering stage before these cases were referred to the ordinary courts.⁸⁶⁶ During *gacaca*’s pilot phase all information gathering, including in regards to sexual violence, happened in public. All Rwandans were by law required to participate in the *gacaca* hearings,⁸⁶⁷ and were initially required to testify in public if they ‘knew something concerning a matter denounced by others’.⁸⁶⁸ The obligation to testify may have prompted some affected victim-survivors and other community members to talk about sexual violence during public *gacaca* hearings. Nevertheless, while 250,000 to 500,000 women are estimated to have been raped during the genocide, only 6000-8000 sexual violence cases have reportedly been brought to the Rwandan justice system.⁸⁶⁹ These figures demonstrate that most victim-survivors did not raise their case during *gacaca* (or that their cases could not be dealt with by *gacaca*).

Several reasons are likely to have contributed to the underreporting of sexual violence cases.⁸⁷⁰ Since perpetrators had to be alive and their identities had to be known to be considered by *gacaca*, those victim-survivors who were raped by strangers and who were unable to identify their perpetrator(s), as well as victim-survivors whose perpetrators had died, were unable to have their case dealt with by *gacaca*.⁸⁷¹ Some did not report their case because the crime happened far away from where they were residing at the time of *gacaca*,

⁸⁶⁴ Bornkamm (n 76) 133.

⁸⁶⁵ *Organic Law N° 40/2000* (n 85) art 2. See also National Service of *Gacaca* Courts (n 75) 42.

⁸⁶⁶ Kaitesi (n 29) 208.

⁸⁶⁷ *Organic Law N° 16/2004* (n 84) art 29.

⁸⁶⁸ Kaitesi (n 29) 209.

⁸⁶⁹ Kaitesi and Haveman (n 36) 385; Kaitesi (n 29) 221.

⁸⁷⁰ See for example Morris, Meghan Brenna (n 100) 80.

⁸⁷¹ Kaitesi (n 29) 234, Haskell (n 96) 116; Eftekhari (n 469) 23; Amick (n 32) 81-2. Morris notes that out of 76 Rwandan victim-survivors who participated in her research and who had not raised their case at *gacaca*, nearly 30 per cent reported that they did not do so because they did not know their perpetrators’ identities, while around 15 per cent did not raise their case because their perpetrators had died, see Morris, Meghan Brenna (n 100) 80.

so that they would have had to travel long distances to report their perpetrators.⁸⁷² Some victim-survivors did not report their cases because they worried that a lack of physical evidence or eyewitness testimonies would not warrant a trial.⁸⁷³ Others feared re-traumatisation when talking about their experiences,⁸⁷⁴ because many of those victim-survivors whose cases were discussed publicly at a *gacaca* hearing suffered episodes of severe trauma.⁸⁷⁵ Besides fear of re-traumatisation, many victim-survivors worried about social stigma, rejection and ridicule by their families and communities if they revealed their experience of sexual violence,⁸⁷⁶ or they did not want to burden their families with such information.⁸⁷⁷ Furthermore, various authors point out that in the Rwandan culture, women were not used to speaking up in public about intimate details using sexual language and could therefore have felt too ashamed or not courageous enough to do so.⁸⁷⁸ Some victim-survivors were unwilling to raise their case because they felt that they had forgiven their perpetrators.⁸⁷⁹ Some were afraid of reprisal attacks.⁸⁸⁰ Again others decided to leave the past behind and remain silent, rather than having to go through a process of talking about

⁸⁷² Amick (n 32) 82.

⁸⁷³ Eftekhari (n 469) 23; Kaitesi (n 29) 217; Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 43.

⁸⁷⁴ For example, Haskell reports that some victim-survivors 'feared renewed trauma if they were to speak about what happened to them again', Haskell (n 96) 115; See also de Brouwer and Ruvebana (n 40) 945. Similar accounts are reported by Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 43-4.

⁸⁷⁵ Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57); Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57); Wells (n 32).

⁸⁷⁶ See, e.g., Morris, Meghan Brenna (n 100) 80. Uwigabye, who conducted focus groups with Rwandan victim-survivors, notes that some of her research participants reported 'foul treatment from the public' during *gacaca* hearings and feared information about their sexual abuse becoming public due to the stigma that attaches to survivors of rape, Uwigabye (n 15) 275. The research participants were worried that identifying as a survivor of sexual violence would lead to mockery by their community members, and might decrease chances of getting married for those who were unmarried. Concerns about stigma following testimony have also been raised by victim-survivors testifying at the ICTR, see Mullins, 'We Are Going to Rape You and Taste Tutsi Women': Rape during the 1994 Rwandan Genocide' (n 29) 725; Amick (n 32) 65-6. Derogatory attitudes towards victim-survivors in Rwanda were discussed in more detail in Chapter 3 (3.2.3).

⁸⁷⁷ Similar accounts are reported in Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 43-4.

⁸⁷⁸ These authors include Rwandan nationals or authors who conducted research with Rwandan women. See, e.g., Kaitesi (n 29) 210; Kaitesi and Haveman (n 36) 399. Uwigabye refers to research with Rwandan victim-survivors participating at *gacaca*, quoting the women's view as follows: 'It's taboo to talk about sexuality in our culture', see Uwigabye (n 15) 275. Similarly, Morris explains that some of her research participants did not raise their case at *gacaca* because 'they were not comfortable discussing the rape in person', Morris, Meghan Brenna (n 100) 80. See also Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 43-4.

⁸⁷⁹ For example, Kaitesi notes that some victim-survivors 'had converted to some forms of religious practices believing that since they had forgiven their abusers and were at peace with themselves, it was not necessary to make any accusations', Kaitesi (n 29) 234. See also Morris, Meghan Brenna (n 100) 80.

⁸⁸⁰ Amick (n 32) 66.

what had happened to them.⁸⁸¹ Finally, many women in *gacaca* hearings reportedly focused on the loss of their family members, rather than on what they had suffered physically.⁸⁸² Despite all these issues, 6000-8000 cases were tried at *gacaca*, suggesting that for some victim-survivors seeking justice for their suffering prevailed all other concerns. Amick reports that the five victim-survivors who she interviewed 'all stated a desire to participate in *gacaca* for the sexual violence crimes committed against them, and all wanted justice'.⁸⁸³

Recognising the re-traumatisation potential of *gacaca*, the Rwandan Government made various changes to *gacaca* law and procedures to better protect the confidentiality of victim-survivors and support them during the process.⁸⁸⁴ Changes to *gacaca* law in 2004 included changes to the information gathering of sexual violence cases.⁸⁸⁵ For example, the public lodging of claims and/or guilty pleas concerning sexual violence were prohibited under the new law.⁸⁸⁶ This safeguard was put into place because some accusations had been lodged by others with malicious intent to expose and humiliate the victim-survivor.⁸⁸⁷ In addition, the obligatory nature of having to testify about crimes of a sexual nature was waived.⁸⁸⁸ Instead, victim-survivors were given the choice of whether they wanted to report their perpetrator or not.⁸⁸⁹ Leaving the decision of whether to report a case of sexual violence or not with the victim-survivor was a feature of *gacaca* that distinguishes the courts from conventional criminal justice systems, where 'the state, not the victim, is considered the injured party, and it is the state, not the victim, who has the exclusive right to take action against the offender'.⁸⁹⁰ Furthermore, under the new law, cases could be reported either in writing or

⁸⁸¹ Eftekhari (n 469) 24. This point is also supported by Morris' research in which over 20 per cent of victim-survivors who had not reported their case at *gacaca* had decided to do so because they preferred to keep it a secret, Morris, Meghan Brenna (n 100) 80.

⁸⁸² This focus on crimes other than sexual violence is not just a Rwandan phenomenon, but is seen as typical of women testifying in transitional justice settings, see, e.g., Erin Daly, 'Transformative Justice: Charting a Path to Reconciliation' (2002) 12 *International Legal Perspectives* 73, 56 n 255.

⁸⁸³ Amick (n 32) 71-2.

⁸⁸⁴ National Service of *Gacaca* Courts (n 59-60)

⁸⁸⁵ According to the NSGC, these changes were predominantly aimed at reducing re-traumatisation and protecting the identities of victim-survivors, see *ibid* 209-10. See also Kaitesi (n 29) 216-19.

⁸⁸⁶ *Organic Law N° 16/2004* (n 84) art 38. See also Kaitesi (n 29) 216; National Service of *Gacaca* Courts (n 75) 156; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 69.

⁸⁸⁷ Kaitesi and Haveman (n 36) 398.

⁸⁸⁸ *Organic Law N° 16/2004* (n 84) art 38. See also Kaitesi (n 29) 216; National Service of *Gacaca* Courts (n 75) 156; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 69.

⁸⁸⁹ *Organic Law N° 16/2004* (n 84) art 38.

⁸⁹⁰ Herman, 'Justice from the Victim's Perspective' (n 9). This point is discussed in more detail in Chapters 5 and 8.

orally to an *Inyangamugayo* of the victim-survivor's choice.⁸⁹¹ Alternatively, victim-survivors were given the option to report their case to the judicial police authorities or the public prosecution service.⁸⁹²

In 2008, further major amendments were made to *gacaca* law, transferring competency to try most of the remaining Category 1 cases, including any remaining sexual violence cases.⁸⁹³ The law still allowed for new sexual violence cases to be raised as long as they were reported privately by the victim-survivor herself.⁸⁹⁴ While most sexual violence cases were reportedly tried between June 2008 and mid-2009,⁸⁹⁵ overall appeals were dealt with until the closure of *gacaca* in 2012, which is likely to also have involved cases of sexual violence. The functioning of *gacaca* courts trying sexual violence was regulated by Organic law 13/2008 and Regulation 16/2008.⁸⁹⁶ As opposed to the usually public *gacaca* hearings, all proceedings that included charges of sexual violence were to be held *in camera*.⁸⁹⁷ Kaitesi explains that the privacy of these trials was established in response to complaints and trauma experienced by victim-survivors during public *gacaca* proceedings.⁸⁹⁸ The relevant *gacaca* law restricted

⁸⁹¹ *Organic Law N° 16/2004* (n 84) art 38.

⁸⁹² *Ibid* art 38.

⁸⁹³ *Organic Law N° 13/2008* (n 95) art 1. 9,352 first Category cases were transferred plus 1,265 cases from the Ordinary and Military Courts, see National Service of *Gacaca* Courts (n 75) 208. See also Kaitesi (n 29) 224. Bornkamm (n 76) 44. IRIN News (n 96). Some sexual violence cases were reportedly tried by *gacaca* before the courts were officially made competent to try these cases, see, e.g., De Brouwer and Ka Hon Chu, 'Survivors' Views on *Gacaca*' (n 99). This was confirmed by Emilienne, who noted that she accompanied two victim-survivors during trials that were held in public before 2008. She further recounted that neither of these trials resulted in a judgment, one because the process was too difficult for the victim-survivor, and the other one, because someone in the audience stopped the trial, by claiming that the time for sexual violence cases would come at a later stage.

⁸⁹⁴ *Organic Law N° 13/2008* (n 95) art 6. The only exception to this rule was if the victim had deceased, in which case a 'concerned party' was allowed to lodge the claim – in the law of 2004, it was possible for 'an interested party' to lodge a claim. As had been introduced by *gacaca* law 16/2004, in 2008, victim-survivors could still report their case directly to the *gacaca* court of the sector, to a judicial police officer or to the public prosecution team. Furthermore, *Organic Law N° 13/2008* still prohibited any public confessions regarding sexual violence or the public initiating of related proceedings against another person. See also Kaitesi (n 29) 232; National Service of *Gacaca* Courts (n 75) 156; Kaitesi and Haveman (n 36) 396-7.

⁸⁹⁵ Kaitesi and Haveman (n 36) 385. It is assumed that in cases where the judgments were appealed, appeals may have continued beyond mid-2009.

⁸⁹⁶ *Organic Law N° 13/2008* (n 95); Regulation 16/2008 'provided additional information on the rules to be respected in cases involving rape and sexual torture before the *gacaca* courts', *Regulation 16/2008* (Rwanda) 5 June 2008.

⁸⁹⁷ *Organic Law N° 13/2008* (n 95) art 6. See also Kaitesi (n 29) 232; Kaitesi and Haveman (n 36) 397. If sexual violence and other offences were committed by a perpetrator against a plaintiff, all these offences were tried *in camera* at the same time as the case of sexual violence, see *Regulation 16/2008* (n 896) art 5.

⁸⁹⁸ Kaitesi (n 29) 218, 232.

participation in these *in-camera trials* to the *Inyangamugayo*, the accused,⁸⁹⁹ the victim-survivor, *gacaca* court supervisors, security officers and a trauma counsellor to accompany the victim-survivor.⁹⁰⁰ The attendance of witnesses was permitted⁹⁰¹ but, according to Kaitesi, only 'for a period not exceeding that required for them to testify'.⁹⁰² As for the public *gacaca* hearings, the *in-camera* trials for sexual violence did not include any legal representation, neither for the accused nor for the victim-survivor as the plaintiff. Category 1 crimes, which included crimes of sexual violence, resulted in prison sentences ranging from a minimum of 20 years to life, depending on whether and when the accused confessed.⁹⁰³ Life imprisonment with special provisions constituted the maximum penalty at the time when sexual violence cases were tried.⁹⁰⁴

While all proceedings relating to the trial were to be held *in camera*, judgements were to be publicly announced 'as a safeguard for basic rights'.⁹⁰⁵ Kaitesi reports that as part of this judgement, victim-survivors' names, being the main plaintiff in these proceedings, were also publicly announced,⁹⁰⁶ suggesting a tension between the need for basic rights and the need for confidentiality. All information shared about a case during the trial was to remain confidential.⁹⁰⁷ *Inyangamugayo* were by law prohibited from revealing information about a

⁸⁹⁹ *Organic Law N° 16/2004* outlines the procedures of a *gacaca* hearings trying suspects that are absent, see *Organic Law N° 16/2004* (n 84) art 66. Haskell reports that 'Rwanda allows trials in absentia, that is trials without the accused present', Haskell (n 96) 55, referring to Rwandan Code of Criminal Procedure, arts 155-156. HRW recorded several cases that were tried at *gacaca* in absentia, including sexual violence cases: at 56. Several other sources confirm that *gacaca* tried and convicted suspects in absentia, see De Brouwer and Ruvebana (n 40) 950 n 40; National Service of *Gacaca* Courts (n 75).

⁹⁰⁰ *Organic Law N° 13/2008* (n 95) art 6. Kaitesi, Kaitesi (n 29) 218, 232.

⁹⁰¹ *Regulation 16/2008* (n 896) art 8.

⁹⁰² *Ibid*; Kaitesi (n 29) 233.

⁹⁰³ See Appendix 1.

⁹⁰⁴ As previously mentioned in this chapter, the death penalty was abolished in 2007 and substituted by life imprisonment or life imprisonment with special provisions, see *Organic Law N° 31/2007* (Rwanda) 25th July 2007. These special provisions include that 1) 'a convicted person is not entitled to any kind of mercy, conditional release or rehabilitation, unless he/she has served at least twenty (20) years of imprisonment', and 2) that 'a convicted person is kept in isolation'. According to the *gacaca* sentencing scheme, defendants found guilty of rape and sexual torture were punished with life imprisonment with special provision if they refused to confess or if their guilty plea was rejected (see Appendix 1). If the defendant had pleaded guilty after being included on the list of suspects, the prison sentence ranged from 25 to 30 years. If the defendants had pleaded guilty before being included on the list of suspects, the prison sentence ranged from 20 to 24 years, see *Organic Law N° 13/2008* (n 95).

⁹⁰⁵ *Regulation 16/2008* (n 896) art 4; Kaitesi (n 29) 232; Kaitesi and Haveman (n 36) 397.

⁹⁰⁶ Kaitesi and Haveman (n 36) 397.

⁹⁰⁷ *Ibid*.

sexual violence trial at *gacaca*, and this was punishable with between one and three years of prison.⁹⁰⁸

Kaitesi and Haveman explain that the 17,000 *Inyangamugayo* who heard and judged sexual violence cases were specifically selected for their integrity to be involved in these proceedings and were given additional training.⁹⁰⁹ This training included both legal and psychological aspects focusing on prosecuting cases of sexual violence and handling traumatic reactions.⁹¹⁰ It was expected that *Inyangamugayo* would need to be able to handle direct confrontation between the victim-survivor and the perpetrator.⁹¹¹ To improve the accuracy of evidence heard during the trial, *Inyangamugayo* were also trained to encourage traumatised victim-survivors to speak about their experiences.⁹¹²

While *gacaca* law permitted trauma counsellors to accompany the victim-survivors, these trauma counsellors were not staff members of the National Service of *Gacaca* Courts (NSGC).⁹¹³ However, *gacaca* collaborated with several Rwandan NGOs, including IBUKA, AVEGA and SOLACE Ministries, which provided these trauma counsellors.⁹¹⁴ Amick holds that '[t]ypically, the trauma counsellors were not professionals; they were trained by IBUKA.'⁹¹⁵ She furthermore notes that victim-survivors were allowed to choose their trauma counsellor for their trial(s), and that these counsellors 'could offer advice and intervene in any case of trauma'.⁹¹⁶ Haskell reports that besides the support from trauma counsellors, the Victim and Witness Support Unit of the National Prosecutor's Office undertook some work aimed at preparing victim-survivors for their trial.⁹¹⁷ In addition, Dr Yvonne Kayiteshonga of the Rwanda Biomedical Center (RBC) noted:

⁹⁰⁸ *Organic Law N° 13/2008* (n 95) art 5; *Regulation 16/2008* (n 896) art 7.

⁹⁰⁹ Kaitesi and Haveman (n 36) 402-4. See also Amick (n 32) 49.

⁹¹⁰ See Kaitesi and Haveman (n 36) 398-406; Kaitesi (n 29) 220-1; National Service of *Gacaca* Courts (n 75) 199; Amick (n 32) 49-50.

⁹¹¹ Kaitesi and Haveman (n 36) 399.

⁹¹² *Ibid*; Amick (n 32) 50-1.

⁹¹³ The NSGC was 'the organ coordinating the activities of *Gacaca* Courts', 'detached from the Supreme Court, National Service of *Gacaca* Courts (n 75) 60.

⁹¹⁴ Amick (n 32) 52.

⁹¹⁵ *Ibid* 53.

⁹¹⁶ *Ibid*.

⁹¹⁷ Haskell (n 96) 116. For example, Haskell reports that staff of the unit would take 'women who express[ed] fear of testifying in *gacaca* to the communal rooms where their trials would take place to familiarize them with the surroundings in advance of the trial'.

The Ministry of Health contributed with strategies and actions to foster a healthy psychosocial environment throughout the *Gacaca* process; aiming to prevent and deal with trauma problems before, during and after *Gacaca* court trials. The cases of trauma were overseen by the Ministry of Health through the Department responsible for trauma, which involved community sensitization on prevention of *Gacaca* related re-traumatization, training of community health workers and trauma counsellors, creation of a synergy of interventions by partners in mental health as part of the *Gacaca* process, referral of victim-survivors who experienced re-traumatization during their trial to health centres and in some cases to hospitals.⁹¹⁸

4.2.3.3 Critique of *gacaca*'s handling of sexual violence

Early criticism raised by scholars and organisations working with victim-survivors focused predominantly on the repercussions for victim-survivors when discussing sexual violence in public *gacaca*, including re-traumatisation and social stigma.⁹¹⁹ Responding to this criticism, changes to the law in 2004 prohibited public discussions of sexual violence and permitted only private lodgings of such cases to respond. While Kaitesi reports that victim-survivors received the opportunity to raise their case without the need to expose themselves to their community 'with relief',⁹²⁰ she acknowledges that not everyone would have been supportive of moving the topic of sexual violence behind closed doors.⁹²¹ As a specific concern, she notes

⁹¹⁸ Quoted in Email from Dr Jean-Damascène Gasanabo to Judith Rafferty, 10 June 2020. One interviewee (M13) explained that 'she spent a month in the hospital after the trial because [she] ... was having a hard time coping with ... information [provided by her perpetrators during *gacaca*]'. M13 further explained that she 'had a mental breakdown', but that she was looked after by some psychologists who worked for a Health Centre, and who sent her to a hospital when her condition worsened to receive medication. Emilienne also recounted the experiences of a victim-survivor who suffered re-traumatisation at her trial, and who was taken to hospital with the help of *gacaca* authorities to receive some tranquilisers.

⁹¹⁹ See, e.g., Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57); Brounéus, 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 57); Wells (n 32).

⁹²⁰ Kaitesi (n 29) 217.

⁹²¹ *Ibid.* Some criticism focuses on the negative effect that trying sexual violence cases in secrecy had for the Rwandan community, including that it 'excluded the public from being able to feel the animosity and extent of genocidal rape and sexual violence in Rwanda': at 233. Furthermore, because of the lack of public discourse about sexual violence, Rwandan communities may have missed out on opportunities to address the societal harms caused by the widespread sexual violence during the genocide. Having said that, Kaitesi suggests that changes to *gacaca* to a more private investigation setting may actually have been aimed at protecting the community, rather than the victim-survivors: at 217. She holds that community members may not have had 'the energy to confront the animosity of rape and sexual torture', which is why closed hearings may reflect community needs, but not necessarily the needs of individual victim-survivors. Research by other scholars support this point, suggesting that not only community members, but also law and policy makers, investigators, judges, etc. are reluctant to listen to the horrific stories of victim-survivors, and that the set-up of private processes dealing with these cases may deliberately limit victim-survivors' opportunities to speak, see Sharratt (n 15). See also Sara Sharratt, 'Voices of Court Members: A Phenomenological Journey' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia, 2013) 353; Amick (n 32).

that the exclusion of the public ‘minimised the experiences and suffering of women and girls since they were not ... recorded in similar ways to establish a clear record’.⁹²² Amick notes that by omitting stories of sexual violence from the public genocide discourse, ‘there is a risk that those types of crimes will never be deemed “wrong”’.⁹²³ Because of ‘this lack of identification of the crimes as “wrong”’, combined with the ‘tendencies in Rwanda to minimize sexual violence as a crime’, Amick holds that *gacaca* failed to contribute to the prevention of sexual violence in the future.⁹²⁴ Furthermore, by hearing accounts of sexual violence in private only, victim-survivors were not given the opportunity to share their genocide experience to have their pain publicly acknowledged as were survivors of other genocide-related crimes.⁹²⁵ Research by REDRESS showed that survivors (of crimes other than sexual violence) managed to ‘overcome feelings of loneliness and isolation by publicly describing the personal impact of genocide crimes and receiving communal acknowledgment of their pain’.⁹²⁶ Considering issues such as social stigma and the element of shame associated with sexual violence, it is, however, questionable whether publicly sharing their stories would have had the same positive impact on victim-survivors.⁹²⁷

Besides concerns about the impact of moving the topic of sexual violence behind closed doors, stakeholders were overall sceptical that *gacaca* was a suitable forum to deal with sexual violence, arguing that Rwanda’s ordinary courts would have served victim-survivors better.⁹²⁸ For example, some victim-survivors, as reported by Haskell, were worried that sentences for crimes of sexual violence reached at *gacaca* would be too lenient.⁹²⁹ Furthermore, victim-survivors were reportedly concerned that despite the rules that were meant to provide for privacy and confidentiality, their identities would be revealed to their community.⁹³⁰ Eftekhari shares this concern and notes that the privacy regulations regarding

⁹²² Kaitesi (n 29) 218. See also Amick (n 32); Kaitesi (n 29).

⁹²³ Amick (n 32) 4, 89.

⁹²⁴ Ibid 93.

⁹²⁵ Ibid 89.

⁹²⁶ Clark and Palmer (n 694) 9.

⁹²⁷ Kaitesi (n 29) 217.

⁹²⁸ For example, Haskell, referring to research with victim-survivors who had participated in *gacaca*, notes that ‘for most women, the experience of appearing in *gacaca* was emotionally difficult, and more difficult than they believed a conventional court trial would have been’, Haskell (n 96) 117.

⁹²⁹ Ibid 115.

⁹³⁰ Ibid 112, 114. For example, many *gacaca* related processes were held near administrative offices or schools and women entering a room to report rape or sexual violence could easily be seen by third parties. Furthermore, as outlined earlier in this section, judgments relating to sexual violence trials were meant to be announced in public, including the name of the victim-survivor who had lodged the case.

the lodging and trying of sexual violence were not practicable in the context of small Rwandan communities, where closed-door testimony was likely to be an open secret.⁹³¹ Haskell argues that *in-camera gacaca* trials dealing with sexual violence were ‘simply not compatible with the nature of *gacaca*’,⁹³² since the participation of the community was regarded as one important element to legitimise *gacaca* and protect the rights of all participants.⁹³³ It was thought that the lack of community participation would jeopardise the fairness of a trial and carried ‘grave risks of miscarriages of justice’.⁹³⁴ Much of this concern was raised before *in-camera trials* took place and predominantly reflect concerns and opinions, rather than actual experiences of victim-survivors.

Besides this critique of *gacaca*, several scholars compliment *gacaca*’s handling of sexual violence cases, particularly in relation to the *gacaca* trials themselves.⁹³⁵ Kaitesi explains that *gacaca* constituted a justice measure that was able to ‘safeguard the basic principles of justice’ while managing to ‘balance the extraordinary complex realities of rape and sexual violence and the classical standards of justice’.⁹³⁶ Other research highlights specific achievements of the *gacaca* trials, including that they helped victim-survivors to share their story and experience a sense of acknowledgment, justice and reconciliation. For example, some victim-survivors interviewed by de Brouwer and Ka Hon Chu felt that having their case tried at *gacaca* helped them to achieve a sense of justice, and one of them was reportedly able to reconcile with her perpetrators.⁹³⁷ Similarly, the victim-survivors interviewed by Amick appear to have spoken positively about their *gacaca* participation.⁹³⁸ They reported, for example, that *gacaca* helped them to feel empowered and to experience justice and safety.⁹³⁹ While Haskell reports that the experiences of victim-survivors who were interviewed by Human Rights Watch (HRW) after their participation in *gacaca* were mixed, several informants noted that ‘their cases proceeded relatively smoothly’, and that they found their

⁹³¹ Eftekhari (n 469) 21-2

⁹³² Haskell (n 96) 112. Ibid 116

⁹³³ Ibid.

⁹³⁴ Ibid 112.

⁹³⁵ Kaitesi (n 29) De Brouwer and Ka Hon Chu, ‘Survivors’ Views on *Gacaca*’ (n 99).

⁹³⁶ Kaitesi (n 29) 235. Kaitesi’s research included an empirical study with 30 victim-survivors of gender and sexual violence, various trauma counsellors and *gacaca* jurists: at 10. It is unclear, however, whether the victim-survivors all participated in *gacaca* after the changes were made in May 2008 or before, or both.

⁹³⁷ De Brouwer and Ka Hon Chu, ‘Survivors’ Views on *Gacaca*’ (n 99). It is important to note though that only two of the Rwandan victim-survivors who De Brouwer and Ka Hon Chu interviewed had participated in a *gacaca* trial.

⁹³⁸ Amick (n 32) 73-5.

⁹³⁹ Ibid.

participation in their trial ‘less difficult than they expected’.⁹⁴⁰ The HRW informants highlighted interactions with the *Inyangamugayo* hearing their case as a particularly positive experience during their trial, explaining that ‘the judges acted appropriately and in a manner that was sensitive to the situation’.⁹⁴¹ These examples suggest that the experiences of victim-survivors with the *in-camera trials* were much more positive than the experiences of victim-survivors when publicly raising cases during *gacaca*’s early information-gathering phase. However, since only little research considers victim-survivors’ experiences with the *gacaca in-camera trials*, further analysis of these experiences, as discussed in Chapters 7-10 of this thesis, is needed to be able to draw some more robust conclusions.

4.3 Conclusion

This chapter discussed *gacaca* as the justice mechanism analysed in this thesis. To provide theoretical background to *gacaca*, the chapter introduced transitional justice as the overarching justice framework to *gacaca*, and five related key concepts that have particular relevance to the analysis of *gacaca* and the primary data of this thesis. These concepts comprise justice, truth, forgiveness, reconciliation and healing. To further contextualise *gacaca*, the chapter also introduced Rwanda’s approach to transitional justice and provided an overview of the ICTR and Rwanda’s ordinary courts, with a focus on how the courts dealt with sexual violence. The ICTR has been applauded for advancing the topic of conflict-related sexual violence in international criminal law and for setting important international precedents. However, because of the overall detachment of the tribunal from the Rwandan people, these achievements are likely to have had only little, if any, practical impact for the vast majority of Rwandan victim-survivors at the time of the trials.

The specialised chambers in Rwanda’s ordinary and military courts, as well as the *gacaca* courts, were initiatives specifically set up to deal with genocide-related crimes. To prepare for the analysis of the primary data, this chapter outlined the functioning of these courts, in particular the *gacaca* courts, and more specifically, those *gacaca* proceedings that relate to sexual violence. The chapter discussed how the experiences of victim-survivors at *gacaca* influenced the rules that regulated the reporting and trying of sexual violence cases and changes to these rules, evidencing the dynamic nature of *gacaca*. The most significant change

⁹⁴⁰ Haskell (n 96) 117.

⁹⁴¹ Ibid 117.

to the law enabled the transfer of sexual violence cases from the ordinary courts to *gacaca* in 2008. While this move was, at the time, highly criticised for several reasons, including issues of confidentiality and safety, *gacaca* reportedly succeeded in processing most of the 6000-8000 cases that were allocated to it in 2008 in approximately one year. To accommodate for the sensitive nature of sexual violence cases, *gacaca* courts that tried sexual violence were held *in camera* instead of in public, and therefore differed substantively from the courts that heard other genocide-related cases. The assessment of existing literature on *gacaca*'s handling of sexual violence cases revealed that there are significantly differing views on how well *gacaca* handled sexual violence cases. Having said that, most publications on the topic discuss victim-survivors' experiences during *gacaca*'s information-gathering phase. Critique of the *gacaca* courts that tried sexual violence has been predominantly theoretical. This thesis adds empirical evidence about victim-survivors' experiences with the *in-camera trials* and therefore makes a unique contribution to the discussion.

5 CHAPTER 5: VICTIM-SURVIVORS' JUSTICE NEEDS

This chapter categorises and defines victim-survivors' justice needs, serving two purposes: firstly, it contributes to the definitional precision of relevant terminology; secondly, it develops a comprehensive set of justice needs, establishing the conceptual framework for the analysis of the primary data. The chapter includes a consolidation of existing literature on justice needs of victims of human rights abuses,⁹⁴² with a focus on victim-survivors in a range of contexts. While Daly cautions for the consideration of 'the boundaries of domestic and international or transitional justice',⁹⁴³ she acknowledges that there are 'points of overlap in the studies of sexual victimization in countries at peace and in conflict zones'.⁹⁴⁴ She also proposes the possibility to adapt justice processes that are established in one context to another context. Similarly, van der Merwe acknowledges the limitation of research on victims' justice needs in transitional justice settings, noting that this limitation obliges transitional justice scholars to consider 'non-political' criminal justice, including 'research on the experience that victims of domestic violence have of the legal system'.⁹⁴⁵ Therefore, the literature considered for this chapter includes literature on domestic and international criminal justice as well as transitional justice.⁹⁴⁶ While some of the research on justice needs in conflict or post-conflict settings focuses on sexual violence, most of the transitional justice

⁹⁴² Research with victims of crimes other than sexual violence was included in the literature review, because most available literature on the topic of justice needs involves studies with victims of violent conflict that do not distinguish the specific crimes experienced. Furthermore, victim-survivors of conflict-related sexual violence are likely to also have experienced and witnessed other types of violence during times of conflict, which may have influenced their perceptions of justice and experiences with justice processes. For example, Sharratt's informants who testified about sexual violence at the ICTR had suffered multiple traumas and crimes, stating 'in many instances clearly ... that rape was not the worst crime', Sharratt, *Gender, Shame and Sexual Violence* (n 15) 119-20. Similarly, the Rwandan women interviewed as part of this thesis not only experienced sexual violence, but also lost family members and property, were subjected to non-sexual torture and witnessed massacres. Therefore, when analysing the interviewees' justice needs, it is likely that experiences with violence other than sexual violence will have affected the interviewees' perspectives on justice. How this phenomenon was addressed as part of the research methodology is discussed in Chapter 2.

⁹⁴³ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 390. Daly notes that each justice approach 'works in different victimization contexts and on different problems of justice for victims', which is why she considers it essential to be clear about the context in which research is conducted. Daly further highlights the need for researchers and policy makers to consider the 'specificity of victimization context' and to be guided in their work by the question of how context matters for justice from a victim's perspective: at 386.

⁹⁴⁴ Ibid 390.

⁹⁴⁵ Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 123.

⁹⁴⁶ Domestic criminal justice literature was considered because most studies that have been done exclusively with victim-survivors consider an individual context of sexual victimisation in developed countries at peace, as defined by Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 13) 384-5. At the same time, some research is emerging on sexual violence and justice in collective contexts in countries in conflict or post-conflict: at 384.

literature considers victims of human rights abuses in general. It is argued, however, that the latter can still be useful in the assessment of the justice needs of victim-survivors of conflict-related sexual violence.

The analysis of the literature on justice needs revealed that various elements of justice recur.⁹⁴⁷ Nevertheless, some researchers use different terms to describe the same, or at least similar, justice elements. In some publications, terminology is used without the author(s) providing a definition, or definitions are provided but differ from definitions provided by other scholars. Therefore, one objective of this chapter is to develop clear definitions for each justice need. The analysis of existing literature also revealed that the identified justice needs are not necessarily clearly distinguishable but they are often connected and embedded. This chapter aims to distinguish and define the various elements of justice as much as possible but also discusses their connections with each other.

5.1 Victim-survivors' Justice Needs

Victims of violent conflict are likely to have experienced and witnessed repeated acts of violence over an extended period, including torture and death of family members and friends. Herman explains that 'the witnessing of ... and the extended exposure to violence is likely to cause trauma and PTSD'.⁹⁴⁸ These traumatic experiences are further exacerbated by the specific conditions that are typically present in violent conflict and post-conflict settings. Henry explains:

The disclosure of traumatic experiences is complicated by the realities of post-conflict environments. War victims and witnesses may experience more intense fear than victims of ordinary crime because of the large number of perpetrators and the associated fear of reprisal from these individuals, their friends and family members. In addition, because of displacement and the deaths of large numbers of people within the community, many of the usual support structures are not in place to help victims through the process of grief, trauma and recovery in the aftermath of conflict.⁹⁴⁹

While the above experiences apply to all victims of conflict-related human rights abuses, the repercussions suffered by victim-survivors are distinct from those of victims of other

⁹⁴⁷ This point is also supported by Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 114.

⁹⁴⁸ Herman, *Trauma and Recovery* (n 342) 87.

⁹⁴⁹ Henry (n 5) 124.

crimes.⁹⁵⁰ Sexual violence has the specific purpose of degrading the victim, which, according to Herman, further exacerbates the traumatic experience.⁹⁵¹ Nowrojee explains that a victim-survivor 'has been stripped of everything including her essential humanity'.⁹⁵² As a result, victim-survivors are particularly prone to severe trauma and PTSD. Because of these distinct repercussions, victim-survivors have specific justice needs, including, for example, regaining 'a place of value in society'.⁹⁵³

Victim-survivors of conflict-related sexual violence share some justice needs with victim-survivors in non-conflict settings.⁹⁵⁴ However, victim-survivors of conflict-related sexual violence are likely to have additional needs and/or might emphasis certain needs more than victim-survivors in other contexts of victimisation.⁹⁵⁵ The following sections develop and define a comprehensive set of victim-survivors' justice needs in a conflict/post-conflict settings. The justice needs have been distinguished as process-related and outcome-related justice needs and are further categorised (Table 5.1).⁹⁵⁶ Process-related justice needs concern the functioning of a justice process, including its set-up, procedures and roles and behaviours of stakeholders. Outcome-related justice needs refer to what victim-survivors hope to achieve by engaging in a justice process, including formal and tangible outcomes, such as a final verdict in a criminal trial, but also less obvious, intangible results, such as emotional and other psychological effects.

⁹⁵⁰ See, e.g., Godden (n 51) 58.

⁹⁵¹ Herman, 'Justice from the Victim's Perspective' (n 9) 572-3.

⁹⁵² Nowrojee, "Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 112.

⁹⁵³ Ibid 112.

⁹⁵⁴ For different contexts of victimisation see Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 13) 384-5.

⁹⁵⁵ For a detailed discussion of the consequences suffered by victim-survivors of conflict-related sexual violence Chapter 3 (3.1 and 3.2.3).

⁹⁵⁶ Not all components of justice needs could be neatly distinguished as either process-related or outcome-related justice needs, since they may relate to both categories. However, for the purpose of this thesis, these components were allocated and are discussed as part of the category where they appeared to be most relevant.

Table 5.1: Victim-survivors’ Justice Needs

Process-related justice needs	Outcome-related justice needs
<ol style="list-style-type: none"> 1. An ‘enabling environment’ <ol style="list-style-type: none"> a. Supportive treatment by authorities b. Supportive procedures 2. Participation 3. Information and support 	<ol style="list-style-type: none"> 1. Truth <ol style="list-style-type: none"> a. Truth-telling b. Truth-seeking 2. Consequences <ol style="list-style-type: none"> a. Formal State Punishment b. Alternative Consequences 3. Perpetrator responsibility 4. Safety (of self and others) – prevention of future harm 5. Validation 6. Vindication 7. Reparation 8. Empowerment

The rest of this chapter discusses each of these process and outcome-related justice needs and the various elements that form part of each need.

5.1.1 Process-related justice needs

Research on procedural justice shows that the process of a justice activity may influence the experience of participants in the same manner as, or even more than, its outcomes.⁹⁵⁷ For example, Phakathi and van der Merwe found that procedural justice appeared to significantly affect victims’ overall evaluation of the Amnesty Hearings of the TRC.⁹⁵⁸ As another example, studies undertaken by Tyler revealed that people’s experience with a justice initiative were only minimally influenced by specific outcomes but were strongly affected by participants’ ‘evaluation of the procedures that were used to determine the outcome of their case’.⁹⁵⁹

⁹⁵⁷ Tom R. Tyler, 'The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings' (1992) 46 *Southern Methodist University Law Review* 433; Edgar Allan Lind and Tom R. Tyler, *The Social Psychology of Procedural Justice* (Plenum Press, 1988); Jo-Anne M. Wemmers, *Victims in the Criminal Justice System* (WODC-Ministry of Justice; Kugler Publications 1996); Wemmers, 'The Meaning of Justice for Victims' (n 5); Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 146; Henry (n 5) 119.

⁹⁵⁸ Timothy Sizwe Phakathi and Hugo van der Merwe, 'The impact of the TRC's Amnesty Process on Survivors of Human Rights Violations' in Hugo van der Merwe and Audrey R. Chapman (eds), *Truth and Reconciliation in South Africa* (University of Pennsylvania Press, 2008) 116, 126.

⁹⁵⁹ Tyler (n 957) 436-7.

Having said that, Sharratt's research suggests that the importance of process elements on a victim's satisfaction overall may depend on the level of satisfaction with the outcome of a trial.⁹⁶⁰

While research on procedural justice has informed the analysis of victim-survivors' justice needs, this thesis prefers the term 'process-related justice needs' instead of 'procedural justice' for the purpose of definitional clarity. The following sections discuss the process-related justice needs most cited in the literature on victim-survivors' perspectives of justice.

5.1.1.1 An 'enabling environment'

Experiences of victim-survivors with a justice process is influenced by the behaviour of authorities involved in a justice initiative,⁹⁶¹ as well as the overall functioning of the process. This section firstly outlines how authorities involved in a justice activity may support victim-survivors during a justice process to create an enabling environment, and secondly discusses which process procedures victim-survivors are likely to experience as supportive.

A person's evaluation of justice is influenced by the way they were treated during a justice process.⁹⁶² Victims of human rights abuses are likely to have been 'degraded, demeaned, and dehumanized' in various ways, and need supportive treatment during a justice process.⁹⁶³ Du Toit proposes that the restoration of human and civic dignity might be the most important concern of participants in a justice process.⁹⁶⁴ Several scholars suggest that one way of supporting dignity is by treating victims of human rights abuses with respect.⁹⁶⁵ In the context of justice for victims, respectful treatment includes how victims are spoken to and otherwise treated by authorities involved in a justice initiative. Victim-survivors are particularly likely to

⁹⁶⁰ Sharratt notes that several of her informants did not perceive their ICTY trial as fair, including because punishment was perceived as too lenient, Sharratt, *Gender, Shame and Sexual Violence* (n 15).

⁹⁶¹ The term authorities includes judges and prosecutors in criminal justice processes, but could also refer to facilitators in more restorative processes. In this thesis, the term also includes *gacaca* personnel who had a position defined in *gacaca* law, including the *Inyangamugayo* and *gacaca* court coordinators.

⁹⁶² Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 147.

⁹⁶³ Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 125.

⁹⁶⁴ André du Toit as cited in Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (n 8) 204 n 105.

⁹⁶⁵ McGlynn and Westmarland (n 12) 189-91. McGlynn and Westmarland take a broad approach to dignity, considering further elements, including information and support, which are included in this chapter as other process-related justice needs of victim-survivors. See also Herman, 'Justice from the Victim's Perspective' (n 9) 572, quoting Giannini, M. M., 'The swinging pendulum of victims' rights: The enforceability of Indiana's victims' rights laws' (2001) 34 *Indiana Law Review* 1157, 1163; Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111; *Ibid* 121, quoting AVEGA; Godden (n 51).

feel dehumanised and experience low self-worth, which is why they are especially sensitive to how they are treated during a justice process. Therefore, respectful treatment is an important process need of victim-survivors. Various researchers also highlight that victims' experiences with a justice process depend on the neutrality of decision-making.⁹⁶⁶ Neutrality, according to Wemmers, refers to 'victims' perceptions that authorities were impartial, honest and made informed decisions based on the facts of the case'.⁹⁶⁷

Since victim-survivors are likely to have experienced trauma and suffer from PTSD, victim-survivors also require sensitivity and care from authorities to feel supported to tell their story. Henry explains that '[p]roviding details of sexual atrocities and describing one's private body parts is not an easy endeavour'.⁹⁶⁸ Similarly, Nowrojee states that '[t]he world over, rape victims have difficulty in speaking out because of the stigma attached to being a rape victim and the taboo of speaking publicly about sex'.⁹⁶⁹ To support victim-survivors to share their story, Nowrojee proposes that judges need 'to ensure that questioning of rape victims is not excessively or gratuitously repetitive'.⁹⁷⁰ Attention to the amount of questions posed appears to be particularly important for those victim-survivors who have experienced gang rape and, in the context of a criminal trial, may be testifying against multiple perpetrators.⁹⁷¹ As another example of how authorities may exercise sensitivity and care, Stover highlights the psychological benefits of positive feedback provided to victims after having testified in a criminal trial.⁹⁷² Similarly, Lobwein and Naslund explain that victims greatly appreciate if their contribution to justice is being acknowledged and suggest that judges and prosecutors 'should go out of their way to make witnesses feel their participation is valuable'.⁹⁷³

⁹⁶⁶ Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 146; Shirley Jülich, 'Restorative Justice and Gendered Violence in New Zealand' in James Ptacek (ed), *Restorative Justice and Violence Against Women* (New York Oxford University Press, 2009) 239.

⁹⁶⁷ Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 146; see also Henry (n 5) 129.

⁹⁶⁸ Henry (n 5) 125.

⁹⁶⁹ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 129.

⁹⁷⁰ For example, Nowrojee reports that one victim-survivor at the ICTR was asked 1,194 questions by the defence counsel, *ibid* 130.

⁹⁷¹ See, e.g., *ibid* 129-30.

⁹⁷² Stover (n 9) 90. Stover notes that support from the prosecutors and investigators was 'one mitigating factor that helped make the act of testifying less stressful'. See also Henry (n 5) 120.

⁹⁷³ Henry (n 5) 120, citing a personal interview with Wendy Lobwein and Monika Naslund, The Hague, 17 October 2002.

Besides supportive treatment by authorities, an enabling environment can be enhanced through supportive procedures determined by relevant legislation and regulations.⁹⁷⁴ Such procedures may include privacy provisions and safety measures that help victim-survivors engage in a justice process as safely and confidentially as possible.⁹⁷⁵ As an example, victim-survivors may be allowed to testify behind a closed curtain during a criminal trial to protect their identity, as was practiced at the ICTR.⁹⁷⁶ Privacy is a particularly concern in settings where stigma attaches to victim-survivors and where talking about sexual violence is hindered by social and cultural norms, as explained by Nowrojee.⁹⁷⁷ Safety is especially important where victim-survivors are at risk of being threatened and harmed because of their participation in the justice process. For example, more than 25 per cent of Sharratt's informants who testified about sexual violence at the ICTY 'had received threats, including ... death threats, mostly before their testimony'.⁹⁷⁸ Similarly, HRW conducted interviews with Rwandan victim-survivors and some of them reported having been threatened and intimidated because of their testimony at *gacaca*.⁹⁷⁹

These examples suggest that victim-survivors may require protection of their identities to support their safety. Furthermore, several safety measures may need to be put in place to protect victim-survivors from actual harm before, during and after their participation in a justice process.⁹⁸⁰ Needs for safety are not limited to victim-survivors themselves, but may

⁹⁷⁴ In this thesis, procedures include those that are formal (covered by policies, regulations or legislation) and those that are informal (for example, determined in the context of or by a specific justice initiative).

⁹⁷⁵ See, e.g., Wendy Lobwein, 'Experiences of the Victims and Witnesses Section at the I.C.T.Y.' in Uwe Ewald and KKsenija Turkovic (eds), *Large-Scale Victimization as a Potential Source of Terrorist Activities : Importance of Regaining Security in Post-Conflict Societies* (IOS Press, 2006) 197, 200; Herman highlights the importance of safety as a pre-condition to allow victim-survivors who have experienced trauma to restore power and control, Herman, *Trauma and Recovery* (n 342) 159.

⁹⁷⁶ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 128.

⁹⁷⁷ Ibid 112. It is acknowledged that shame and stigma may also apply to victim-survivors in the context of developed/affluent countries, as defined by Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 13) 384-5. However, severe social and socio-economic consequences are assumed to be more common in the context of conflict / post-conflict settings.

⁹⁷⁸ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 113.

⁹⁷⁹ Haskell (n 96) 117-8.

⁹⁸⁰ Stover holds that the ICTY did not adequately 'investigate, let alone punish' anyone for 'witness tampering', and stipulates that international criminal trials should make an effort to strengthen their rules to protect their witnesses from interference and intimidation, Eric Stover, 'Witnesses and the Promise of Justice in The Hague' in Eric Stover and Harvey M. Weinstein (eds), *My Neighbour, My Enemy* (Cambridge University Press, 2004) 104, 111. Stover also notes issues regarding the protection of witnesses in criminal trials after the process has finished. He notes that 'the prevailing view at the tribunal is that once witnesses have returned to their country of residence, local authorities should handle their protection', which is likely to leave those 'who live in areas where they are in the minority' in 'a vulnerable position'.

also extend to family members. For example, Sharratt's informants were worried about the safety of their families, particularly their children, both because of threats received and because they worried that their children might 'be mocked at school or marked by what had happened to their mother'.⁹⁸¹

In the past, many justice processes dealing with sexual violence, including conflict-related sexual violence, have reportedly failed to provide an enabling environment. Nowrojee describes how 'at the ICTR, rape victims have been harangued and harassed on the stand by defence counsel without intervention by the prosecution lawyers or the judges'.⁹⁸² Furthermore, various researchers describe incidents where victim-survivors had to endure judges falling asleep or even laughing in response to victim-survivors' descriptions of the acts of sexual violence committed against them.⁹⁸³ Finally, the privacy of witnesses has reportedly been violated in various process, including at the ICTR, which had, in some cases, serious repercussions for the affected victim-survivors.⁹⁸⁴

5.1.1.2 Participation

Participation as a justice need involves a number of components.⁹⁸⁵ In the most general sense, participation means that victim-survivors have 'a speaking or other type of physical presence in a justice process', which is frequently referred to as 'voice' in relevant literature.⁹⁸⁶ Wemmers holds that 'voice' is 'one of the most stable findings in procedural justice research'.⁹⁸⁷ Having a voice involves victim-survivors telling their story, relating to truth-telling, which is discussed later as part of the justice need of truth recovery. Besides, having a

⁹⁸¹ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 122-3.

⁹⁸² Nowrojee describes how rape victims at the ICTR were 'subjected to hours, days, and weeks on the stand being cross-examined by each defence counsel, sometimes going over the same questions again and again.', Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 129-30. She also reports that victim-survivors at the ICTR were exposed to overly offensive questioning.

⁹⁸³ *Ibid* 130; Henry (n 5) 121.

⁹⁸⁴ Several examples are reported by Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 131. The issue of failing to guard the identity of witnesses is also discussed in Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 110-2.

⁹⁸⁵ Tyler (n 957) 439-40; Henry (n 5) 120. Daly includes as an element of participation the need for information about options and developments in one's case, Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 115. The author of this thesis categorises these as a component of the overarching justice need 'information and support' discussed below.

⁹⁸⁶ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 116; Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 146.

⁹⁸⁷ Wemmers, 'Victims' Need for Justice. Individual versus Collective Justice' (n 3) 146.

voice may involve victim-survivors asking questions about violence committed against themselves or others, which again relates to truth-seeking.⁹⁸⁸ As another component of participation, victim-survivors may wish to be involved in any decisions on whether their case is pursued,⁹⁸⁹ as well as what justice mechanism is dealing with their case.⁹⁹⁰ Finally, victim-survivors may wish to contribute to the final outcome of a justice process, including how the crime should be addressed.⁹⁹¹

Participation is a fundamental justice need from the point of view of victim-survivors.⁹⁹² The active involvement in a justice process can help victim-survivors to restore a sense of control.⁹⁹³ Herman describes the restoration of control as a crucial step in the process of individual healing of a traumatised individual.⁹⁹⁴ Some victim-survivors may request face-to-face meetings with perpetrators as a particular activity relating to participation,⁹⁹⁵ allowing for a direct exchange of information.⁹⁹⁶ Having said that, Herman cautions that many victim-survivors ‘fear direct confrontation with their perpetrators’.⁹⁹⁷ Therefore, it is important to

⁹⁸⁸ Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388. Koss, ‘Restoring Rape Survivors’ (n 9) 209; Herman (n 632) 77; Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 123.

⁹⁸⁹ McGlynn, Downes and Westmarland (n 12) 5; Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11) 21; Clark, ‘“What is the Justice System Willing To Offer?” Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 34; Koss, ‘Restoring Rape Survivors’ (n 9) 218; Tyler (n 957) 440.

⁹⁹⁰ Kathleen Daly and Danielle Wade, ‘Sibling Sexual Violence and Victims’ Justice Interests’ in Estelle Zinsstag and Marie Keenan (eds), *Sexual Violence and Restorative Justice: Legal, Social and Therapeutic Dimensions* (Routledge, 2017) 143, 149.

⁹⁹¹ Koss, ‘Restoring Rape Survivors’ (n 9) 209. Herman (n 632) 77; Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388. Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 115; Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 131. The involvement in the outcome of a justice process is usually not endorsed in conventional justice processes (such as criminal trials), but may form part in restorative justice processes as discussed in Chapter 4.

⁹⁹² See Henry (n 5) 120; Herman, ‘Justice from the Victim’s Perspective’ (n 9); McGlynn, Downes and Westmarland (n 12); Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 131; Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 115-6. Clark uses the term ‘control’ to refer to the components that are covered under participation in this thesis, Clark, ‘“What is the Justice System Willing To Offer?” Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 34-5.

⁹⁹³ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 123; Herman, ‘Justice from the Victim’s Perspective’ (n 9) 582; Herman, *Trauma and Recovery* (n 342) 133.

⁹⁹⁴ Herman, *Trauma and Recovery* (n 342) 134, 159. Wessells and Bretherton (n 569) 101. The impact of the restoration of control is discussed in more detail as part of the justice need of empowerment below.

⁹⁹⁵ Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388; Phakathi and van der Merwe (n 958) 139; Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 106.

⁹⁹⁶ Various examples of dialogue between victim-survivors and perpetrators are discussed in Susanne L. Miller, *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders* (New York University Press, 2011).

⁹⁹⁷ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 574.

note that various activities relating to participation are not universally endorsed by all victim-survivors equally but may differ from individual to individual.

A dominant point of critique when assessing the experiences of victim-survivors with justice processes is that opportunities for participation are rare, if not absent, from conventional criminal trials.⁹⁹⁸ Herman's research with victim-survivors who had participated in a criminal justice process in the US supports this critique. For Herman's informants, the marginal role that they played during the process came as 'the single greatest shock', reminding them of the humiliation that they had experienced during the original victimisation.⁹⁹⁹ In the Western conventional criminal justice system, rape is considered as a crime against the state and it is the prosecutor who determines whether a case is pursued or not, while the victim-survivor only acts as a witness.¹⁰⁰⁰ Victim-survivors have also said that the conventional criminal justice system denied them the ability to influence whether their case was pursued or not.¹⁰⁰¹ Furthermore, in conventional criminal trials, victim-survivors do usually not have the opportunity to confront the accused and have little or no control over the outcome.¹⁰⁰²

5.1.1.3 Information and support

Information and support involves victim-survivors receiving information, advice, advocacy and other support in their case.¹⁰⁰³ Information includes advice about different types of justice mechanisms available, key players and procedures of a justice initiative, potential implications for the victim-survivor when engaging in the justice process, developments in one's case and possible outcomes.¹⁰⁰⁴ Research in various contexts found that information

⁹⁹⁸ Koss, 'Restoring Rape Survivors' (n 9) 218-9. Herman, 'Justice from the Victim's Perspective' (n 9) 582; Henry (n 5) 120. Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11).

⁹⁹⁹ Herman, 'Justice from the Victim's Perspective' (n 9) 582.

¹⁰⁰⁰ Ibid 575; Clark, "'What is the Justice System Willing To Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 34.

¹⁰⁰¹ See, e.g., McGlynn, Downes and Westmarland (n 12); Koss, 'Restoring Rape Survivors' (n 9) 218; Marianne Hester et al., *Attitudes to Sentencing Sexual Offences* (Report, Sentencing Council, March 2012).

¹⁰⁰² In contrast, some of Sharratt's informants who had testified at the ICTY spoke about having had the opportunity of speaking directly to their perpetrators, see Sharratt, *Gender, Shame and Sexual Violence* (n 15).

¹⁰⁰³ As is for example stipulated in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* 40/34, 40th sess, 96th mtg, (29 November 1985).

¹⁰⁰⁴ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 115 (as previously noted, Daly discussed the need for information as part of the justice need of participation); Clark, "'What is the Justice System Willing To Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 31-2; Nowrojee, "'Your Justice Is Too Slow'" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 128-9.

and support are vital process-related justice needs of victim-survivors.¹⁰⁰⁵ Clark, who conducted research with victim-survivors in Australia,¹⁰⁰⁶ explains that for her informants, '[s]trong advocacy and representation' were even more important than personal decision-making power.¹⁰⁰⁷ Clark highlights the importance of sufficiently informing victim-survivors *before* they proceed with their case to manage expectations.¹⁰⁰⁸ Nowrojee's research with Rwandan victim-survivors who testified at the ICTR confirms the importance of early information. Nowrojee explains that her informants wanted 'information and agency ... to understand the process and to make fully informed decisions on whether to testify and what to expect' from participating in the ICTRY.¹⁰⁰⁹ Nowrojee emphasises that victim-survivors should be supported to 'understand fully the risk that they take and choose to come forward fully informed', to prevent that they 'find themselves unwittingly vulnerable and exposed as sometimes has been the case'.¹⁰¹⁰

Information and support are also important over the course of a justice process, including notification and education of victim-survivors about developments and outcomes of their

¹⁰⁰⁵ Hester et al. (n 1001) 24. Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 115; Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 128-9; Koss, 'Restoring Rape Survivors' (n 9) 220. Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 107-14; Clark, "'What is the Justice System Willing To Offer?" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 31-2, 34. Ilic notes that information about courtroom procedures prior to a trial, protective measures during a trial, as well as post-trial 'affirming feedback' can reduce the risk of psychological trauma for victims participating in war crime trials, Shanee Stepakoff et al., 'The Experience of Testifying in a War-Crimes Tribunal in Sierra Leone' (2015) 21(3) *Peace and Conflict: Journal of Peace Psychology*, 445, 446-7, citing Zoran Ilic, 'Psychological Preparation of Torture Victims as Witnesses toward the Prevention of Re-Traumatization' in Z. Spiric, G. Knezevic, V. Jovic, & G. Opacic (eds.) *Torture in War: Consequences and Rehabilitation of Victims: Yugoslav Experience* (IAM Center for the Rehabilitation of Torture Victims, 2004) 377, 379.

¹⁰⁰⁶ Clark's informants had 'experienced sexual assault (in adulthood and/or during childhood)', Clark, "'What is the Justice System Willing To Offer?" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 29.

¹⁰⁰⁷ Ibid 35.

¹⁰⁰⁸ Ibid 32.

¹⁰⁰⁹ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111. Similarly, Stover's informants, who had testified at the ICTY, 'wanted to know what the ICTY expected and what they could expect from the tribunal', Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 110.

¹⁰¹⁰ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 129.

case.¹⁰¹¹ Hester et al. found that ‘when victim/survivors had a reasonable understanding of sentencing prior to attending the sentencing of their case (for example, being aware of existing sentencing guidelines) and they had received support and information throughout the case, they tended to be more satisfied with the outcome and able to follow proceedings in the court’.¹⁰¹² In conflict and post-conflict settings, where levels of literacy might be low, and where people may live remotely without access to media, targeted face-to-face communication might be needed to inform victim-survivors about case developments and judgements.¹⁰¹³ This appears to be particularly important if justice processes are held in other locations, as was the case for the ICTR and ICTY.

Various researchers have criticised conventional criminal justice processes for not providing sufficient information and support to victim-survivors.¹⁰¹⁴ International criminal trials have been particularly criticised for being detached from the people whose cases they tried, as well as for a lack of explanation of judgements.¹⁰¹⁵ For example, Nowrojee explains how ‘the lack of information ... contributes to the sense of alienation from the ICTR [and] fosters a feeling of having been used among those rape victims who testif[ied].’¹⁰¹⁶ Nowrojee further noted that victim-survivors participating in the ICTR had not sufficiently been informed about the potential repercussions and risks associated with their participation at the tribunal.¹⁰¹⁷

¹⁰¹¹ For example, Nowrojee’s informants wanted to ‘be notified of developments before and after they ... [testified]’, *ibid* 111. Henry explains as one issue regarding the ICTY that ‘many witnesses return to their communities well before the verdict is rendered and often are left to their own interpretations, with little explanation of the trial outcome, whether it is a guilty verdict, an acquittal or an appeal’, Henry (n 5) 131. Examples of lack of communication about progress the cases of witnesses who testified at the ICTY is also discussed in Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 107.

¹⁰¹² Hester et al. (n 1001) 23-4.

¹⁰¹³ For example, Nowrojee explains how ‘in Sierra Leone, outreach is the prosecutor and a Krio interpreter travelling to remote outlying areas where they address the population in the local language and explain in simple, comprehensible language what the court is doing’, see Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 127.

¹⁰¹⁴ Koss, ‘Restoring Rape Survivors’ (n 9) 220.

¹⁰¹⁵ Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 126-8; Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 109-14.

¹⁰¹⁶ Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 127. See also Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (n 9).

¹⁰¹⁷ As specific examples, Nowrojee notes that despite measures to protect witnesses’ identities from the public at the ICTR, names of witnesses were ‘leaked back to Rwanda’ because ‘the rules of the court require[d] that the defence knows the names of the witnesses who are testifying against his or her client.’, Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 128.

5.1.2 Outcome-related justice needs

Besides these process-related justice needs, victim-survivors have needs in regard to the outcomes that a justice process may be able to support. As mentioned earlier, these needs relate to formal, tangible outcomes, as well as to less obvious, intangible effect of a justice process.

5.1.2.1 Truth recovery

Chapter 4 discussed truth as an important concept of transitional justice. Based on this discussion and on the analysis of literature concerning victim-survivors' perspectives on justice, the justice need of truth recovery involves two distinct components: truth-telling and truth-seeking. Both components are concerned with information about an individual's victimisation. Truth-telling focuses on victim-survivors sharing information about their victimisation, while truth-seeking involves victim-survivors searching for information about what happened to them (and their loved ones).

5.1.2.1.1 Truth telling

Truth-telling involves victim-survivors telling their story of what happened to them (and their loved ones) and the impact of the crimes committed against them,¹⁰¹⁸ preferably in their own words. Telling one's story was discussed earlier in this chapter as a component of participation. However, the literature suggests that truth-telling is much more than just one way of participating in a process, which is why it is considered here as a distinct outcome-related justice need. According to Daly, truth-telling is the most frequently mentioned element of justice in the literature on justice needs.¹⁰¹⁹ Some scholars distinguish between victim-survivors telling their story,¹⁰²⁰ and 'being heard', which relates to truth-hearing.¹⁰²¹ In this thesis, the justice need of truth-telling includes the process of truth-hearing. Daly specifies that the process of telling one's story (and being heard) needs to occur 'in a significant setting, where a victim-survivor can receive public recognition and

¹⁰¹⁸ See, e.g., Stanley (n 622).

¹⁰¹⁹ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 116 (Daly refers to truth-telling as 'voice'). See also, Clare McGlynn, 'Feminism, Rape and the Search for Justice' (Pt Oxford University Press) (2011) 31(4) *Oxford Journal of Legal Studies* 825, 827. Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 129. Clark, "'What is the Justice System Willing To Offer?'" *Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs* (n 11) 33-4.

¹⁰²⁰ Herman (n 632) 77. See also Koss, 'Restoring Rape Survivors' (n 9) 209.

¹⁰²¹ Koss, 'Restoring Rape Survivors' (n 9) 209. See also Herman (n 632) 77.

acknowledgment'.¹⁰²² Having said that, victim-survivors are likely to have differing ideas on what a 'significant setting' is and what 'public recognition' involves, and might prefer a more private setting altogether. Victim-survivors may also have different preferences about who exactly should hear their story. For example, Jülich, who conducted research with victim-survivors of child sexual abuse in New Zealand, found that some of her informants wanted to tell their story directly to their perpetrator.¹⁰²³ Similarly, Miller, who conducted research with victim-survivors in the US, notes that some of her informants wanted their perpetrators to know which consequences the victim-survivors had suffered because of the sexual violence.¹⁰²⁴ Other victim-survivors may not be interested in telling their story to their perpetrator but might want to be heard by their community, official authorities or the general public. Victim-survivors may want to tell their truth for various reasons, including to experience personal catharsis and to expose their perpetrators and the crimes committed. The latter is closely linked to the provision of evidence as part of a justice process.

Personal catharsis

Some researchers discuss the potential value of truth-telling during a justice process as a form of catharsis assisting victim-survivors to come to terms with the past.¹⁰²⁵ For example, Shaw reports that 'some people do feel a great deal of relief and satisfaction when they testify, especially in situations of covert state violence, when abuses towards victims have been denied and people's experiences of suffering have not been accorded reality'.¹⁰²⁶ Similarly, Wessells and Bretherton highlight the psychological value of truth-telling, explaining that it 'can help to validate publicly the pain and suffering that may have previously been hidden or portrayed as deserved'.¹⁰²⁷ In this sense, truth-telling supports the justice need of validation (discussed further below). Wessells and Bretherton further explain how the activity of creating meaning around harm experienced by victims of violent conflict – a process that

¹⁰²² Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388; Kelsall and Stepakoff (n 51) 357.

¹⁰²³ Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 129.

¹⁰²⁴ Miller, Susanne (n 996) 45, 74-5.

¹⁰²⁵ Wessells and Bretherton (n 569) 101; Stanley (n 622), 3; Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 34; Henry (n 5) 122-30; Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (n 9) 87-90; Shanee Stepakoff et al., 'The Experience of Testifying in a War-Crimes Tribunal in Sierra Leone' (2015) 21(3) *Peace and Conflict: Journal of Peace Psychology*, 445, 460.

¹⁰²⁶ Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone* (Special Report, United States Institute of Peace February 2005) 7.

¹⁰²⁷ Wessells and Bretherton (n 569) 101.

requires truth to be shared – contributes to the process of healing, a concept of transitional justice.¹⁰²⁸ In contrast, other researchers note that the therapeutic value of testifying at a criminal trial or in a truth commission process is overestimated and questionable.¹⁰²⁹ For example, Harris Rimmer explains that ‘the act of remembering and chronicling violence may not always be therapeutic’ and that a faith in ‘truth-telling’ as progress is based in the Western historical context’.¹⁰³⁰ Similarly, Shaw claims that

underlying the very concept of truth-telling as bringing about healing and reconciliation are ideas of the efficacy of recounting verbal memories of violence and trauma. These ideas are the product of a globalized culture of memory that arose from specific historical processes in North America and Europe.¹⁰³¹

In support of this critique, Stover explains that only 14 per cent of the ICTY witnesses who he interviewed for his research ‘described feelings that could be characterized as cathartic’.¹⁰³² Several scholars particularly challenge the value of testifying about experiences of sexual violence. For example, referring to the SA TRC, Daly explains that

to the extent that telling one's story was a critical part of the healing process, women generally did not partake in that aspect. The reasons for this are difficult to ascertain. One reason may be that the TRC's modus operandi - talking as a curative - reflected men's needs but not women's needs. For many women, talking about the experience of being raped is more likely to feel like revictimization than therapy.¹⁰³³

¹⁰²⁸ Ibid 101.

¹⁰²⁹ Henry (n 5) 118; Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (n 57); Daly (n 909) n 255. Stover highlights that ‘[r]ecovery from trauma rarely results from a single cathartic experience’, Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 107. Recovery is a complex process of multiple stages taking place over time, supported by various developments of the individual. The developments include safety, the restoration of the individual’s self-esteem, and reconnection with ordinary life, which involves the re-establishment of relationships with others Herman, *Trauma and Recovery* (n 342) 155, 212-3. Shaw (n 1026) 6-7; Daly (n 909) n 255; Louise Vella, ‘Translating Transitional Justice: The Solomon Islands Truth and Reconciliation Commission’ (2014) 2 *State, Society & Governance in Melanesia* 1, 10.

¹⁰³⁰ Harris Rimmer (n 56) 9.

¹⁰³¹ Shaw (n 1026) 7.

¹⁰³² Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (n 9) 88.

¹⁰³³ Daly (n 909) 56 n 255.

It appears that in some cultures ‘social forgetting’ may be more conducive to healing than continued talking about the violence.¹⁰³⁴ In support of this argument, Wells holds that depending on the cultural and social context, victim-survivors might prefer to forget and move on and not relive the experiences by talking about them.¹⁰³⁵ She explains that in the context of the *gacaca* courts

the Association Rwandaise des Conseillers en Traumatisme (ARCT) in Kigali found that a majority of victim-survivors report increased emotional and psychological suffering after testifying. The NURC also reported that half of all victim-survivors, but particularly women, believed that testifying would be painful. All female victim-survivors surveyed by the NURC feared that testifying would be a new source of trauma in their lives. Thus, it appears that community based, participatory models of justice may not reflect the needs of sexual violence survivors, and theories of truth-telling as curative may, in practice, be gendered.¹⁰³⁶

Research suggests that the risks of talking about personal suffering, particularly if the suffering has been of a sexual nature, may outweigh the benefits if the process does not take place in a safe and private environment. For example, Brounéus, who conducted research with Rwandan women who had testified in public *gacaca* hearings, found that instead of supporting personal catharsis, the women’s testimonies led to ‘intense psychological suffering’.¹⁰³⁷ Brounéus highlights as particular factors that threatened the psychological health of women speaking at *gacaca* ‘the short-term exposure testifying involves, as well as ... the vulnerable position of testifying in an environment surrounded by family members of the perpetrators, as well as by the perpetrators themselves, and in relation to sexual violence’.¹⁰³⁸

¹⁰³⁴ Shaw (n 1026) 9. Shaw for example notes that in northern Sierra Leone ‘speaking of the war in public often undermines ... processes [of reintegration and healing], and many believe it encourages violence.’: at 1. The report of the SA TRC acknowledges that truth does not necessarily lead to healing. However, it also suggests that truth is a first step towards reconciliation, see Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report* (Report, n.d.) 107. The close connection between truth and reconciliation is also noted by Bloomfield (n 557), as discussed in Chapter 4 (4.1).

¹⁰³⁵ Wells (n 32) 192. Gabryll explains about the TRC SA that ‘[m]any women could not bring themselves to testify’, Lyn S. Graybill, ‘Women’s Rights and the Truth and Reconciliation Commission: an unfinished Agenda’ in Sharon Pickering and Caroline Lambert (eds), *Global Issues, Women and Justice* (The Sydney Institute of Criminology, 2004) 13, 23.

¹⁰³⁶ Wells (n 32) 192.

¹⁰³⁷ Brounéus, ‘Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts’ (n 57) 71.

¹⁰³⁸ *Ibid* 71.

Various scholars highlight particularly the shortcoming of criminal trials in regard to truth-telling as personal catharsis, criticising that such processes tend to elicit victims' testimonies 'with a question-and-answer format that does not permit victims to share their full story of what happened and the impact it had on them'.¹⁰³⁹ Stover, for example, reports that some of his informants who testified at the ICTY 'were angry that they were prevented from giving longer, contextual explanation about the causes of the war'.¹⁰⁴⁰ To have a therapeutic effect, Herman explains that talking about the experiences of sexual violence must not be limited to 'a recitation of fact' but should also include a reconstruction of how the victim-survivor felt when she suffered the act(s) of sexual violence.¹⁰⁴¹

Even though criminal trials provide only a limited platform for victim-survivors to speak, several scholars hold that testifying may still have several psychological benefits for victim-survivors, including that they may 'bring some strength and resolution to parts of their lives'.¹⁰⁴² As another example, Henry proposes that trials may still assist in 'the reconstruction of the traumatic narrative, even if witnesses are not permitted to tell their stories in their own words'.¹⁰⁴³ In support of Henry's claim, Herman explains that reciting the facts of a traumatic event forms the basis for the development of 'an organized, detailed, verbal account, oriented in time and historical context'.¹⁰⁴⁴ At the same time, Herman cautions that 'approaching [traumatic memories] too precipitately leads to a fruitless and damaging reliving of the trauma'.¹⁰⁴⁵ This point highlights that the timing of a justice process involving truth-telling can lead to re-traumatisation of the victim-survivor if it takes place too early. Furthermore, Herman's work shows that it is unlikely that a mere description of the basic facts of the sexual violence during a justice initiative (without a discussion of the impact of the event) has any immediate therapeutic effect. Rather, the verbalisation of the events can

¹⁰³⁹ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 116. Henry notes that in the context of conventional criminal justice processes, some of the benefits that may result from truth-telling are restrained by three factors: 1) 'the deficiency of language for the communication of inexplicable physical or emotional pain', 2) the fragmentation of testimony and 3) cross-examination, Henry (n 5) 124-7. Jülich, for example, reports that those informants who had testified during a conventional criminal trial 'did not get the opportunity to tell their story', Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 129.

¹⁰⁴⁰ Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (n 9) 87.

¹⁰⁴¹ Herman, *Trauma and Recovery* (n 342) 176-7.

¹⁰⁴² Lobwein (n 975) 200.

¹⁰⁴³ Henry (n 5) 133.

¹⁰⁴⁴ Herman, *Trauma and Recovery* (n 342) 177.

¹⁰⁴⁵ *Ibid* 176.

be seen as constituting a first step in reconstructing a holistic narrative which can aid in the individual recovery of a victim-survivor.

Exposure

Various studies show that one key objective of victim-survivors engaging in truth-telling is the exposure of the perpetrator to the public.¹⁰⁴⁶ For example, for Herman's informants, exposure of their perpetrator was the most important reason for the victim-survivors participating in a justice process.¹⁰⁴⁷ Victim-survivors may have different preferences in terms of to whom they want to expose their perpetrators and why. In research by McGlynn, Downes and Westmarland with victim-survivors in the UK, the informants reportedly expected from justice processes that they would assist in exposing the perpetrator to gain public confirmation 'that this was a perpetrator'.¹⁰⁴⁸ Rather than general public reassurance, Herman's informants wanted their families and communities to learn the truth about their perpetrators so that they would 'see through the perpetrator's deceptions and lies'.¹⁰⁴⁹ It appears that most victim-survivors hope or expect that the exposure of their perpetrator will lead to consequences for their perpetrator, such as social sanctioning.¹⁰⁵⁰

Besides exposing their perpetrators, some victim-survivors place great value on disclosing information about their victimisation, as well as the victimisation of others (if applicable). In the context of mass human rights abuses, disclosure of victimisation to a broader audience appears particularly important. For example, some of Sharratt's informants, who testified at the ICTY, 'wanted the world to know' what had happened to them.¹⁰⁵¹ While sharing details about an individual's victimisation may also serve as personal catharsis, victims may also want to expose such information with the objective of contributing to 'a public record documenting historic truth'.¹⁰⁵² Stover relates victims' interest in contributing to a public record to their desire to fight 'the veil of denial about past war crimes'.¹⁰⁵³ Contributing to a public record

¹⁰⁴⁶ Herman, 'Justice from the Victim's Perspective' (n 9) 593-4; McGlynn, Downes and Westmarland (n 12) 8.

¹⁰⁴⁷ Herman, 'Justice from the Victim's Perspective' (n 9) 593.

¹⁰⁴⁸ McGlynn, Downes and Westmarland (n 12) 8.

¹⁰⁴⁹ Herman, 'Justice from the Victim's Perspective' (n 9) 593-4.

¹⁰⁵⁰ The consequences of exposure are discussed later in this chapter as part of the justice need of alternative consequences (5.1.2.2.2).

¹⁰⁵¹ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 123.

¹⁰⁵² Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 113.

¹⁰⁵³ Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 115.

appears to be particularly important in institutional and collective contexts of sexual victimisation, where testimonies may be gathered with the specific objective of establishing factual truth about past violence. For example, Nowrojee's informants, who had participated at the ICTR, wanted for 'the record to show that they were subjected to horrific sexual violence at the hands of those who instigated and carried out the genocide'.¹⁰⁵⁴ Some victim-survivors see it as their duty to contribute to this public record and actually seem to gain strength from their contribution. Some of Sharratt's informants, for example, explained that it was important for victim-survivors to testify at the ICTY to prove what happened during the war.¹⁰⁵⁵

Victims of violent crimes in various studies have highlighted the need to testify at a criminal trial so that they can expose the truth on behalf of the dead and missing.¹⁰⁵⁶ Stover explains that 'the need to speak for those who were missing or dead', which he terms 'moral duty to testify', was a 'pervasive' need in relation to justice among his informants, who were survivors and witnesses of violent crime testifying before the ICTY.¹⁰⁵⁷ Similarly, Henry notes that 'speaking for the dead and telling the truth' may be 'a compelling reason' for victim-survivors to speak in a justice process.¹⁰⁵⁸ As an example, Sharratt explains that by testifying at the ICTY her informants 'wanted to honor other women who were sexually assaulted during the war'.¹⁰⁵⁹ While criminal trials have been criticised for not allowing victims to tell their experiences in their own words, Stover acknowledges that '*under the right condition*', international criminal trials provide a platform for victims to 'discharge their moral duty to testify on behalf of the dead,' therefore meeting at least one component of the justice need of truth-telling.¹⁰⁶⁰

5.1.2.1.2 Truth-seeking

Truth-seeking refers to asking questions and receiving answers about a person's victimisation. Many victims of violent crime feel a need to find out information about how and why they

¹⁰⁵⁴ Nowrojee, "Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims? (n 15) 110.

¹⁰⁵⁵ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 116.

¹⁰⁵⁶ Henry (n 5) 128. Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 105

¹⁰⁵⁷ Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 105.

¹⁰⁵⁸ Henry (n 5) 128.

¹⁰⁵⁹ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 114.

¹⁰⁶⁰ Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 105.

became victimised (and, in the context of mass violence, the victimisation of family members).¹⁰⁶¹ For example, most interviewees in Phakathi and van der Merwe's study with participants in the SA TRC amnesty process cited 'to find out more truth' as one of their most important objectives.¹⁰⁶² Herman explains that 'survivors of atrocities of every age and every culture come to a point in their testimony where all questions are reduced to ... Why ... Why me?'.¹⁰⁶³ For example, finding answers to the question 'why' was a dominant request made by survivors of violent crime who testified in the SA TRC and at the ICTY, as discussed in van der Merwe's and Stover's work respectively.¹⁰⁶⁴ Receiving answers to these questions can help victims to 'reconstruct a sense of meaning', which again assists in a better understanding of the trauma story.¹⁰⁶⁵ In the aftermath of violent conflict, truth-seeking may also aim to recover information about who had ordered the violence,¹⁰⁶⁶ as well as what happened to loved ones. The latter may assist survivors to locate, exhume and bury the bodies of their friends and families.¹⁰⁶⁷

Truth-seeking by way of asking questions in a justice process purpose relates to the justice need of participation. Receiving answers to these questions involves perpetrators explaining their actions, part of the justice need of perpetrator responsibility.

¹⁰⁶¹ Miller, Susanne (n 996); McGlynn, Downes and Westmarland (n 12); Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 77). Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980); Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (n 9) 77.

¹⁰⁶² Phakathi and van der Merwe (n 958) 122.

¹⁰⁶³ Herman, *Trauma and Recovery* (n 342) 178.

¹⁰⁶⁴ Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 31, 33; Stover notes that many of the witnesses at the ICTY, who he interviewed, were driven by the need to find out 'why the defendants – who were their fellow citizens and in some cases neighbors – had committed, or let their subordinates commit, such abominable acts', Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 106.

¹⁰⁶⁵ Herman, *Trauma and Recovery* (n 342) 178.

¹⁰⁶⁶ McGlynn, Downes and Westmarland (n 12) 6; Keenan (n 11) 22; Hester et al. (n 1001) 30; Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 115 (Daly defines questions about one's victimisation as a component of the justice need of participation); Phakathi and van der Merwe (n 958) 122. Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 34; Miller, Susanne (n 996) 43. Besides the question of 'why me?', one of Miller's informants wanted to know detail about her victimisation, such as whether she had fought back while being raped, whether her perpetrator had known her and had been stalking her: at 44.

¹⁰⁶⁷ Henry (n 5) 134; Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 115; Phakathi and van der Merwe (n 958) 123; Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 77) 40.

5.1.2.2 Consequences

Victim-survivors may request meaningful consequences for their perpetrators.¹⁰⁶⁸ Such consequences may serve ‘to underline the significance and harm of their actions’, as explained by victim-survivors in research by McGlynn, Downes and Westmarland.¹⁰⁶⁹ Meaningful consequences may range from formal state punishment to alternative consequences. Alternative consequences include reparation, exposure in combination with social sanctioning of the perpetrator, the perpetrator’s removal from office, restraining orders, and counselling or other treatment for the perpetrator.¹⁰⁷⁰

5.1.2.2.1 Punishment

In this thesis, the term punishment refers to formal state punishment. Van der Merwe explains that at the most superficial level, victims might experience justice where perpetrators are being formally punished.¹⁰⁷¹ However, research suggests that victim-survivors have diverse attitudes towards punishment.¹⁰⁷² For some victim-survivors, punishment of their perpetrator appears to be one of the main reasons why they engage in a justice process. For example, Sharratt’s study with victim-survivors who testified before the ICTY, found that more than 75 per cent of the informants said that the main reason for their participation was ‘because rape and sexual assault is a crime and needs to be punished’.¹⁰⁷³ She further specifies that her informants requested ‘the most severe punishment’.¹⁰⁷⁴ Similarly, in van der Merwe’s research with survivors who participated in the TRC Victim Hearings, a dominant request of victims was for the perpetrators to be prosecuted and

¹⁰⁶⁸ McGlynn, Downes and Westmarland (n 12) 7-8, Herman, ‘Justice from the Victim’s Perspective’ (n 9); Clark, ‘“What is the Justice System Willing To Offer?” Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 30; Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 132.

¹⁰⁶⁹ McGlynn, Downes and Westmarland (n 12) 7.

¹⁰⁷⁰ Ibid 7-8; Herman, ‘Justice from the Victim’s Perspective’ (n 9); Clark, ‘“What is the Justice System Willing To Offer?” Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 30; Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 132.

¹⁰⁷¹ Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 123. As a current example, the attorney of the victim-survivors involved in the law suit against Harvey Weinstein, when addressing the public after the announcement of the verdict in March 2020 (Weinstein was found guilty of sexual assault and rape and sentenced to 23 years in prison), held a sign that read: ‘This Is What Justice Looks Like 20 + 3 years’.

¹⁰⁷² Herman, ‘Justice from the Victim’s Perspective’ (n 9); Sharratt, *Gender, Shame and Sexual Violence* (n 15); Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15); Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 32.

¹⁰⁷³ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 114.

¹⁰⁷⁴ Ibid 114.

punished by the courts and for justice to take its 'normal course'.¹⁰⁷⁵ Van der Merwe notes that punishment was particularly important for those victims 'who felt that their victimisation was unprovoked, grossly out of proportion or where justice was sought on behalf of a dead relative'.¹⁰⁷⁶ In support of the last point, Herman explains that her informants were harsher in their request for punishment when 'advocating for loved ones who had been victimized, rather than for themselves'.¹⁰⁷⁷ In contrast, Nowrojee comments that 'punishment ... [was] astonishingly the least articulate reasons for why Rwandan women wanted and valued ICTR prosecutions of rape'.¹⁰⁷⁸ Similarly, Herman's research revealed that 'the concept of punishment as a so-called debt to society found little support among ... [the women interviewed for the research]'.¹⁰⁷⁹ These highlight the diversity of victim-survivors' attitudes towards punishment.

To better understand victim-survivors' justice needs, it may be important to ask why exactly victim-survivors may desire punishment of their perpetrators. From a legal point of view, punishment is imposed for a number of reasons, including retribution, rehabilitation, deterrence,¹⁰⁸⁰ and incapacitation.¹⁰⁸¹ Victim-survivors may value punishment for similar and/or other reasons, depending on their personal situation and attitude, as well as contextual factors.¹⁰⁸²

A retributive approach to punishment assumes that the perpetrator 'owes a debt' and deserves to be punished.¹⁰⁸³ As part of such an approach, guilt is 'established and appropriate consequences (punishment) are determined'.¹⁰⁸⁴ As a general principle of retribution, such 'appropriate consequences' require that punishment is 'proportionate to the amount of harm

¹⁰⁷⁵ Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 32.

¹⁰⁷⁶ Ibid 36.

¹⁰⁷⁷ Herman, 'Justice from the Victim's Perspective' (n 9) 591.

¹⁰⁷⁸ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111.

¹⁰⁷⁹ Herman, 'Justice from the Victim's Perspective' (n 9) 590.

¹⁰⁸⁰ Godden specifies that deterrence includes deterring people from committing crimes generally and deterring an individual from reoffending, Godden (n 51) 65.

¹⁰⁸¹ Roger Matthews, 'Punitiveness' in Eugene McLaughlin and John Muncie (eds), *The SAGE Dictionary of Criminology* (SAGE Publications Limited, 3rd ed, 2013) 352, 352.

¹⁰⁸² Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 44; Uli Orth, 'Punishment Goals of Crime Victims' (2003) 27(2) *Law and Human Behavior* 173.

¹⁰⁸³ Maggie Sumner, 'Retribution' in Eugene McLaughlin and John Muncie (eds), *The SAGE Dictionary of Criminology* (SAGE Publications Limited, 3rd ed, 2013), 386; Godden (n 51) 64; Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 31.

¹⁰⁸⁴ Sumner (n 1083) 386; Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 31; Godden (n 51) 64.

done'.¹⁰⁸⁵ Godden explains that retribution can fulfil a number of objectives, including to 'restore an order of fairness which was disrupted by the criminal's criminal act', 'vindicate the value of the victim', and 'censure the wrongdoer and her/his conduct'.¹⁰⁸⁶ Therefore, retribution is closely linked to vindication.

Henry argues that 'for some victims and witnesses, retributive justice *is* justice'.¹⁰⁸⁷ Various studies with victims of human rights abuses, including with victim-survivors, support Henry's claim.¹⁰⁸⁸ For example, Keenan, who conducted a study with victim-survivors in Ireland, explains that her informants highlighted the need for retributive justice to form part of responses to sexual violence.¹⁰⁸⁹ Similarly, van der Merwe found that retribution was 'a dominant concern' among the victims included in his study.¹⁰⁹⁰

Many victim-survivors who are interested in retribution seem to value imprisonment as a specific retributive consequence.¹⁰⁹¹ For example, in Clark's research with victim-survivors in Australia, those informants who sought retribution for their perpetrators highlighted that 'imprisonment was the most appropriate response for the perpetrators'.¹⁰⁹² These informants believed that imprisonment would help perpetrators to understand that there were consequences to their actions, and this appears to be important to at least some victim-survivors.¹⁰⁹³ Furthermore, some victim-survivors feel that their perpetrator deserves to suffer, and imprisonment is regarded as a consequence that would guarantee this suffering.¹⁰⁹⁴ While a retributive approach to justice endorses the suffering of perpetrators as 'morally right and good', one important principle of retribution is that punishment should be commensurate to the crime committed.¹⁰⁹⁵ In comparison, van der Merwe reports that some

¹⁰⁸⁵ Sumner (n 1083) 386-7.

¹⁰⁸⁶ Godden (n 51) 64-65.

¹⁰⁸⁷ Henry (n 5) 118, quoting Judith Shklar, *The Face of Injustice* (Yale University Press, 1990), 94.

¹⁰⁸⁸ See, e.g., Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 28-30.

¹⁰⁸⁹ Keenan (n 11) 223. The informants also highlighted the need for restorative elements, promoting a combination of restorative and retributive justice.

¹⁰⁹⁰ Van der Merwe reports that out of the 101 informants, 35 expressed an exclusive desire for retribution, while 9 spoke about both perpetrator responsibility (which van der Merwe refers to as accountability) and retribution, Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 32.

¹⁰⁹¹ Keenan (n 11) 223. Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 28-9; McGlynn et al. note that imprisonment, as well as other forms of state punishment, 'offered symbolic weight for survivors', McGlynn, Downes and Westmarland (n 12) 7-8.

¹⁰⁹² Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 28-9.

¹⁰⁹³ Ibid 29. See also Keenan (n 11) 223.

¹⁰⁹⁴ See, e.g., Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 28.

¹⁰⁹⁵ Sumner (n 1083) 386-7.

of his informants were motivated by feelings of vengeance and demanded 'severely punitive penalties',¹⁰⁹⁶ which goes beyond a retributive understanding of punishment.¹⁰⁹⁷ Similarly, some of Herman's informants spoke about revenge; some even fantasised of killing their offender.¹⁰⁹⁸ At the same time, Herman highlights that the number of victim-survivors desiring revenge in her study was much smaller than those who 'were not particularly interested in seeing their perpetrators suffer'.¹⁰⁹⁹

Not all victim-survivors value formal state punishment primarily for its retributive value. Research has shown that many victim-survivors request formal punishment predominantly to guarantee safety for self and/or others by way of incapacitation, deterrence and/or rehabilitation, reflecting the key factors of a consequentialist approach to justice.¹¹⁰⁰ Victim-survivors also seem to view formal punishment (predominantly by way of imprisonment) as a means to validate their suffering, which may or may not be commensurate with the legal measure of retribution. For example, some victims who participated in van der Merwe's study indicated that they had been motivated by the thought that punishment would provide a sense of relief or acknowledgment, relating punishment to validation.¹¹⁰¹ Godden argues that victim-survivors place higher value on the legal conviction of a perpetrator as a way to validate the harm experienced, rather than the sanction that may follow a conviction.¹¹⁰²

Nevertheless, research suggests that for some victim-survivors the severity of a sanction (for example, length of imprisonment) is crucially important. Hester et al. highlight that 'even when victim/victim-survivors had a positive experience in court up to the point of sentencing, or had received support, the length of sentence remained a key factor underpinning the

¹⁰⁹⁶ Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 38.

¹⁰⁹⁷ Ibid 33.

¹⁰⁹⁸ Herman, 'Justice from the Victim's Perspective' (n 9) 590.

¹⁰⁹⁹ Ibid 589-90.

¹¹⁰⁰ Godden (n 51) 67-8; Hester et al. (n 1001) 38; McGlynn, Downes and Westmarland (n 12) 7; Herman, 'Justice from the Victim's Perspective' (n 9) 595; Herman found that her study participants only endorsed incapacitation, explaining that

[t]heir priority was safety, for themselves and for others. They preferred to prevent offenders from committing future crimes, rather than to punish them for those already committed. Although they agreed unanimously that rehabilitation of offenders was a desirable goal, many doubted the prospects for rehabilitation of the particular offenders they knew. In most cases, they believed that some degree of ongoing supervision or control of the offender would be necessary to ensure future security.: at 597.

Orth notes that victims of crimes endorse just deserts and incapacitation, but not rehabilitation, Orth (n 1082) 175-6.

¹¹⁰¹ Van der Merwe, 'What Survivors Say about Justice: An Analysis of the TRC Victim Hearings' (n 9) 32-3.

¹¹⁰² Godden (n 51) 68.

extent of individuals' satisfaction'.¹¹⁰³ If victim-survivors view punishment as too light, they may feel that it minimises their suffering, as is supported by various studies with victim-survivors.¹¹⁰⁴ For example, Hester et al. explain:

Victim/victim-survivors expressed deep disappointment if the judge described mitigating factors which they felt at their best deemed their experience less serious, and at their worst, indicated they were also culpable. When this was accompanied with a sentencing decision they felt did not reflect the magnitude of the offence (in effect they felt it was too short to do so) this sense of dismay and disappointment was compounded further and was reported in some cases to 'devastate' the victim/victim-survivor.¹¹⁰⁵

It can be concluded that if punishment is perceived as appropriate, it has the potential to meet victim-survivors' need for validation. However, if the extent of a sanction is not regarded as adequate, punishment can evoke feelings of anger, disappointment and being 'let down' by the justice system, therefore not validating an individual's experience.¹¹⁰⁶

One question that is rarely discussed in existing literature relates to who exactly would need to be punished from the point of view of a victim-survivor: the individual perpetrator or, depending on the context of victimisation, those who condoned, or ordered the violence or all of them.¹¹⁰⁷ For example, Stover explains that 'full justice' for his informants who had participated at the ICTY involved 'capturing and trying all war criminals, from the garden-variety killers (the so-called "small fry") in their communities all the way up to the nationalist ideologues who had poisoned their neighbors with ethnic hatred'.¹¹⁰⁸

5.1.2.2.2 Alternative consequences

Not all victim-survivors value formal state punishment, which places a high importance on retribution.¹¹⁰⁹ Godden suggests that the ultimate objectives that victim-survivors seek in a justice initiative may be achieved better through other means than traditional forms of state

¹¹⁰³ Hester et al. (n 1001) 24.

¹¹⁰⁴ Henry (n 5) 131; Hester et al. (n 1001) 22, 24; Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 29-30.

¹¹⁰⁵ Hester et al. (n 1001) 22.

¹¹⁰⁶ Ibid 24. Henry (n 5) 131. Sharratt notes that some of her informants who had testified about sexual violence at the ICTR did not consider their trial as fair because punishments were too mild in their view, Sharratt, *Gender, Shame and Sexual Violence* (n 15) 118.

¹¹⁰⁷ See, e.g., Chapman, 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' (n 632) 85-89.

¹¹⁰⁸ Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 115.

¹¹⁰⁹ Godden (n 51) 67. Herman, 'Justice from the Victim's Perspective' (n 9) 589.

punishment.¹¹¹⁰ For example, Herman's informants predominantly endorsed alternative measures of punishment, which were usually driven by other justice needs such as the victim-survivor's safety and vindication, rather than an interest in punishment per se.¹¹¹¹

While formal punishment is not appreciated by all victim-survivors, they may still require 'meaningful consequences' for perpetrators to represent 'the significance and harm of [the perpetrator's] actions'.¹¹¹² Victim-survivors in various studies valued as meaningful consequences the exposure of their perpetrators, followed by social sanctioning, removal of their perpetrator from their everyday life, as well as counselling or treatment of their perpetrators.¹¹¹³ For example, Herman's informants wanted to expose their perpetrators so that the latter would be shunned and ostracised from the community, or deprived of 'undeserved' honour, status, respect and privilege, which fits the concept of social sanctioning.¹¹¹⁴ While public embarrassment, shunning and community ostracism constitute alternative consequences to formal state punishment, these activities conceptually also relate to the vindication of the victim-survivor. In support of this point, Herman highlights in her analysis that the majority of her informants had raised their case with the ultimate goal of being vindicated, not to seek retribution.¹¹¹⁵

Besides vindication, safety is another justice need that underpins victim-survivors' appreciation of alternative consequences.¹¹¹⁶ Informants in the study of McGlynn, Downes and Westmarland suggested removing perpetrators 'from the everyday shared spaces that they work study and/or live', so that the victim-survivor did not have to meet their perpetrator any more in these settings.¹¹¹⁷ As another example, to provide for 'a reasonable degree of safety', Herman's informants preferred 'informal social controls to the more formal'.¹¹¹⁸ The informal social controls suggested by Herman's informants included exposure

¹¹¹⁰ Godden (n 51) 68.

¹¹¹¹ Herman, 'Justice from the Victim's Perspective' (n 9) 589-93.

¹¹¹² McGlynn, Downes and Westmarland (n 12) 187. Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 28.

¹¹¹³ Herman, 'Justice from the Victim's Perspective' (n 9) 589-90; Clark, "'What is the Justice System Willing To Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 30; McGlynn, Downes and Westmarland (n 12) 187-8; McGlynn and Westmarland (n 12) 186; Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 132.

¹¹¹⁴ Herman, 'Justice from the Victim's Perspective' (n 9) 589-90, 594.

¹¹¹⁵ *Ibid* 585-90.

¹¹¹⁶ *Ibid* 589-93.

¹¹¹⁷ McGlynn, Downes and Westmarland (n 12) 8.

¹¹¹⁸ Herman, 'Justice from the Victim's Perspective' (n 9) 594.

of the perpetrator and ‘civil sanctions such as restraining orders’, while state punishment was only requested if informal measures were unsuccessful.¹¹¹⁹

Finally, many victim-survivors appreciate as alternative meaningful consequences the redress of material harm associated with sexual violence,¹¹²⁰ for example through reparation and other symbolic forms of punishment.¹¹²¹ Since reparation is of particular importance to victim-survivors of conflict-related sexual violence and fulfils additional justice-related purposes, it is discussed as a separate justice need further below.

In summary, requests for meaningful consequences appear to be underpinned by various justice needs that victim-survivors emphasise differently, depending on the context of victimisation and the victim-survivor’s personal situation and attitude. These needs include retribution, validation and vindication as well as safety for self and others. While these justice needs may be met by formal state punishment, research suggests that some victim-survivors prefer alternative measures of consequences. Such alternative measures include public exposure followed by social sanctioning, as well as reparation. Western criminal justice systems, however, emphasise retribution and deterrence and have frequently been criticised for not meeting the diverse needs of victim-survivors in regard to consequences for their perpetrators. Having said that, criminal courts may have the power to facilitate reparation provided by the perpetrator to the victim-survivor, for example by way of compensation orders, in addition to, or in lieu of, other standard forms of punishment (such as imprisonment).¹¹²²

5.1.2.3 Perpetrator responsibility

Perpetrator responsibility is frequently referred to as ‘accountability’ in the literature on victims’ justice needs. However, the term accountability is used with different meanings by different scholars and frequently lacks a precise definition.¹¹²³ Scholars such as Daly and van

¹¹¹⁹ Ibid 594.

¹¹²⁰ For the definition of material harm of sexual violence, see Chapter 3 (3.1).

¹¹²¹ McGlynn, Downes and Westmarland (n 12) 8; Godden (n 51) 54; Clark, “‘What is the Justice System Willing To Offer?’ Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 30. Herman, ‘Justice from the Victim’s Perspective’ (n 9) 590, 594. As a specific example for a symbolic form of punishment, one of Herman’s informants suggested donations to a women’s shelter: at 590.

¹¹²² Sumner, Maggie, ‘Reparation’ in Eugene McLaughlin and John Muncie (eds), *The SAGE Dictionary of Criminology* (SAGE Publications Limited, 2013) 376.

¹¹²³ This ambiguity of the term has also been noted by Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 15.

der Merwe use accountability to refer to ‘perpetrator responsibility’ (that is, the perpetrator taking responsibility for their actions) and clearly distinguish it from punishment.¹¹²⁴ However, international criminal justice and transitional justice literature frequently discuss legal or criminal accountability,¹¹²⁵ equating accountability with prosecution and punishment. This thesis clearly distinguishes between perpetrator responsibility and punishment, while accountability is regarded as an umbrella term that includes both perpetrator responsibility (personal accountability) and punishment (legal or criminal accountability). This section focuses on perpetrator responsibility, considering two forms: 1) perpetrators taking responsibility and 2) perpetrators being held responsible.¹¹²⁶ The first definition denotes actions that demonstrate responsibility taken by perpetrators themselves, while the second definition refers to how a third party (for example, a court) encourages or enforces perpetrators to accept or take responsibility. These two definitions are explained in more detail and are used throughout the thesis to ensure definitional precision.

5.1.2.3.1 Perpetrators taking responsibility

A demonstration of responsibility by those who committed crimes, and by those who ordered or enabled the violence, appears to be a fundamental element of justice for victims of human rights abuses and is also discussed in nearly every study with victim-survivors.¹¹²⁷ Jülich et al. propose that there are ‘different layers’ of taking responsibility.¹¹²⁸ At the most basic level, perpetrators confess or admit to an offence, which may signal that they are accepting at least

¹¹²⁴ Ibid 117-23; Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) .

¹¹²⁵ Diane F. Orentlicher, ‘Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime’ (Pt The Yale Law Journal Company, Inc.) (1991) 100(8) *The Yale Law Journal* 2537, 2612; Teitel (n 64) 72; Paige Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’ (2009) 31(2) *Human Rights Quarterly* 321, 321-2.

¹¹²⁶ See, e.g., Bloomfield (n 557) 18; Shirley Jülich et al., *Project Restore: An Exploratory Study of Restorative Justice and Sexual Violence* (Report, AUT University Auckland, May 2010), 36. Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 118-20; Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11) 24-5.

¹¹²⁷ Stover suggests that perpetrator responsibility (which he refers to as accountability) is not only an important element of justice, but also of reconciliation, Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 117. For Stover’s informants ‘the inability and unwillingness of their neighbors ... to acknowledge that they stood by as other members of their group committed war crimes in their name was one of the biggest hindrances to reconciliation.’

¹¹²⁸ Jülich et al. (n 1126) 38. Jülich et al. explain that perpetrator responsibility (which they refer to as accountability) is not ‘an all or nothing concept’, and that ‘some perpetrators might accept some aspects of their offending ... [but] not accept the harm that it has caused to the victim’. It is even possible that admission of wrongdoing by the offender is accepted only on a superficial level when this acceptance needs to be deep and profound in order for the provision of true perpetrator responsibility: at 36.

some degree of responsibility.¹¹²⁹ A deeper level of responsibility is demonstrated when perpetrators confess while accepting responsibility for their actions ‘with all its consequences without providing excuses’.¹¹³⁰ As the next step, perpetrators not only acknowledge their actions but also the wrongfulness of such actions. The next layer of responsibility, according to Jülich et al., would involve an acknowledgment of the harm caused.¹¹³¹ Again a deeper level of responsibility involves perpetrators taking active responsibility through an apology and/or alternative demonstration of regret and remorse.¹¹³² Various scholars suggest that ideally, an apology should include all the layers of responsibility previously discussed, as well as a commitment to make amends and/or not re-offend.¹¹³³

Receiving an apology seems to be crucially important for some victim-survivors, while others do not place great importance on it. Approximately half of Herman’s informants wanted their perpetrators to apologise,¹¹³⁴ while the other half questioned the value of such action.¹¹³⁵ Victim-survivors in various studies have voiced their mistrust in the motives behind a perpetrator’s apology.¹¹³⁶ For example, some of Herman’s informants viewed apologies as

¹¹²⁹ Not all confessions are necessarily underpinned by the acceptance of responsibility. Some confessions may be made as a strategy to reduce the final sentence, as has been suggested by victim-survivors interviewed for this thesis. Furthermore, some perpetrators may acknowledge that they committed an act, but might not acknowledge the wrongfulness of the act or might excuse their actions by blaming the circumstances or others around them, a point that has also been suggested by victim-survivors who participated in this research.

¹¹³⁰ Andrews (n 639) 76; Daicoff (n 636) 136.

¹¹³¹ Jülich et al. (n 1126) 38. Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388; Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 31. This point relates to validating both the crime and the impact of the crime.

¹¹³² Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 120-1. Jülich et al. (n 1126). In contrast, apologies and remorse were not mentioned in van der Merwe’s discussion of survivors’ views on perpetrator responsibility (which he refers to with the term accountability) as justice, see Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) .

¹¹³³ Daicoff (n 636) 136. Several scholars highlight the following elements as crucial components of a sincere apology: 1) acknowledgment of wrongdoing and the harm caused, 2) the acceptance of responsibility, 3) an expression of genuine regret or remorse and 4) a commitment to make amends and/or not re-offend; Andrews (n 639) 76; Mellor et al. (2007); Daicoff (n 636) 136.; Herman, ‘Justice from the Victim’s Perspective’ (n 9) 586; Haydie Gooder and Jane M. Jacobs, ‘On The Border Of The Unsayable’: The Apology in Postcolonizing Australia’ (Pt Routledge) (2000) 2(2) *Interventions* 229, 237, quoting Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford University Press, 1991). Daicoff emphasises the importance of the commitment to not re-offend, because ‘apologizing without changing one’s behavior in the future can be entirely meaningless’, Daicoff (n 636) 136.

¹¹³⁴ Some of Herman’s informants ‘expressed a fervent wish for a sincere apology from their offender and believed that this would be the most meaningful restitution the offender could give’, Herman, ‘Justice from the Victim’s Perspective’ (n 9) 586. Others valued apologies mainly for the fact that they proofed to the community that the victim-survivor was innocent, which links an apology to validation and vindication.

¹¹³⁵ Ibid 586.

¹¹³⁶ Ibid 586-7. See also Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 129-30; Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 120-1.

‘yet another manipulative ploy enabling offenders to gain community sympathy or to disarm their victims’.¹¹³⁷ These comments show that for victim-survivors to accept an apology as a form of perpetrator responsibility, it needs to be perceived as sincere.¹¹³⁸ For example, the forum in which an apology is given is crucial to relaying the sincerity of what is being said.¹¹³⁹ Daicoff proposes that an apology should ideally be expressed face-to-face to the person or persons harmed, or, if that is not possible, in writing or as part of a public statement.¹¹⁴⁰ Some victims may require a public apology for others to witness in order for it to be perceived as legitimate.¹¹⁴¹

Victim-survivors have diverse views on who exactly should demonstrate responsibility. For example, victim-survivors may desire an apology not only from the actual perpetrator, but also from their community or an institution or authority that may have been involved in permitting, facilitating or, in the context of violent conflict, organising the violence. In Herman’s research, those who sought an apology wanted to receive it not only from their perpetrators but also from the family or community who, by complicity or inaction, enabled the abuse to take place.¹¹⁴² Some of Herman’s informants thought that the enablers of the sexual violence were just as responsible as the actual perpetrator, if not more so.¹¹⁴³

A deeper level of responsibility may also include actions of the perpetrator that are aimed at reducing or repairing the harm caused, for example by paying reparations or providing other forms of support to the victim-survivor.¹¹⁴⁴ Taking responsibility for wrongdoing may involve perpetrators accepting and completing a prescribed justice requirement,¹¹⁴⁵ or carrying out a

¹¹³⁷ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 587.

¹¹³⁸ Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 130; Andrews (n 639) 76. Marshall (n 72Mellor, Bretherton and Firth (n 649)). See n 1133 above for the elements of a sincere apology.

¹¹³⁹ Daicoff (n 636) 136.

¹¹⁴⁰ Ibid 136.

¹¹⁴¹ Jülich, ‘Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand’ (n 10) 129-30. For example, Cahan notes that the public nature of the apology from German Chancellor Adenauer and his government offered to the Jewish community is likely to have facilitated reconciliation between Germany and the Jewish community, Jean Axelrad Cahan, ‘Reconciliation or Reconstruction? Further Thoughts on Political Forgiveness’ (2013) 45(2) *Polity* 174, 183. Other examples are provided by Daicoff (n 636) 131, 137; Gooder and Jacobs (n 1133) 242.

¹¹⁴² Herman, ‘Justice from the Victim’s Perspective’ (n 9) 588-9.

¹¹⁴³ For example, one of Herman’s informants held the Catholic Church hierarchy morally accountable for the criminal behavior of the priest who molested him, see *ibid*.

¹¹⁴⁴ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 31, 34.

¹¹⁴⁵ Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 120.

‘burdensome task’ or sanction.¹¹⁴⁶ Such sanction may again vindicate the law and a victim, linking perpetrator responsibility and vindication.¹¹⁴⁷ Finally, perpetrators may demonstrate responsibility by explaining what they did and why they did it.¹¹⁴⁸ Research shows that perpetrators explaining their motives is particularly important for survivors in the context of intrastate mass violence, where survivors are likely to have been targeted by members of their own community.

Victim-survivors have diverse views on to whom perpetrators should demonstrate responsibility. Some victim-survivors want to personally ‘call the perpetrator to account through face-to-face interaction’.¹¹⁴⁹ Others prefer that perpetrators demonstrate responsibility in an official forum, such as before a court or a truth commission,¹¹⁵⁰ so that the victim-survivor may experience official validation and vindication. For example, in van der Merwe’s study, some informants requested demonstration of responsibility in an official forum to have those who had been falsely accused officially vindicated.¹¹⁵¹

5.1.2.3.2 Perpetrators being held responsible

Ideally, perpetrators come forward voluntarily and take responsibility for their actions.¹¹⁵² If perpetrators do not willingly offer to take responsibility, justice processes and/or authorities should assist in facilitating perpetrator responsibility, which Daly has termed ‘calling and holding perpetrators to account’.¹¹⁵³ Calling to account, according to Daly, involves a number of events, including: 1) perpetrators being reported to the police or similar institution (or an institution discovers the offence) and 2) investigation of a crime and charges brought against

¹¹⁴⁶ Ibid 17, referring to R.A. Duff, ‘Responsibility, restoration, and retribution’ in Michael Tonry (ed.) *Retributivism has a past: has it a future?* (Oxford University Press 2011) 63-85, 79.

¹¹⁴⁷ Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388.

¹¹⁴⁸ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 31, 33. Daly, ‘Reconceptualizing Sexual Vicimization and Justice’ (n 12) 388.

¹¹⁴⁹ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 34; Stover, ‘Witnesses and the Promise of Justice in The Hague’ (n 980) 106. Miller conducted interviewees with participants in the “Victim’s Voices Heard” program, which brings together victims and offenders. Miller notes that for one of her interviewees who had been raped by a stranger, ‘[g]etting information and answers to questions from the offender himself proved to be the key’, Miller, Susanne (n 996) 43.

¹¹⁵⁰ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 33-4. Van der Merwe uses the term ‘official accountability’ to denote what is termed ‘official demonstration of perpetrator responsibility’ in this thesis.

¹¹⁵¹ Ibid 34.

¹¹⁵² Ibid 33.

¹¹⁵³ Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 119.

a suspect.¹¹⁵⁴ Holding to account occurs when authorities interrogate alleged perpetrators, asking them to explain what they did and why they did it,¹¹⁵⁵ a process that is termed ‘perpetrators being held responsible’ in this thesis. Daly explains that conventional criminal courts frequently fail to hold perpetrators responsible sufficiently, since legal justice systems commonly allow perpetrators to plead guilty without giving a detailed account of their actions and motives.¹¹⁵⁶

To adequately hold perpetrator responsibility, a justice process would need to provide sufficient opportunities for perpetrators to take responsibility, for example by challenging the perpetrators regarding the morality of their actions,¹¹⁵⁷ facilitating or ordering an apology,¹¹⁵⁸ as well as ordering reparation (or other acts that are aimed at repairing or at least diminishing the harm caused).¹¹⁵⁹ As a last resort, if the perpetrator does not sufficiently demonstrate responsibility, justice processes may hold perpetrators accountable by enforcing consequences.¹¹⁶⁰ In support of this point, van der Merwe’s informants requested that ‘those who did not come and account should be prosecuted and punished’.¹¹⁶¹ Nevertheless, while formal state punishment may be imposed for the lack of a demonstration of personal responsibility, it fails to achieve the active responsibility of the perpetrator which victim-survivors may require.¹¹⁶²

¹¹⁵⁴ Ibid.

¹¹⁵⁵ Ibid.

¹¹⁵⁶ Ibid 119-20. Therefore, using the term “accountability process” to describe criminal trials, as frequently found in relevant literature, is somewhat misleading and is why in this thesis distinguished clearly between perpetrators being punishment and perpetrators being held to account / being held responsible.

¹¹⁵⁷ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 33-4. Referring to Jülich’s et al. Project Restore, Daly envisions that opportunities encouraging perpetrator responsibility may include ‘project staff members ...”holding and offender to account” by probing more deeply into their explanations for that they did in ways that legal officials often fail to do’, Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 123. As another example, informants in Clark’s study suggested that institutions delivering justice processes (e.g. a court) could support perpetrators to take responsibility by providing counselling and education for perpetrators, see Clark, ‘A Fair Way to Go: Criminal Justice for Victim/Survivors of Sexual Assault’ (n 51) 69-7.

¹¹⁵⁸ It is, however, questionable whether an ordered apology would still meet the requirements of a sincere apology (n 1133).

¹¹⁵⁹ For example, Project Restore initiates ‘action plans that reflect what participants think will put offending right’, Jülich et al. (n 1126) 37.

¹¹⁶⁰ For example, the action plan initiated by Project Restore (see n 1185) ‘includes the provision of consequences if the action plan is not complied with’, ibid 37. Another example is the conditional amnesty provided by the SA TRC.

¹¹⁶¹ Van der Merwe, ‘What Survivors Say about Justice: An Analysis of the TRC Victim Hearings’ (n 9) 35.

¹¹⁶² This point is also highlighted by Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12).

5.1.2.4 Safety (for self and others)

The need for safety during a justice process has been discussed as a component of an enabling environment. In addition, safety constitutes an outcome-related justice need. Several scholars note that achieving safety for self and others constitutes an important reason for victim-survivors engaging in justice processes.¹¹⁶³ For example, ‘safety for themselves and for other potential victims’ was one of the most frequently sought outcomes of victim-survivors who participated in Herman’s research.¹¹⁶⁴ When their own safety was concerned, most informants preferred informal social controls (for example, exposure and social sanctioning) and milder sanctions (for example, restraining orders) aimed at enabling long-term safety,¹¹⁶⁵ unless the perpetrators were regarded as so dangerous that incarceration was the only option to provide for safety.¹¹⁶⁶ In contrast, safety for others, according to Herman’s informants, was best enabled through imprisonment.¹¹⁶⁷ Overall, safety concerns seem to be one of the key reasons for why victim-survivors appreciate the incarceration of their perpetrators as a consequence of the perpetrator’s crime.¹¹⁶⁸

In the context of mass violence, some victim-survivors were not only concerned with future safety of self and others, but also with the overall prevention of sexual violence in the future. Sharratt, for example, explains that nearly three-quarters of her informants stated ‘so that it will not happen again’ as the main reason why they had chosen to participate in the ICTY.¹¹⁶⁹ Similarly, the Victim and Witness Section of the ICTY estimates that the prevention of future war crimes was one of the main reasons why victims testified at the tribunal.¹¹⁷⁰ Safety for self appears to be of particular concern in the context of intrastate violence, where victim-survivors are likely to continue living side-by-side with their perpetrators, as in post-genocide Rwanda.

¹¹⁶³ Herman, ‘Justice from the Victim’s Perspective’ (n 9); Clark, “‘What is the Justice System Willing To Offer?’ Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 30; Sharratt, *Gender, Shame and Sexual Violence* (n 15) 114; Orth notes that safety is not only important for victim-survivors, but for victims of crime in general, Orth (n 1082) 175.

¹¹⁶⁴ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 594.

¹¹⁶⁵ *Ibid* 594.

¹¹⁶⁶ *Ibid* 596-7.

¹¹⁶⁷ *Ibid* 595.

¹¹⁶⁸ Hester et al. (n 1001) 38; Herman, ‘Justice from the Victim’s Perspective’ (n 9) 595; McGlynn, Downes and Westmarland (n 12) 186-7; Godden (n 51) 67-8.

¹¹⁶⁹ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 114.

¹¹⁷⁰ Henry (n 5) 119.

Herman highlights the importance of a safe environment for anyone who has suffered trauma, explaining that safety is the first step in the individual recovery of the affected person.¹¹⁷¹ Therefore, it appears that a certain degree of safety is a precondition before victim-survivors can engage in other activities dealing with the violence experienced.

5.1.2.5 Validation

Various studies show that validation is a core justice need of victims of violent crime,¹¹⁷² and of victim-survivors in particular,¹¹⁷³ and can be experienced in several ways. The form of validation most frequently cited is acknowledgment of the victimisation, which may involve an affirmation that the victim-survivor's assertions are being believed.¹¹⁷⁴ An acknowledgment of the victimisation ideally includes both an acknowledgment of 'the basic facts of the crime', as well as the recognition that the victim-survivor was harmed.¹¹⁷⁵ Several studies with victim-survivors support that an acknowledgment of their suffering is of critical importance to them.¹¹⁷⁶ As another element of validation, victim-survivors may need reassurance that they are 'not blamed for or thought to be deserving of what happened'.¹¹⁷⁷ Daly highlights the need to 'shift the weight of the accusation from ... [the] shoulders [of the victim-survivors] to others (family members, a wider social group, or legal officials)'.¹¹⁷⁸

Victim-survivors appear to have different needs in terms of from whom they would like to receive validation. Some victim-survivors seek acknowledgment of the crime from the

¹¹⁷¹ Herman, *Trauma and Recovery* (n 342) 155.

¹¹⁷² Phakathi and van der Merwe (n 958); Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73).

¹¹⁷³ Herman, 'Justice from the Victim's Perspective' (n 9) 585-6; Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 116-7; Koss, 'Restoring Rape Survivors' (n 9) 207; Henry (n 5) 128; Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 112. Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 130; McGlynn and Westmarland (n 12) 182-3; McGlynn, Downes and Westmarland (n 12) 188-9; Ka Hon Chu, de Brouwer and Roemkens (n 123) 543-4.

¹¹⁷⁴ Clark, "'What is the Justice System Willing To Offer?' Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 32; Phakathi and van der Merwe (n 958) 123.

¹¹⁷⁵ Herman, 'Justice from the Victim's Perspective' (n 9) 585; Clark, "'What is the Justice System Willing To Offer?' Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 30. Daly provides an explanation of what such acknowledgement might look like, suggesting that it may involve others (for example family members of legal officials) stating: "I agree with the victim's version of what happened and its impact"', Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 117.

¹¹⁷⁶ Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 112; Miller, Susanne (n 996) 45, 74-5; Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' (n 11) 23-4.

¹¹⁷⁷ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388.

¹¹⁷⁸ *Ibid* 388.

perpetrator himself, for example by way of a confession, linking validation to perpetrator responsibility. However, while an admission by the perpetrator may be desirable for some victim-survivors, for others, it may be 'neither necessary nor sufficient to validate the victim's claim'.¹¹⁷⁹ According to Herman, validation from bystanders is equally or even more important than admission by the perpetrator.¹¹⁸⁰ Nevertheless, victim-survivors might value the confessions of the perpetrator predominantly as reliable evidence to gain validation from the community.¹¹⁸¹ To qualify as reliable evidence, victim-survivors may prefer confessions to be made in a public forum, where they can be witnessed by 'bystanders'.¹¹⁸²

Victim-survivors value acknowledgment from a particular group of these 'bystanders'. Victim-survivors of child sexual abuse who were ostracised by their immediate families because they reported the sexual violence, seem to predominantly seek validation from 'the ones closest to them'.¹¹⁸³ Herman highlights that gaining validation from their community was the most important objective of some of her informants.¹¹⁸⁴ Others appreciate validation most if it '[comes] from representatives of the wider community or the formal legal authorities'.¹¹⁸⁵ This last point is supported by Nowrojee's research with victim-survivors who participated in the ICTR. Nowrojee's informants specified that they wanted 'the record to show that they were subjected to horrific sexual violence at the hands of those who instigated and carried out the genocide'.¹¹⁸⁶ By testifying before the ICTR, the victim-survivors had hoped to have their experiences publicly acknowledged and documented, linking the justice needs truth-telling and validation.

¹¹⁷⁹ Herman, 'Justice from the Victim's Perspective' (n 9) 585; Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388.

¹¹⁸⁰ Herman, 'Justice from the Victim's Perspective' (n 9) 585. See also Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 130.

¹¹⁸¹ Herman, 'Justice from the Victim's Perspective' (n 9) 585.

¹¹⁸² Herman introduces the term bystanders to refer to family and community members of the victim-survivor, *ibid*(14) 585.

¹¹⁸³ *ibid*(14) 585; Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 131.

¹¹⁸⁴ Herman, 'Justice from the Victim's Perspective' (n 9) 585.

¹¹⁸⁵ Clark, "'What is the Justice System Willing To Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 30.

¹¹⁸⁶ Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 110; Clark, "'What is the Justice System Willing To Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (n 11) 30.

Many researchers have criticised the conventional criminal justice system for not adequately providing opportunities for victim-survivors to experience validation.¹¹⁸⁷ For example, several studies have shown that victim-survivors who participated in criminal trials reportedly did not feel that the impact of the sexual violence was adequately acknowledged.¹¹⁸⁸ Clark notes that the lack of acknowledgment has left some victim-survivors with a feeling that they were ‘ripped off’ by the justice system.¹¹⁸⁹

5.1.2.6 Vindication

Vindication is reportedly a vital justice need of victims of violent crime.¹¹⁹⁰ To experience vindication, victims need to hear from others that what the perpetrator did to them was wrong.¹¹⁹¹ Daly distinguishes between vindication of the law and vindication of the victim.¹¹⁹² Vindication of the law is achieved by an affirmation that an act was morally and legally wrong, while vindication of the victim requires an affirmation that ‘this perpetrator’s actions against the victim were wrong and unjustified’.¹¹⁹³ Besides the recognition of the wrongfulness of an act, Zehr proposes that vindication also requires for victims ‘to know that something has been done to correct the wrong and to reduce the chances of its recurrence’.¹¹⁹⁴ He furthermore holds that vindication includes an acknowledgment of victims’ suffering and validation of their experience by others,¹¹⁹⁵ suggesting that validation is a component of vindication.

Victim-survivors seem to have different opinions about who should denounce the crime and perpetrator. Research has shown that victims of mass violence take a particular interest in having the wrongfulness of an act publicly declared by official authorities. Phakathi and van der Merwe’s informants wanted the actions committed against them to be publicly condemned as unjustified during the TRC Amnesty hearings.¹¹⁹⁶ Similarly, Nowrojee’s

¹¹⁸⁷ Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11) 22-4.

¹¹⁸⁸ See, e.g., Nowrojee, “‘Your Justice Is Too Slow’ Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15); Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11) 22-4.

¹¹⁸⁹ Clark, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ (n 11) 23.

¹¹⁹⁰ Phakathi and van der Merwe (n 958) 123; Herman, ‘Justice from the Victim’s Perspective’ (n 9) 585.

¹¹⁹¹ Bennett (n 10) 253; Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 117-8.

¹¹⁹² Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 117-8.

¹¹⁹³ Ibid 117.

¹¹⁹⁴ Bennett (n 10) 253 quoting Zehr, H. (1990) *Changing Lenses*. Scottsdale, PA: Herald Press, 191. Bennet discusses the challenges associated with correcting wrongs, noting that ‘it seems quite correct to say that wrongs, once done, cannot be undone’, especially if it is physically impossible to repair a harm: at 253.

¹¹⁹⁵ Zehr, H. (1990) *Changing Lenses*. Scottsdale, PA: Herald Press, 191, quoted in *ibid* 253.

¹¹⁹⁶ Phakathi and van der Merwe (n 958) 123.

interviewees wanted the ICTR to ‘say loudly in no uncertain terms that what was done to the women was a genocide crime’.¹¹⁹⁷ In contrast, Herman’s informants, among whom many had suffered child sexual abuse and domestic violence, sought denunciation of the perpetrator’s actions against them from their communities, rather than from the courts.¹¹⁹⁸ Herman explains that the condemnation of the crime by the community was important because ‘it affirmed the solidarity of the community with the victim and transferred the burden of disgrace from victim to offender’.¹¹⁹⁹ Bennett agrees that ‘the community ... has a role in vindicating the victim by asserting that what was done to her was unacceptable’.¹²⁰⁰ Beside condemnation of a perpetrator’s actions by official authorities and/or the community, vindication may also be expressed by symbolic and material forms of reparation (for example apologies, memorialisation and financial assistance) and standard forms of state punishment.¹²⁰¹ Some expressions of reparation, including apologies and material reparation, may contribute to vindication and originate from the perpetrator, or they may be offered by third parties involved in a justice activity.¹²⁰²

Vindication appears to be a particularly important justice need of victim-survivors.¹²⁰³ The two core experiences of psychological trauma associated with sexual violence are disempowerment and disconnection from others.¹²⁰⁴ Victim-survivors frequently suffer from feelings of shame, embarrassment, guilt and humiliation, due to the nature of the crime.¹²⁰⁵ Vindication can assist victim-survivors in regaining a sense of power and control and restoring their honour.¹²⁰⁶ It can counteract any isolation of victim-survivors and can help them to re-

¹¹⁹⁷ Nowrojee, ‘“Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 111.

¹¹⁹⁸ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 585.

¹¹⁹⁹ *Ibid* 585.

¹²⁰⁰ Bennett (n 10) 259.

¹²⁰¹ Daly, ‘Sexual Violence and Victims’ Justice Interests’ (n 12) 117; Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 123.

¹²⁰² For example, a state representative might offer an apology for past mass atrocities committed by former state officials, or a government might establish a memorial site to acknowledge and remember victims of mass atrocities.

¹²⁰³ Herman states that after validation, vindication was the most frequently sought objective of victim-survivors when participating in a justice initiative, Herman, ‘Justice from the Victim’s Perspective’ (n 9) 594.

¹²⁰⁴ Herman, *Trauma and Recovery* (n 342) 133.

¹²⁰⁵ Godden (n 58-63; Clark, ‘“What is the Justice System Willing To Offer?” Understanding Sexual Assault Victim/Survivors’ Criminal Justice Needs’ (n 11) 35.

¹²⁰⁶ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 585; Van der Merwe, ‘Delivering Justice during Transition: Research Challenges’ (n 3) 123.

establish a sense of meaning in society and to reconnect with their community.¹²⁰⁷

5.1.2.7 Reparation

Survivors of gross human rights abuses may require reparation to deal with the material harm of the violence experienced.¹²⁰⁸ Research with victims of human rights abuses shows that from a victim's perspective, reparations ideally include financial payments, assistance to find work, access to education and capacity-building programs, emotional support and 'any other intervention that would help them to rebuild their life'.¹²⁰⁹ International law distinguishes various forms of reparations, including restitution, compensation, satisfaction and rehabilitation.¹²¹⁰ Restitution, as defined by the UN, should 'whenever possible, restore the victim to the original situation before the gross violations ... occurred'.¹²¹¹ Restitution is limited to specific crimes and can include return of property and return to one's place of residence.¹²¹² However, restitution is impossible in cases of mass killings,¹²¹³ and is also viewed as 'particularly challenging' for crimes of sexual violence, so is seen as less relevant for this study.¹²¹⁴ Compensation is considered the most tangible form of reparation, since it aims to 'qualify and quantify the harm suffered in economic terms'.¹²¹⁵

¹²⁰⁷ Koss, 'Restoring Rape Survivors' (n 9) 209. See also Herman (n 9) 578; Van der Merwe, 'Delivering Justice during Transition: Research Challenges' (n 3) 123.

¹²⁰⁸ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 121-2; Ka Hon Chu, de Brouwer and Roemkens (n 123) 542-3; Phakathi and van der Merwe (n 958) 123, 126; Ruth Picker, *Victims' Perspectives about the Human Rights Violations Hearings* (Research Report, Centre for the Study of Violence and Reconciliation, February 2005),

¹²⁰⁹ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 121-2; Phakathi and van der Merwe (n 958) 123, 126.

¹²¹⁰ United Nations, *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* 60/147, 60th sess, Agenda Item 71 (a), UN Doc A/RES/60/147 (16 December 2005), 7; Bornkamm (n 76) 126; International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations* (rev ed, 2018), 153-8.

¹²¹¹ United Nations, *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* (n 1210) 7 [19].

¹²¹² *Ibid* 7 [19].

¹²¹³ Correa, Cristián, *Getting to Full Restitution* (Briefing Paper, International Center for Transitional Justice, April 2017) 2; Bornkamm (n 76) 125.

¹²¹⁴ Correa (n 1213) 2.

¹²¹⁵ Bornkamm (n 76) 127; International Commission of Jurists (n 1210) 173-201. The United Nations considers the following damages to qualify for compensation: 1) Physical or mental harm, 2) Lost opportunities (employment, education and social benefits), 3) Material damages and loss of earnings, including loss of earning potential, 4) Moral damage, 5) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services, United Nations, *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* (n 1210) 7.

While evaluating the costs of sexual violence also comes with its challenges,¹²¹⁶ financial compensation appears to be the measure most frequently discussed in relevant literature.¹²¹⁷ Satisfaction includes predominantly symbolic, non-financial reparation, such as the disclosure of the truth, public acknowledgment of the crime, apologies and sanctions against perpetrators, thus linking reparation to several other justice needs.¹²¹⁸ Rehabilitation aims to support ‘physical and psychological recovery and social reintegration’, comprising access to medical and psychological care as well as to legal and social services,¹²¹⁹ which are greatly relevant to victim-survivors because of the psychological, physical and social consequences that result from sexual violence. Reparation may be provided either by the perpetrator directly or by reparation programs (or compensation schemes) funded by a state or specific organisation or institution.

For victim-survivors, one main purpose of reparation in the form of compensation is to receive support for dealing with the material harm of sexual violence.¹²²⁰ Chapter 3 discussed the range of consequences suffered by victim-survivors and identified as the material harm of sexual violence any costs associated with the physical and psychological injuries caused by sexual violence, including economic and financial losses such as unemployment and costs of health care. The economic and financial losses are likely to be particularly significant in settings where social stigma may lead to far-reaching socioeconomic consequences (such as where a victim-survivor is unable to find a husband, or a married woman is left by her husband). Material harm of sexual violence are especially damaging in a conflict/post-conflict setting, where victim-survivors are already likely to suffer from poor access to food, health and housing even without the additional effects of the sexual violence.

¹²¹⁶ Bornkamm (n 76) 127; United Nations, *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* (n 1210) 7.

¹²¹⁷ Godden (n 51).

¹²¹⁸ Bornkamm (n 76); United Nations, *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 (n 8; International Commission of Jurists (n 1210) 207-11.

¹²¹⁹ Bornkamm (n 76) 130; United Nations, *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* (n 1210) 8; International Commission of Jurists (n 1210) 204-6.

¹²²⁰ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 121-2; Godden (n 51) 72-4.

Studies with victims of gross human rights abuses, including sexual violence, have shown that reparation constitutes an important justice need.¹²²¹ Over 75 per cent of Sharratt's informants requested 'financial and emotional support for victims to rebuild their lives' when asked about what justice meant to them.¹²²² In Nowrojee's research, those victim-survivors who had contracted HIV/AIDS from their rapist, wanted 'access to the same AIDS medications that the tribunal ... [was providing at that time] to the defendants in custody'.¹²²³

Besides assistance with the material harm of sexual violence, victim-survivors may value reparation for several other purposes. Godden explains that victim-survivors in several studies have preferred compensation to be paid by their perpetrator, rather than by third parties, since such compensation not only assisted them financially, but also carried symbolical meaning as an alternative consequence for perpetrators.¹²²⁴ Furthermore, compensation offered by the perpetrator and satisfaction in the form of disclosure of the truth, acknowledgment of the crime (and the harm caused) and apologies reflect perpetrator responsibility and may also meet additional justice needs of victim-survivors, including truth-seeking, vindication and validation.¹²²⁵

5.1.2.8 Empowerment

Empowerment is, according to Herman, the first principle of an individual's recovery from trauma,¹²²⁶ and is therefore particularly important for victim-survivors.¹²²⁷ While a justice initiative can support victim-survivors' to feel empowered in several ways, empowerment is only rarely discussed as a justice need in the literature and therefore also lacks definition as a justice need.¹²²⁸ In the context of sexual violence, empowerment forms part of the process

¹²²¹ Phakathi and van der Merwe, who conducted research with victims who participated in the Amnesty Hearings of the TRC, report that their informants repeatedly raised 'pleas for socioeconomic assistance to the government', Phakathi and van der Merwe (n 958) 130. Stover explains that justice from the perspective of his informants included securing meaningful jobs, providing their children with good schools; and helping those traumatized by atrocities to recover', Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 115.

¹²²² Sharratt, *Gender, Shame and Sexual Violence* (n 15) 117.

¹²²³ Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111.

¹²²⁴ Godden (n 51) 69-71.

¹²²⁵ *Ibid* 70.

¹²²⁶ Herman, *Trauma and Recovery* (n 342) 133. Along with creating connections, empowerment is seen as essential to support the three stages of recovery: 1) safety, 2) mourning and remembrance and 3) reconnection: at 155-9.

¹²²⁷ For the relevance of trauma in the context of sexual violence see Chapter 3 (3.1 and 3.2.3).

¹²²⁸ This point is also discussed by Morris, Meghan Brenna (n 100)47.

of overcoming feelings of fear, intimidation and humiliation that many victim-survivors experience after their victimisation,¹²²⁹ and includes the experience of both power and control. Herman highlights as a specific and fundamental principle of empowerment that the victim-survivor is 'the author and arbiter of her own recovery'.¹²³⁰ Therefore, empowerment is closely related to the justice need of participation, which emphasises a victim-survivor's active involvement in a justice process.

Victim-survivors may feel empowered by experiencing power relative to their perpetrator, including when meeting their perpetrator face-to-face during a justice process.¹²³¹ Some victim-survivors appreciate witnessing their perpetrators as powerless,¹²³² possibly to balance out the feeling of inferiority and powerlessness that the victim-survivor experienced at the time of the victimisation. For many of Stover's informants, merely being in the courtroom with their perpetrator under guard helped to restore the informant's confidence in the order of things.¹²³³ Sharratt explains that many of her informants 'felt a sense of power and victory' when looking at their perpetrator in the courtroom during their testimonies.¹²³⁴ Sharratt highlights that some of her informants reported that they 'felt enjoyment' because of the perceived powerlessness of their perpetrators as defendants under guard'.¹²³⁵ In contrast, other victim-survivors preferred meeting their perpetrator 'as equals' or 'on the same level'.¹²³⁶ Jülich found that her informants articulated a desire for 'equality and fairness between themselves and the offender in the pursuit of justice'.¹²³⁷

Encounters with the perpetrator may also include some direct interaction between the victim-survivor and the perpetrator, depending on the preference of individual victim-

¹²²⁹ Herman, 'Justice from the Victim's Perspective' (n 9) 572; Miller, Susanne (n 996). Hester et al. found in their study with victim-survivors in England and Wales that for some of their informants, experiences of sexual violence than involved more than one offender were 'more frightening, disturbing, humiliating and degrading for the victim.', Hester et al. (n 1001) 51.

¹²³⁰ Herman, *Trauma and Recovery* (n 342) 133.

¹²³¹ Specific examples are discussed in Miller, Susanne (n 996) 73, 75.

¹²³² See, e.g., Stepakoff et al. (n 1025) 460-1; Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 118; Sharratt, *Gender, Shame and Sexual Violence* (n 15) 115.

¹²³³ Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 118.

¹²³⁴ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 115.

¹²³⁵ *Ibid* 115.

¹²³⁶ Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 130. See also Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 106.

¹²³⁷ See, e.g., Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 129-30. Jülich highlights that this concept of fairness and equality does not correspond to procedural fairness as emphasised in 'legal constructions of justice': at 130.

survivors. For example, some of Sharratt's informants, who testified at the ICTY, spoke about moments of empowerment when they had the opportunity to look their perpetrator in the eye and speak to them directly.¹²³⁸

Besides experiencing power relative to the perpetrator, victim-survivors may also feel empowered by contributing to the greater good by providing information about crimes and perpetrators. Nowrojee notes that some of her informants who bore witness at the ICTR felt empowered by making a contribution to the public record.¹²³⁹ These examples show that victim-survivors may experience empowerment in various way during a justice process. The analysis of the primary data aims to add further examples and contributes to a more robust definition of empowerment as a justice need.

5.2 Survival Needs

Various scholars distinguish clearly between survival needs and justice needs.¹²⁴⁰ Survival needs reflect the most immediate and basic needs of victim-survivors for 'economic stability, emotional security and physical safety'.¹²⁴¹ Koss holds that survival needs 'are generally unrelated to the offender or anything he/she can do, nor is the criminal justice system generally capable of addressing them'.¹²⁴² She also identifies economic issues such as employment as survival needs.¹²⁴³ Particularly in the immediate aftermath of sexual violence, these survival needs may be more fundamental than justice needs, since the main purpose during this time is to prevent 'the traumatic economic and psychological downward spiral that frequently begins within the first six months after assault'.¹²⁴⁴

¹²³⁸ See, e.g., Sharratt, *Gender, Shame and Sexual Violence* (n 15) 115.

¹²³⁹ Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 127.

¹²⁴⁰ Koss, 'Restoring Rape Survivors' (n 9) 208-9 (citations omitted), Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 389.

¹²⁴¹ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 389; Koss, 'Restoring Rape Survivors' (n 9) 208-9; Seidman and Vickers use the term 'civil legal needs'. The authors identified a number of core areas of civil legal needs that affect the well-being and recovery of rape victims. Even though these core areas were developed specifically in the context of the US legal system, some of these core areas, or a modified version thereof, appear to also find application in the context of conflict-related sexual violence, Seidman and Vickers (n 356) 471-482.

¹²⁴² Koss, 'Restoring Rape Survivors' (n 9) 208-9.

¹²⁴³ *Ibid* 208. See also Seidman and Vickers (n 356) 482.

¹²⁴⁴ Seidman and Vickers (n 356) 471; Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 389.

Daly explains that the whole range of needs of victim-survivors are 'relevant and may have greater priority than others, depending on the victimization context'.¹²⁴⁵ In a conflict or post-conflict setting, survival needs relating to safety, food, health and housing are likely to be particularly important.¹²⁴⁶ Henry notes that '[i]n the aftermath of armed conflict, many women may be caregivers, widows, refugees and internally displaced persons, investing energy into survival and economic stability with little regard to the relative "luxury" of justice'.¹²⁴⁷ Besides the possible loss of their husband as breadwinner, victim-survivors of conflict-related sexual violence are also likely to suffer significant socioeconomic impacts because of social ostracism, should their experiences become known to their communities. Furthermore, in conflict or post-conflict settings where law and order have not been fully re-established and where victims and perpetrators have to live side-by-side, safety may be a specific issue.¹²⁴⁸

It therefore appears that some of the survival needs identified by Koss may in fact be related to conflict-related sexual violence, including poor physical and mental health. The socioeconomic impact of sexual violence indicates a relationship between the crimes experienced and economic issues of victim-survivors. It also appears that justice initiatives could be capable of addressing some of these issues.¹²⁴⁹ For example, the need for safety could be addressed by the justice process if incarceration (or other measures aimed at the safety of the victim-survivor) was the final outcome, while material needs could be met through reparation ordered by a court. Therefore, this thesis considers any psychological, physical, medical and socioeconomic needs that have resulted from the sexual violence and not from other contextual factors as relevant in the context of justice for victim-survivors of conflict-related sexual violence.

¹²⁴⁵ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 389.

¹²⁴⁶ Henry (n 5) 120; Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15); Sharratt, *Gender, Shame and Sexual Violence* (n 15) 112, 117-8; Phakathi and van der Merwe (n 958) 130; Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 115; Robins (n 115) 90.

¹²⁴⁷ Henry (n 5) 120.

¹²⁴⁸ Ka Hon Chu, de Brouwer and Roemkens (n 123) 541.

¹²⁴⁹ Ibid.

5.3 Conclusion

This chapter distinguished, categorised and defined a comprehensive set of justice needs, developing an original conceptual framework for the analysis of the primary data of this thesis. The set of justice needs includes both process-related and outcome-related justice needs. Process-related justice needs comprise the need for an enabling environment, participation, information and support. An enabling environment involves victim-survivors being treated with respect, neutrality, sensitivity and care, as well as procedures supporting victim-survivors to partake in a justice activity. Outcome-related justice needs refer to what victim-survivors hope to achieve by engaging in a justice process, including truth recovery, consequences, perpetrator responsibility, safety (for self and others), validation, vindication, reparation and empowerment.

The analysis of justice needs was based on literature concerning domestic and international criminal justice, as well as transitional justice. Therefore, the range of justice needs is relatively broad, covering victim-survivors' perspectives on justice in various victimisation contexts. Not all components of these justice needs would necessarily apply to a victim-survivor in a specific setting, but victim-survivors are likely to prioritise some justice needs over others, depending on contextual and individual factors. The primary data analysed in forthcoming chapters adds further evidence to the set of justice needs identified in this chapter and provides new examples and further nuances to each justice need. Furthermore, the analysis highlights which justice needs may be especially relevant for victim-survivors in collective contexts of victimisation in conflict/post-conflict countries.

6 CHAPTER 6: THE INTERVIEWEES' GENOCIDE EXPERIENCES

This chapter provides important background information on the interviewees, including relevant demographic details and their genocide experience. While the interviewees were not explicitly asked about what they had endured during the genocide, all interviewees chose to recount at least some of their experiences of sexual violence and other traumatic events. These events include deaths and injuries of family members, as well as how the interviewees fled, hid and managed to survive the genocide. The interviewees also discussed at length the consequences that resulted from the atrocities suffered during the genocide, in particular from acts of sexual violence.¹²⁵⁰

This chapter fulfils several purposes. Firstly, it contextualises the interviewees' motivations, expectations and experiences regarding *gacaca*, which are analysed in subsequent chapters. Secondly, this chapter contributes important information to answering the first primary research question, which asks about the justice needs of victim-survivors who participated in *gacaca*. The discussion in this chapter on the range of consequences suffered by the interviewees is critical to answering this research question. Thirdly, the chapter acknowledges that it was important for the interviewees to tell their genocide experiences and provides a platform to share these stories. The importance of sharing the stories of research participants is supported by the methodology of this thesis. This research has been informed by feminist methodologies, which are committed to giving voice to marginalised groups. The author acknowledges that this chapter provides insight into 23 horrific genocide experiences, which may cause distress to the reader. For reasons of confidentiality, all interviewees are referred to with a code, such as M1, M2, M3. All names of places or names of other persons that the interviewees cited during their interviews were also replaced with a code, such as 'XXX', 'YYY' and 'ZZZ'.

¹²⁵⁰ To illustrate certain points, the discussion of the analysis of the interviews in Chapters 6-10 includes direct quotes of the interviewees. In most cases, between one and three quotes were selected as examples to illustrate each point, depending on the diversity of comments made by the interviewees. The codes of the interviewees who discussed the point are included in a footnote.

6.1 Demographic Details

The 23 victim-survivors who were interviewed were born between 1949 and 1975.¹²⁵¹ The average age of the interviewees at the time of the interviews was 50.¹²⁵² At the time of the genocide, the average age of the interviewees was 29, with the youngest having been 19 and the oldest 45. With the exception of two, all had completed at least three years of primary school. More than half (12) had finished primary school with either six or eight years of attendance.¹²⁵³ Five had completed an additional three years of vocational school. Only one, and the only one who lived and worked in an urban area, reported a regular monthly income of 40,000 RWF,¹²⁵⁴ and one interviewee received some benefits for being handicapped. The rest of the interviewees did not have a fixed income but relied on farming as their main source of income.

Most interviewees were married when the genocide started, three were single and one had just become engaged. At the time of the interview, five were still married, three had separated from their previous husbands, one was still single (she had lost her fiancé during the genocide and never married) and 14 were widows, with most of them having lost their husbands during the genocide. Most interviewees had had children before the genocide but many (15) lost one or more of their children during the genocide. Two interviewees lost as many as eight children. While one interviewee lost all her children, all other interviewees still had at least one child, and on average between three and four children were alive at the time of the interview. Each interviewee identified as a member of a church. The range of religious preferences was diverse, including Roman Catholic (10), Pentecostal (6), Seventh-day Adventist (5), Jehovah's Witnesses (1) and Muslim (1).

¹²⁵¹ See Appendix 2: Demographic Details of Interviewees.

¹²⁵² As discussed in Chapter 2, the interviews were conducted in December 2015 and January 2016.

¹²⁵³ According to the interpreter, primary school in Rwanda consisted of 8 years until 1992 and afterwards of six years. Five interviewees completed an additional one to three years of vocational school.

¹²⁵⁴ At the time of the interviews, RWF40,000 converted to approximately USD50/ AUD70. As a point of reference, the international website WageIndicator estimated the average monthly living costs of one adult living in Rwanda (factoring in a person's basic needs including food, housing, transport, health, education, tax deductions and other necessities, but not factoring in dependants) in its 'Living Wage Series – Rwanda – January 2018' as ranging from about 65,000 to 75,000 RWF, 'Living wages, Wages in context - Rwanda', *WageIndicator.org*, (Web Page, n.d.) <<https://wageindicator.org/salary/living-wage/rwanda-living-wage-series-january-2018>>.

The 23 interviewees had participated in *gacaca* courts in four different Rwandan districts,¹²⁵⁵ nine different sectors (including rural and urban) and at least 15 different cells (two did not want to disclose their cell).¹²⁵⁶ At the time of the interview, 13 interviewees regularly participated in a support group specifically established for victim-survivors who had suffered sexual violence during the genocide (there were three different groups across the 13 interviewees); nine interviewees had not participated in such a group at the time of the interview.

6.2 Genocide Experience

Similar to the experiences of other Rwandan women, the interviewees had suffered various forms of sexual violence, including rapes by individuals, gang rapes, sexual torture, sexual slavery and ‘forced marriage’. Nearly all interviewees had been raped by several perpetrators, including gang rape (raped by more than one perpetrator at the same time),¹²⁵⁷ as well as rapes by different perpetrators at different times.¹²⁵⁸ Some interviewees had been raped repeatedly by multiple perpetrators.¹²⁵⁹ Two interviewees spoke about how they had been kept in houses set aside specifically for the purpose of keeping women to rape over the period of the genocide:¹²⁶⁰

M16: I ... managed to survive from a house in which 30 women were killed. They had gathered all of us together in the house pretending they were protecting us. We were 30 in total from different families. ... What happened was that every evening, each member of the *interahamwe* militia would go home with one of the women to rape. It was like a reward for the hard work, killing people. That’s actually what happened to all of us. I didn’t know if I was grateful for being alive to be raped.

M17: When the genocide began, they started by murdering the men and they lied to the women that they were not going to do anything to us. They put us all in one house and they would come and rape us. Some of the women who were raped died. They were nasty men and they would rape and beat us up. Being raped was terrible.

¹²⁵⁵ At the time of the interviews, Rwanda consisted of five provinces, which again were divided into 30 districts. Each district was divided into sectors, which again consisted of various cells, the smallest administrative entity in Rwanda. Chapter 4 explains in detail at which administrative level the *gacaca* courts operated.

¹²⁵⁶ The cell *gacaca* was only relevant to raising of cases. The trials would have taken place at the sector level, the same as any appeals court.

¹²⁵⁷ M1, M2 (raped by five perpetrators), M4, M7 (raped by at least two perpetrators), M15.

¹²⁵⁸ Including M5 (2 perpetrators), M16 (30 perpetrators), M17 (several), M20 (10 perpetrators).

¹²⁵⁹ M12, M16, M21 (about 20 perpetrators), M23 (soldiers at refugee camp).

¹²⁶⁰ These ‘houses of rape’ were mentioned in Chapter 3 (3.2.3).

While most interviewees had been raped by more than one perpetrator, many interviewees reported rapes committed by specific individual perpetrators,¹²⁶¹ including multiple rapes by the same perpetrator over an extended period of time.¹²⁶² Some of these interviewees had been raped by the same person whenever they crossed paths during the 100 days of the genocide.¹²⁶³ Others recounted that they had been held captive by their perpetrator to be raped repeatedly.¹²⁶⁴ The interviewees had been raped in their own homes, in the fields, in the bush, at road blocks as well as in other public places. Many highlighted that they had been raped in front of other people:¹²⁶⁵

M20: They would make me have my legs wide open and they would demonstrate to [a group of young children] how to rape a woman.

M3: About the man who raped me, I found out that the entire region knew about it because they were watching us.

M7: [T]hey raped and then cut me with a machete ... When they were done doing what they were doing, they left me lying outside. ... What [some witnesses] ... would say in public was that they had seen those men undress me, that those men hit me and that my clothes were on my head.

Several interviewees recounted how they had been raped in front of family members, including their own children.¹²⁶⁶ M19 explained:

He asked me to put the kids down. I was holding two kids in my arms. He started going through my clothes saying that he was looking for some money but he instead took them off and raped me on the spot. The kids would roll on the ground crying.

Three interviewees had been raped while they were carrying their babies on their back,¹²⁶⁷ which stood out to the interviewees as a specific traumatic experience, including:

M6: [W]hat hurt me was that the man in question had raped me when I was carrying a three-year-old-child. He would rape me whenever we would meet. I would be carrying my baby on my back and they would make me lay on my back and I would squash my baby. I would beg them not to let my baby die on my back. My child is still alive. I thanked God for saving him because I thought he was going to die but he didn't.

¹²⁶¹ M1, M3, M4, M5, M6, M8, M9, M10, M11, M12, M13, M14, M18, M23.

¹²⁶² M1 (whenever he saw her), M3 (raped by 3 individual perpetrators), M6, M9, M10, M12.

¹²⁶³ For example M1 and M6.

¹²⁶⁴ M3, M9, M10, M12, M16, M21.

¹²⁶⁵ M2, M3, M5, M6, M7, M9, M11, M20.

¹²⁶⁶ M1 (had baby on her back), M14 (in front of her mother and some other interviewees), M19 (in front of her young children), M23.

¹²⁶⁷ M1, M3, M6.

M1: He did not like my baby because every time he would come to rape me, he would have to position me on a rock to elevate me a bit so that he could take me from behind. The baby on my back would always be in the way and it was hard for him because his second arm didn't work.

Some interviewees explained that they had been raped together with other women.¹²⁶⁸ Some spoke about witnessing the rapes of other women, including their mothers, sisters, daughters and sisters-in-law:¹²⁶⁹

M23: They would also rape my mother in front of me. I was so hurt by the fact that I would get constantly raped and did not have anyone to help me. My mother was the one who should have been helping me and she was going through the same thing as me.

M20: My daughter was also there, she was raped right after turning six years old. She had not even started primary school.

At least two interviewees (M13, M20) discussed experiences of sexual ridicule. M13 explained that a group of men, after beating her up '[chose] the filthiest looking man around' and dragged her 'down all the way' so he could rape her. M20 recounted how she and other women had been verbally abused by a group of men and had been 'force[d] ... to talk dirty to them and give their penises names'. M20 also reported that she had been raped with objects, including a banana trunk.

Several interviewees recalled their perpetrators making specific comments about the interviewees' ethnicity.¹²⁷⁰ For example, M14 recounted that after raping her, her perpetrator said '[y]ou Tutsi women would refuse to sleep with us ...'. M13 and M20 recounted how they had been 'examined' so that the perpetrators could see 'what a Tutsi vagina looked like and how big it was'. M20 noted that '[t]hey would even call young children to come see our vaginas and stick their fingers and other objects in to feel the inside ...'. As previously mentioned, M20 had been raped with a banana trunk, and she recalled her perpetrator telling her 'that he could not betray his ancestors by sticking a penis in a Tutsi vagina.'

Like other Rwandan women, the interviewees had been raped by members of the *Interahamwe* and other militia groups, as well as by civilians. While many interviewees had

¹²⁶⁸ M4, M11, M20. Therefore, some interviewees participated together with other interviewees in the same *gacaca* trial, which is more fully explained in Chapter 7.

¹²⁶⁹ M2 (daughter), M3 (sister in law), M16 (sister and sister in law), M18 (daughter), M23 (mother). M20 noted that her daughter was raped but it is not clear if M20 was present at that time.

¹²⁷⁰ M13, M14, M20.

been raped by strangers,¹²⁷¹ at least 10 had also been raped by people they knew, including former schoolmates, neighbours and extended family members (Table 6.1):¹²⁷²

M15: I would meet some young men from our neighbourhood. Some of them were my children's age. They would come to my house and I would feed them but to my surprise, they were the ones who raped me ... Those were our neighbours' sons and some other young men from our neighbourhood and they were the ones who raped me. One of them held a machete on my throat and the others raped me.

M12: I fled and went to hide at my sister's house. When I got there, my brother-in-law did not seem to be so happy about me being there. The next morning, he came with some other men to attack me. He was an active member of the *Interahamwe* militia. They would come to rape me at night. He would come and rape me during the daylight and there was nothing I could do about it. He would tell me that instead of killing me, I should let them continue to rape me. My sister was there the entire time and she was so powerless and tormented over her husband's actions.

M2: The people who committed such crimes against us were mostly fellows with whom we lived side-by-side and shared food.

¹²⁷¹ For example, M1 (raped by a gang of men in an area that she had fled to), M12, M19, M20 (raped by a group of men in an area different to her home).

¹²⁷² This was also a point made earlier in Chapter 3 (3.2.3). For example, M2 (neighbour), M3 (long time neighbour and former school colleague), M5, M9 (people from her neighbourhood), M10 (neighbour), M12 (brother in law and other neighbours), M15 (her neighbour's sons and some other children from the neighbourhood), M17, M20 (group of neighbours who used to work at her family's house), M21 (people from her neighbourhood), M23 (person from her neighbourhood).

Table 6.1: Relationship between Victim-survivor and Perpetrator¹²⁷³

	Raped by people known to her	Raped by strangers
M1		x
M2	x (neighbour)	x
M3	x (schoolmate and long-time neighbour)	x
M4		x
M5	x (person from neighbourhood)	x
M6	unknown	
M7	unknown	
M8	x (mentioned that she used to run into her perpetrator after genocide)	
M9	x (people from her neighbourhood)	
M10	x (neighbour)	x
M11	unknown	
M12	x (brother-in-law and several neighbours/friends of her family)	x
M13		x
M14		x
M15	x (her neighbours' children and friends of her own children)	
M16	unknown	
M17	unknown	
M18	unknown	
M19		x
M20	x (group of neighbours who used to work at her family's house)	x
M21	x (people from her neighbourhood)	x
M22	unknown	
M23	x (person from her neighbourhood)	

At least one interviewee (M3) explained that she was raped by a person who had rescued her from being killed by others.

The time came when some people from my hometown set me up, wanting me dead. ... God helped me and I was able to find a young man to take me with him. That young man was the one who raped me. I later thought about it and thought it was because we were living in a tiny house with one bedroom and we would sleep on the same bed and he would always be holding on me so tight so that they do not see me.

¹²⁷³ While some interviewees discussed whether they knew their perpetrators or not, not all interviews were clear about this point (indicated by 'unknown'). Those interviewees who mentioned that they had known their perpetrators frequently provided some further information about their relationship with their perpetrator(s). This information, if it was provided, is added in brackets after the 'x'.

Besides being subjected to sexual violence, the interviewees had also been beaten and injured with weapons.¹²⁷⁴ All interviewees reported the death of family members, including their parents, siblings, husbands, children and extended family members.¹²⁷⁵ M17, for example, lost all her eight children and her husband. At least three interviewees spoke about how they experienced the killing of others, including their own children,¹²⁷⁶ including:

M1: When he came to rape me for the fourth time, I did not have any more money to give him so he took my baby away from me [and killed it].

M15: We met some attackers and they took the child away from me and killed him ... I was very exhausted and hurt after losing my child. I had spent all night running with him and they took him away from me in the morning and they also beat me up.

Some interviewees witnessed particularly cruel violence against loved ones. M16, who had been held in a house together with other women to be raped over an extended period of time, described how some babies, including her sister's newborn and the baby of her sister-in-law, were fed to the dogs and thrown into the fire. M16 further explained that '[t]hey had set a team of people that was in charge of killing children who hadn't developed teeth yet'. M16 was the only survivor of the women and children who had been held in the house, since she happened to escape during the night when all the other women and children were killed. At least two interviewees narrated incidents of how they were nearly killed and only just managed to escape or survive:

M1: When it was time to get rid of the bodies, they realised that I was still breathing and they said they should leave me alone because I was already dying. They said that they should not bury people if they were still alive because the *Inkotanyi*¹²⁷⁷ were signing a peace agreement and a truce had been called. They removed me from the dead and I went to ask for refuge in that neighbourhood.

M15: The plan was that they were going to rape me and then kill me but when they were done, they heard a cry signifying that someone had just been found. When they heard the cry, they ran after that person and they left me there ... I came across a barricade and they asked me where I was going. They made me get down on my knees and I stayed like that for quite a while. One man said that he was going to kill me but he later changed his mind.

¹²⁷⁴ Including M1 (cut with a machete, teeth knocked out), M7 (beaten up, cut with a machete and stabbed with a knife in her thighs), M8 (cut with a machete), M13 (beaten and strangled), M14, M20 (beaten and cut with machete).

¹²⁷⁵ See demographic details above for information on the deaths of husbands and children. See also Appendix 2.

¹²⁷⁶ M1, M15, M16.

¹²⁷⁷ Name given by the RPF to its soldiers; literally, 'the tough fighters'.

Two interviewees (M6, M15) recalled moments during the genocide when they had mentally given up and wished for someone to kill them. M15 spoke in detail about times during her escape when she wanted to die rather than live:

I went into a coffee plantation and I would take the leaves that they put underneath the coffee and I covered myself with them. I thought to myself that I was going to stay in that plantation until I died. I wanted the owner of the coffee to find me dead in there. It poured so heavily that day. It rained on me all morning and I could feel the water getting into my ears. I thought I was going to die anyway so I decided to get up and leave to find a place to hide. I was hoping that I could meet with a murderer and he would kill me.

The destruction of their properties and killing of their animals was another traumatic experience highlighted by some interviewees:¹²⁷⁸

M2: They ate our animals and destroyed our houses. It is so sad to construct your house, pave it with your little cement, paint it and roof it with roofing tiles but then they came and put it down by destroying using hoes.

M4: They came [and] destroyed my house and they raped me. I was lucky to have some money to give them and they let us live and brought us to XXX. ... They ate the animals that I was breeding.

Several interviewees described how they had fled and hid until the genocide was over.¹²⁷⁹

Some interviewees explained how they had to hide in the bush for an extended period of time.¹²⁸⁰ M2 explained:

They destroyed my clothes while the genocide was still ongoing. ... We were always in the bush and unable to appear outside of it. We never washed ourselves.

Several interviewees were assisted by others to escape and survive:¹²⁸¹

M17: The rapists took me to that man ... [who] knew my grandfather. He asked them to leave me with him and come back to kill me the following day. They left me with him and he was the one who hid me after I had been raped by two men. [His] wife was a friend of my mother's ... They told me that I should hurry and leave the next morning because if someone in their family was to expose that I was a Tutsi, the attackers were going to come and kill me.

¹²⁷⁸ M2, M3, M4, M5.

¹²⁷⁹ M2, M3, M14, M12, M15, M16.

¹²⁸⁰ M1 (took her dress off her 'as payment' to spare her life), M2, M15.

¹²⁸¹ M1, M3, M12, M14, M15, M17.

M15: There were two women who lived in that home where I was hiding and they would come and open the door to let me in. Those women had a brother who also lived there but he did not know that I was hiding in their house. I would share a bed with that woman but he did not know about it. On that day, they told me that I should not come back to their house because there had been a meeting where ... [some people] had said that every Tutsi should be killed and that no one should be spared. They had also said that whoever was going to be caught hiding someone was going to be killed. They were afraid that their brother would catch me one day and kill them. I had to leave their house at 2am. ... I continued to walk alone and went to one woman's house. ... I was bleeding because they had beaten me with a stick on my head. That lady hid me in her house and her brother brought out some scissors to cut my hair. He applied some penicillin on my wound and they gave me some water to wash away the blood.

M14: Before we got to that barricade, we went past some people who used to go to the same church as me and I started screaming telling them that he was going to kill me. He told them that I was going around poisoning the wells and that I had insulted him and he had to kill me. Those people begged him to let me go and they gave him a lot of money. ... I left and fled to a different cell. I met with a Good Samaritan and she would boil some water for me to treat my wounds and she would give me some butter to rub on them.

At the same time, some interviewees recounted how other family members and friends refused to help them:¹²⁸²

M14: I went to one of our neighbours whom my father had given a cow and I went to hide there. I went and told him that the people who were torturing me had come back. ... I refused to leave but he forced me to leave during the night around 7pm.

M15: I went to one of our neighbours' house[s]. He was my neighbour and I would always give him some food and what not. I wanted to see if he could let me stay at his place for the night. When I got to his house, he asked me who I was and I told him. He told me that he was going to scream, so I left. I ran.

The above sections summarised the interviewees' genocide memories, providing a small insight into how the interviewees experienced and survived the events that unfolded in Rwanda between April and July 1994. The author acknowledges that each individual story of each interviewee is much more complex and devastating than could be considered as part of this chapter. Giving further voice to individual interviewees, the following section discusses the range of consequences suffered as a result of the violence committed against the interviewees during the genocide as they were explained by the interviewees.

¹²⁸² M14, M15, M17.

6.3 Consequences

Like other victim-survivors of conflict-related violence, and of the Genocide against the Tutsi in particular, the interviewees suffered a range of consequences of the sexual violence. Since many interviewees had experienced multiple forms of violence, it is not always possible to distinguish whether the long-term consequences resulted from the sexual violence or from other types of violence. Nevertheless, the interview material suggests that the sexual violence played a significant role in these consequences.

6.3.1 Physical consequences

Some interviewees mentioned poor health in general as a consequence of the genocide,¹²⁸³ including M12:

I was in really bad shape at that time. I was so weak. Can you imagine having five people gang rape you every day? It had taken a toll on me. ... I was very weak at that time. I even went to the hospital to get treated but no one would care about me. I remained that way until genocide was completely over.

Poor health included diseases and infected wounds resulting from the violence committed against the interviewees, as well as poor hygiene and living conditions while fleeing from the genocide, as described by M4:

When I was coming back from exile, I was in pretty bad shape. We were living a terrible life over there in the valley ... and it was so dirty that I caught dysentery.

The interviewees suffered physical injuries from rapes and other forms of violence committed against them. These injuries included vaginal bleeding and open wounds from being hit by clubs, stabbed by knives and cut by machetes:¹²⁸⁴

M17: I was stabbed when they were raping me. I was trying to fight them and they stabbed me.

M7: [T]hey raped and then cut me with a machete.

Three interviewees reported falling pregnant as a consequence of being raped.¹²⁸⁵ While one of them (M23) had a child, the other two pregnancies resulted in miscarriages:

¹²⁸³ Including M2, M4, M12, M22.

¹²⁸⁴ For example M1, M7, M17, M13, M15, M19, M20, M23.

¹²⁸⁵ M4, M9, M23.

M4: When I was coming back from exile ... I was seven months pregnant. My pregnancy had disappeared inside my body and I went to the hospital and the bump came back ... I gave birth to the child and the baby was underweight. They realised that he also had HIV. He died in bad shape, he was anaemic.

M9: I gave birth to a stillborn baby. The baby was so big that it died during delivery. It was born in a terrible situation and there was no equipment to perform a C-section at the place where I gave birth. The baby was very big and it was a breech baby at birth so it died. When you are in a situation like that, you need to have a C-section but because of having no means and the situation at that time, that baby was born in a hospital that did not have any permission to perform C-sections and it died. ... That had some consequences on my health. The fact that I gave birth to a stillborn baby and they had to force it out of me took a toll on me and I sometimes feel like my back is about to give out. I was closely monitored when I had my other babies.

This comment of M9 shows that her miscarriage led to further long-term health consequences and complications with other pregnancies. Besides those immediate consequences, all interviewees spoke about multiple long-term physical consequences, including being handicapped and suffering from permanent disabilities.¹²⁸⁶ For example, M17 noted that '[she lives] with a permanent disability because [she] was stabbed multiple times'. M2 explained:

The genocide left me with such a huge disability so that I am always in hospital and I take with me my hospital papers everywhere I go, and I am having them here.¹²⁸⁷ I've always been in hospital since the end of the genocide. ... I always feel pain in every part of my body. They injured my chests, my head and everywhere. This leg swelled and my body never worked properly again. I caught a heavy and huge sickness from it ... They cut my nerves. ... They had injured the bones of my back. These bones hurt because they had been fractured. They hit us with clubs. This gave me also heart problems and high blood pressure. I spent three years in kinesiotherapy which allowed my bones to join together again. However, I still go back there because they swell and my lungs and heart had stored water ... Everything was the consequence of the genocide.

Many interviewees mentioned suffering from pain, including chronic backache and headache as a consequence of having been raped and beaten:¹²⁸⁸

M16: I have got an incurable headache. Because I was seriously beaten I ought to get a radiography consultation often. I always go to see a doctor for my backache that never gets better which I think was caused by the sexual violence I experienced from different men.

¹²⁸⁶ For example, M1, M7, M15, M16, M17 M19, M20, M22.

¹²⁸⁷ M2 showed her papers during the interview.

¹²⁸⁸ M1, M2, M14, M13, M16, M20, M22.

M20: The aggressors ordered me to lie on my back and they threw my back out ever since ... When the man was ordering me to lie on my back and chest, he would hit me in the back with his military boots while I was on the ground. ... I used to need people to carry me in order to move around ... I was fully treated [at the hospital] but my back still hurts and I cannot do anything that requires me to bend it.

M1: I have chronic headaches and have to take medication all the time. I am not able to carry anything on my head and even when I try to work for someone, I am not able to sleep because of the headache.

Many interviewees mentioned having contracted STDs from their perpetrators, including HIV and chlamydia.¹²⁸⁹ M7 explained that she contracted an infection from her perpetrators and that she 'was bleeding blood and pus and it wouldn't stop'. She also mentioned that the consequences of being raped did not allow her to have further children after the genocide. At least one interviewee (M20) reported having suffered injuries of her sexual organs:

He kept penetrating me with that huge banana trunk and some liquid started dripping from my vagina along with some blood. He inserted the trunk so far inside me that it scarred my uterus. That act alone left me handicapped.

Those interviewees who were injured with weapons suffered scars,¹²⁹⁰ which caused long-term issues for them.

M1: I was seriously cut with a machete on the head. I can never lift anything on my head.

M7: [T]hey raped and then cut me with a machete. I can show you the scar, can you see it? I can also show you some other scars on my thighs from them stabbing me with knives ... I was left as someone with a disability.

The need for continuous use of medication to manage their health conditions was an issue raised by many interviewees.¹²⁹¹ While some had access to medical help and medicine,¹²⁹² others struggled to afford and receive the medical attention they thought they needed.¹²⁹³ M9 explained:

¹²⁸⁹ M2, M4, M12, M15, M19, M20, M21, M23. Six of them reported being HIV positive. In 2019, before this thesis was finalised, M20 died as a consequence of her HIV infection.

¹²⁹⁰ M1, M7, M17, M20.

¹²⁹¹ Including M1, M2, M3, M9, M13, M20, M21.

¹²⁹² M1, M3, M20, M21.

¹²⁹³ M2, M9, M13.

I cannot afford to pay for health insurance so that I can go to the hospital on time. That makes me feel unstable. Poverty does not help when you are trying to fight illnesses because you lack vitamins and other elements to make your body strong enough to resist illnesses. Also when you get sick, it takes you too long to get the medical attention you need because you do not have health insurance. When you get the care you need late, you cannot fully recover from illness.

At least two interviewees (M2, M13) experienced complications arising from long-term medication. M2 explained:

Imagine always taking medical drugs. Before I never had stomach aches but because of the ARV [antiretroviral] my stomach has started again. I take ARV when my health is in bad condition. My stomach really gets disturbed because I always take ARV.

The physical consequences resulting from the sexual violence committed against the interviewees during the genocide were one of the biggest concerns in the lives of the interviewees at the time of the interview. M2, who was infected with HIV and who has been suffering from multiple health issues, explained:

I have left behind the remaining things such as your enemies and moved on, the people who negatively talk about you and so many other negative things. I am so uncomfortable today only because of my health.

6.3.2 Psychological consequences

All interviewees suffered from psychological injuries as a consequence of the genocide, in particular because of acts of sexual violence. Chapter 3 explained that prolonged and repeated abuse as experienced by many of the interviewees is likely to result in severe forms of trauma and PTSD. Consequently, many interviewees recounted feeling traumatised and experiencing high levels of emotional stress, which started during the genocide and appeared to last at least until after their *gacaca* trial (which was held sometime between 2008 and 2012):¹²⁹⁴

M20: I went crazy, and I got traumatised and would stay inside the house all the time. I was troubled; I could not do anything on my own, and could not take care of myself. ... [I]t took me a long time, over two years. I wouldn't do anything since I was having trauma episodes. I would only go to the hospital to get my shots and I would come back home feeling very weak.

M19: I would get traumatised and run like a crazy person ... I would get on the road and head to XXX and then later realise that I did not have any reason to go there and just come home. I would have lost it. I would go back home whenever I would get my head back.

¹²⁹⁴ Including M1, M3, M4, M6, M7, M8, M9, M13, M17, M19, M20, M22.

M17: I was stabbed when they were raping me. I was trying to fight them and they stabbed me. That hurt me a lot. That feeling is never going to leave me.

Furthermore, the interviewees suffered from anxiety, panic attacks and fear of being raped again or being killed by their perpetrators, in particular in the period between the genocide and their *gacaca* trial:¹²⁹⁵

M14: Because of what happened to me, I started to have some panic attacks every now and then. My heart would race so much from time to time ... I used to always be on edge that he would come after me.

M17: I live here but sometimes it is too much for me to take and I run to XXX. I have a home here but I always get traumatised when I'm inside that house. I start to panic and think something is going to happen to me. My friends always tell me that I should probably move permanently so that they don't have to see me worried all the time because of running into the people who killed my own ... I have some land here but I am terrified to live here.

M20: Some people would tell me that they have seen one of the men in the XXX forest, another one in ... and others would say that they have met them at the market. I thought they were going to come and kill me. ... I was scared that their relatives would seek revenge on me. I was always expecting to face some consequences. I would always be so scared that I even had to move and live in a place surrounded by some bushes.

Many interviewees had been raped by people known to them (Table 6.1) and some of them described how they frequently crossed paths with their perpetrators (before these were imprisoned), which triggered their panic attacks:

M8: [E]very time I saw him, I would think that he was probably going to hurt me again. I would sometimes fear to walk on the street because I did not want to cross paths with him.

M10: Whenever I would meet him on the street, I would be more afraid than him. We were neighbours and I would cross paths with him all the time and feel terrified.

M19: I would see him on the street and feel scared.

Several interviewees not only feared being attacked again but were actually threatened with death by their perpetrators or the perpetrators' families, predominantly to prevent the interviewees from testifying during *gacaca*.¹²⁹⁶ Some interviewees reported that real attempts were made to have them killed.¹²⁹⁷ While most interviewees seemed to no longer live in fear at the time of the interview (for example because their perpetrators were in prison), some interviewees indicated that they continued to be concerned about their safety

¹²⁹⁵ M1, M8, M10, M14, M16, M17, M19, M20.

¹²⁹⁶ M2, M5, M16, M20, M22. This point is discussed in more detail in Chapter 8.

¹²⁹⁷ M2, M16, M22. Since these threats and attempted murder relate mainly to the interviewees' participation in *gacaca*, they are discussed in more detail in Chapter 8 (8.1).

and would be so in the future once their perpetrators were released from prison.¹²⁹⁸ M21 and M17 worried that their perpetrators might kill them when they return back home.

Several interviewees spoke about having suffered from depression following the genocide, which they described as an isolating experience:¹²⁹⁹

M20: I got traumatised and would stay inside the house all the time. I was troubled; I could not do anything on my own, and could not take care of myself.

M16: I started to feel like I hated myself, I became unable to do anything.

M4: I was in pretty bad shape. I did not have any good clothes and when you don't have any clothes, you do not even shower because you just give up on yourself.

Feelings of loneliness, hopelessness as well as difficulties with reconnecting to others around them were also concerns discussed by several interviewees:¹³⁰⁰

M4: I used to feel like someone who was always down ... Whenever I would need to go somewhere, I would ask someone to lend me some clothes and they would be worried that I was going to contaminate them with my kwashiorkor and dysentery.¹³⁰¹ I would just go back home and sit down feeling heart broken.

M2: I no longer had hope for life ... regarding my life, we started to be hopeless and lonely.

Furthermore, several interviewees experienced feelings of sorrow and sadness.¹³⁰² Most of them highlighted that sorrow and sadness had troubled them predominantly in the past (particularly right after the genocide, but also at the time of *gacaca*):¹³⁰³

M3: When you cannot cope with something terrible that was done to you, it becomes a wound that is always hurting you. ... I would think about my fiancé, whom I was supposed to marry,¹³⁰⁴ I would look at my children, whom I don't know how I got,¹³⁰⁵ I would see how I used to have family members and I do not have any left to give me some advice, and all that would feel like a terrible wound. Whenever we would be during the commemoration period, I would almost go crazy. I was traumatised and I would feel so much sorrow and shed a lot of tears.

M14: It was the sorrow I had. I felt a lot of pain inside my heart and I was also suffering some consequences of the things he has done to me so I was not ok. I did not feel at peace. ... I was living in sorrow.

¹²⁹⁸ Safety concerns are more fully discussed in Chapter 8 (8.1).

¹²⁹⁹ M3, M4, M16, M20.

¹³⁰⁰ M2, M4, M8, M22.

¹³⁰¹ Kwashiorkor is a form of severe protein malnutrition, while dysentery is an intestinal infection causing severe diarrhoea.

¹³⁰² M3, M13, M14, M17.

¹³⁰³ M3, M13, M14.

¹³⁰⁴ Her fiancé got killed during the genocide

¹³⁰⁵ M3 has four children from four different men who she reportedly does not remember.

M17, who lost all her children and her husband, explained that she still experienced sorrow and sadness at the time of the interview:

I am always crying. I sometimes run into the people who have murdered my family and I cry because of sorrow.

Others noted feelings of shame, humiliation and worthlessness as a result of the sexual violence:¹³⁰⁶

M1: He has humiliated me and stripped me of any value I had in society ... I did not ask for any reparation. I felt worthless at the time and I did not think I deserved it ... My life is complicated. I still live with shame. It is hard being a rape victim.

M19: We just have to hang in there but the truth is that those people have stripped us of our dignity.

Some interviewees spoke about feeling particularly valueless, because they had been infected with HIV. M20, for example, said that she

did not expect them to do anything for me since I was already HIV positive. I felt like it was over for me. From the medicines I was taking from the hospital to the trauma I was experiencing, I felt like there was nothing left for anyone to do for me. I used to think that a traumatised person who is HIV positive had no value in society.

Several interviewees highlighted that after experiencing sexual violence they no longer felt human but compared themselves with animals,¹³⁰⁷ such as M4 who said '[we] were raped like goats', or M1, who stated that she '[was taken] from behind like a cow'.¹³⁰⁸ M2, explained:

We no longer had bodies. We were acting like dead people. Our stomachs were leaking liquids. I was feeling already dead completely ... Imagine someone violating you when you are unconscious. You felt that life was over for you ... I looked like a dead person ...

At least two interviewees discussed that having been raped negatively affected their relationship with men:

M2: [H]ow can I get married again with this physical disability? I don't even feel like doing it again.

M1: [B]eing raped made me hate sex. I do not want to get married again.

Insomnia was another condition mentioned by several interviewees.¹³⁰⁹ At least two interviewees indicated that they suffered from psychiatric illnesses:

¹³⁰⁶ M1, M7, M19.

¹³⁰⁷ M1, M2, M3, M4.

¹³⁰⁸ M1, M2, M3, M5, M7, M15. Further relevant quotes are discussed in Chapter 8 (8.1).

¹³⁰⁹ M1, M2, M5.

M1: I take some medications from XXX mental hospital even to this day and people used to call me crazy.

M21: I hear sounds in my head even right now that we are talking.

One interviewee (M15) recalled having had suicidal thoughts during the genocide after she had experienced multiple traumatic events, including the killing of her children and husband and being raped and beaten:

When the rain was over, I thought that I was being selfish for wanting to live while my kids and my husband had already been killed. I decided that I was going to commit suicide. I went down to a river that they nickname the Jordan, which has a lot of water and waves. I jumped into the water and I started drowning. When I drank it, I got scared and thought that suicide was a terrible idea. I decided that I should wait until they killed me with a machete.

6.3.3 Social consequences

Many interviewees discussed social consequences following the sexual violence,¹³¹⁰ which concerned both the interviewees' immediate family and the broader community. Some interviewees noted marital issues when their husbands found out about the sexual violence that their wives had suffered during the genocide,¹³¹¹ including M7:

Things got very bad between me and my husband at some point and we would always fight. The authorities would always come to break us up. He had not yet coped with what had happened to me. He has gotten over it but even though he has, I cannot ask him something for myself like clothes or things like that.

Two interviewees (M1, M23) explained that their husbands blamed the interviewees for having been raped and consequently left them. M1 explained:

My husband came to see me after the genocide and he told me that he could no longer live with a woman who had been gang-raped. ... I was legally married to him but he left me and married another woman ... he married another woman right after I left and they have five children ... My husband took everything from me and left me feeling worthless.

While M1 mentioned that her husband left her because she had been raped, she also explained that her ethnicity was a reason for him leaving not only her but also their children:

My husband was a Hutu. I was raped during the genocide and my husband hated me because of it, so he left me. I tried to give him custody of the kids but he said that he does not want to live with children that he had with a Tutsi so I ended up raising them as a single mother.

¹³¹⁰ M1, M2, M4, M5, M6, M7, M10, M15, M21, M23.

¹³¹¹ M1, M7, M23.

The example of M1 shows that identifying as a victim-survivor led not only to social repercussions but also to socioeconomic effects (being a single mother). M23, who became pregnant and had a child as a result of the rape, explained:

I was a virgin when I was raped. I got pregnant and then got married. My husband ... refused to take him as his own child. I got married while I was pregnant. ... The child was not his. My first husband left me because of that and I had to marry another one. I was still young. My second husband also learned about the fact that I had been raped. I don't know how he learned it. He was like 'I thought you were a survivor like me, turns out you were just sleeping with the Hutu'. Our relationship could not go past that hurdle. I tried really hard to forget his words but I couldn't. I lose my appetite when I think about it.

While M23 noted that she has accepted her son and was doing everything so that he had a good life, her own family rejects her child 'because they say that he is Hutu'.

Two interviewees mentioned problematic relationships with their own children because of the sexual violence that the interviewees experienced during the genocide:

M4: They actually turned my children against me. My children started hating me because they said that I was raped by an *Interahamwe*. They all left me and I now live alone.

M1: My children look down on me. They are always in jail but even when they come out, they always want to kill me. Their father has taught them to hate and disrespect me. My youngest son is the one who loves me.

Several interviewees felt that their community did not regard them as victims of a serious crime. They experienced ridicule and blame for having been raped:

M15: People used to talk about [rape] as a hot topic and they would make fun of me. They would tell everyone in the neighbourhood about it and those people would tell me. ... they would ridicule me and make me feel like it was my fault.

M1: People took it as if I was a prostitute.

M6: [The rape] had happened in public and people had talked about it like it was something to rejoice about. ... Everyone saw it. It was no secret. ... whenever I would pass by, people would be talking about how I was raped by an entire battalion, things like that ... I went on with my life as usual but the people in our neighbourhood did not seem to care about what happened to me. I have faced some hardships in my life but I seem invisible to the people in my neighbourhood.

One interviewee (M12) explained that she felt her community ostracised herself and other victim-survivors:

I was not feeling well. The community was always rejecting us because they thought that we were the ones that had committed crimes. They extremely rejected us so we decided to always stay home.

Some of the interviewees who spoke about being ostracised by their families and communities expressed disappointment and anger with the reactions of the people around them.¹³¹² The language used to present the reactions of their families and community suggested that (at the time of the interview), the interviewees disagreed with the blame laid on themselves. M1 explained:

My husband took everything from me and left me feeling worthless. He would also harass me while I was in the middle of my trial. He was always accusing me of sleeping with other men because he took me being raped as cheating on him. I just could not continue to live with him because of the constant insults ... I would like to mention ... how disappointed I am with my husband. We both left our home because the genocide was happening. I was raped but he could not get over it. He has also been a terrible influence on my children.

In contrast to the above experiences of family ostracism, some interviewees spoke about receiving support from their communities and families, including their husbands:¹³¹³

M8: I was lucky to have the support of my husband the entire time. I told him about what had happened to me before we got married because I did not want any surprises further down the road. He told me that he was ok with it ...

M13: I got married after the genocide but I told my husband about what had happened to me. I already knew that even if I were to get married, what has happened to me was eventually going to ruin my marriage. ... The first thing was that I told my husband about what happened to me and he was always upset about the fact that I did not know who had done it to me.

M21: [My children] know [that I was raped] and they have dealt with it. They were so upset to hear that those people infected me with HIV.

One interviewee (M10) reported that even though her husband found out that she had been raped, it did not affect their relationship and was never mentioned between them.

As these comments show, many interviewees experienced ridicule, shunning and ostracism from their families and communities, while others highlighted that their families and at least some community members were empathetic and supported them to cope with their experience of sexual violence. Some interviewees reported mixed reactions from their communities, explaining that some supported them while others shunned or ridiculed them.¹³¹⁴ Many interviewees discussed the topic of family and community support in the

¹³¹² M1, M2, M4, M6, M15, M23.

¹³¹³ M6, M7, M8, M10, M11, M20, M21.

¹³¹⁴ M6, M7, M10, M21.

context of their *gacaca* experience, which is why this point is discussed in more detail in the next chapter.

6.3.4 Material harm

The term ‘material harm of sexual violence’ was introduced earlier as referring to the financial costs and economic repercussions resulting from the physical, psychological and social consequences of sexual violence. In particular, the physical consequences that the interviewees experienced led to significant economic and financial issues for most of them and many were ongoing at the time of the interview. Many interviewees explained that they were unable to engage in physical labour, or at least substantively limited, because of the physical repercussions resulting from the violence experienced during the genocide:¹³¹⁵

M20: I am no longer capable to work because of what happened to me during the genocide ... What disturbs me today is my sickness. My backache never allows me to do anything. Of course when you are unable to bend your back, it is not fine at all. Although my family was given some small domestic animals, I can only get some grass to feed them while sitting down. ... It’s the only thing I can do while sitting down. ... Even though I get enough medications from the hospital, they always advise me not to do a lot of chores because I sometimes lose the feeling in my joints when I work hard.

M3: My life today is very tough. I don’t know what my condition is called but I can be able to work today and tomorrow my blood can stop circulating and I am not able to work. That is what makes my life tough.

M16: I was beaten so badly that I am currently not able to work and support myself.

Many interviewees struggled to continue with farming and cultivating work, which they had relied upon for income prior to the genocide.¹³¹⁶ The inability to engage in physical labour has led to further financial and economic hardship for the affected interviewees,¹³¹⁷ as noted by M10: ‘We are poor and cannot work to take good care of ourselves so we are living a terrible life.’

6.4 Conclusion

This chapter discussed important background information about the interviewees, including demographic details and the interviewees’ genocide experiences, including sexual violence and other atrocities committed against them and their families. Most interviewees

¹³¹⁵ For example M3, M10, M13, M15, M16, M17, M20.

¹³¹⁶ For example M3, M4, M11, M13, M15, M16, M17, M18, M20, M22.

¹³¹⁷ M3, M4, M13, M16, M17, M18, M20, M22.

experienced multiple acts of sexual violence by multiple perpetrators, including rape, gang rape and sexual torture, reflecting extraordinary violence. In many cases the sexual violence was accompanied by other violent acts, such as beating, stabbing and the injury and death of children and other family members. The interviewees' experiences are distinct from other conflict-related sexual violence, since the sexual violence was committed as part of the Genocide against the Tutsi and constitutes genocidal sexual violence. As several interviewees explained, they were raped and tortured with the specific goal of destroying them and other Tutsi women. Several interviewees recounted near-death situations and emphasised that they only just managed to survive the genocide.

This chapter has also discussed the range of consequences that the interviewees suffered and continued to suffer as a result of the violence experienced during the genocide. These consequences include physical, psychological and social consequences, as well as material harm. All interviewees reported severe psychological suffering, including high levels of trauma and PTSD, which significantly affected their lives from the time of the genocide until at least after *gacaca*. Furthermore, nearly all interviewees highlighted their suffering from poor physical health as a significant issue in their lives ever since the genocide. Beside pain and the need for ongoing medical treatment, most interviewees stressed their inability to engage in physical labour as the most difficult after-effect of their physical injuries. All but one of the interviewees noted that farming, which requires physical labour, constituted their sole income. Therefore, the interviewees' inability to work has led to financial and economic hardship for nearly all of them.

By considering the interviewees' genocide stories and the consequences suffered because of the violence experienced during the genocide, this chapter has given voice to individual interviewees and this lies at the heart of the methodology utilised in this thesis. In so doing, this thesis also contributes to a better understanding and more accurate historic account of sexual violence during the genocide as experienced by affected victim-survivors. Finally, the interviewees' genocide experiences and resulting consequences contextualise the interviewees' justice needs, their experiences of *gacaca* as well as their understandings of justice.

7 CHAPTER 7: THE GACACA TRIAL IN PRACTICE

This chapter sets out the functioning of *gacaca* trying sexual violence, including trial procedures, participants and judgements, as discussed by the interviewees. The chapter also considers the factors that influenced the victim-survivors' decisions to raise their cases at *gacaca*. In doing so, this chapter contributes to answering the two primary research questions outlined in Chapter 2. It also addresses research question 2.4.a, which asks how the interviewees' experiences with *gacaca* compare with how *gacaca* was meant to function according to relevant laws and regulations (Chapter 4). The chapter also considers the experiences of Rwandan victim-survivors with *gacaca* discussed in other publications, thereby answering research question 2.4.b. While the functioning of *gacaca* outlined in this chapter is predominantly based on the interviewees' accounts, it also draws from information provided by Emilienne, the psychotherapist interviewed for this thesis. Emilienne had accompanied victim-survivors as a trauma counsellor at *gacaca*, including some of the interviewees, and participated in multiple *in-camera trials*.

By discussing the functioning of *gacaca*, the chapter fulfils several purposes. Firstly, it contributes empirical evidence on the handling of sexual violence during *gacaca*, as described by the interviewees, which assists in filling the first research gap outlined in the Chapter 1. Statistics relating to *gacaca* trials concerning sexual violence were not available at the time of writing of this thesis and very little data exists on how *gacaca* trials dealing with sexual violence operated in practice. Secondly, to improve the value of research on justice for victim-survivors, researchers should assess specific justice mechanisms dealing with sexual violence. Since *gacaca* trials dealing with sexual violence constitute a unique justice initiative, a detailed description of *gacaca* is essential to allow meaningful conclusions to be drawn from its assessment. Thirdly, this chapter provides further context to analyse the interviewees' experiences with *gacaca* discussed in subsequent chapters.

7.1 Multiple Interactions with *Gacaca*

Since *gacaca* was a process of several stages,¹³¹⁸ most interviewees had at least two interactions with *gacaca*,¹³¹⁹ including 1) raising their case,¹³²⁰ and 2) trial of their case. Some cases required several trial sessions, either to accommodate interviewees who had trauma episodes during a trial and could not continue on the same day, or because the cases were too complex to be held on one day.¹³²¹ In research by HRW, victim-survivors also noted that trials could take several days because ‘summoned witnesses failed to show up’.¹³²²

While information regarding the genocide was collected by *gacaca* courts at the cell level, sexual violence cases were tried at the sector level.¹³²³ Therefore, the interviewees are likely to have had contact with at least two different *gacaca* courts.¹³²⁴ Those cases that either the interviewee or accused appealed would have involved at least one further trial. Two interviewees (M16, M23) reported several appeals. M16 reported as many as five appeals, which also meant that her case dragged on for many years:

It was me against an entire cell and it was a very big issue for me to the point that I appealed over five times ... My appearance in five trials does not mean that it started from Monday till Friday. ... I started during the collection of information period ... My case was closed during the closing period [in 2012].

Those interviewees who had been raped by different perpetrators on different occasions had to attend several trials, one for each of the accused.¹³²⁵ Besides sexual violence, the interviewees had suffered other non-sexual injuries, as well as loss of family members and loss of property during the genocide. Many interviewees also noted that they attended

¹³¹⁸ More fully discussed in Chapter 4 (4.2.3).

¹³¹⁹ As explained below (7.3), two interviewees noted that they did not raise their case themselves, but others did so for them and the interviewees reported that they were subsequently summoned to attend a hearing.

¹³²⁰ See section 7.3 for the various ways of how the interviewees raised their case.

¹³²¹ As discussed by M10 and M13, for example.

¹³²² Haskell (n 96) 116. Haskell further notes that the failure of witnesses to show up in some cases led the court to adjourn the case two or three times, after which the court simply decided the case with or without the witnesses.

¹³²³ *Organic Law No 13/2008* (n 95) art 7. However, the interview material suggests that some cases were tried in a specific cell, like for example indicated by M6 and M13. M3 noted that while *gacaca* courts dealing with sexual violence were usually located within the sector court, some of them took place at the cell level.

¹³²⁴ As explained below (7.3), only some interviewees raised their case during *gacaca*'s information collection stage by speaking about it at a public *gacaca* hearing. Several interviewees raised their case by informing an *Inyangamugayo* of their choice, which may have been an *Inyangamugayo* at the sector level where sexual violence cases were tried.

¹³²⁵ The interview material suggests that if interviewees were gang raped, one trial would take place involving all perpetrators who had been involved in the gang rape. If the interviewees had been raped by different people at different times, then each perpetrator would be tried in a separate trial.

gacaca hearings dealing with crimes other than sexual violence and it is assumed that in most cases, these crimes were tried by other *gacaca* courts than the ones that dealt with sexual violence.¹³²⁶

M3: [A]ll my family was murdered and I was left alone. The people who murdered my brother are different from those who killed my father. Those who killed my father are different from those who killed my sister. That is why the cases were different.

M18: I went to *gacaca* to accuse the people who killed my children, then the ones who murdered my husband and I went for the third time to raise a case about rape.

Consequently, many interviewees would have participated in multiple *gacaca* sessions, including during the information gathering and the trial phase.

The interviewees were asked during the interviews to focus on the *gacaca* trial dealing with sexual violence when discussing their experiences with *gacaca*. However, at various points during the interview, some interviewees appear to also have considered their experiences with *gacaca* in general, including with trials dealing with the deaths of their family members, when answering questions about *gacaca*.

7.2 Factors Influencing the Interviewees to Raise Their Case

The interviewees' decision to raise their case and follow through with a trial was influenced by several factors. One factor that reportedly prompted several interviewees to raise their case was the awareness of their personal hardship and suffering resulting from the violence of the genocide,¹³²⁷ especially because the violence had been perceived as unprovoked and 'unfair'.¹³²⁸ At least three interviewees specifically mentioned that being HIV positive prompted them to report their perpetrator(s),¹³²⁹ including:

M4: The reason why I decided to bring this case up was because he had given me HIV. Had he not given me HIV, I might have kept quiet.

M12: I raised my case because they ruined my life by infecting me with HIV.

¹³²⁶ As outlined in Chapter 4 (4.2.3), only if sexual violence and other offences were committed by the same perpetrator against a plaintiff, all these offences were tried *in camera* at the same time as the case of sexual violence. See also *Regulation 16/2008* (n 896) art 5.

¹³²⁷ M1, M2, M4, M6, M12, M13, M14, M15, M16, M19, M20, M21, M22, M23.

¹³²⁸ M2, M4, M5, M12, M20.

¹³²⁹ M4, M12, M21.

The awareness of personal hardship, including HIV infections, also rated as the most important reason to raise their case at *gacaca* for the victim-survivors in Morris' research.¹³³⁰

One interviewee (M18) noted that the severity of the crimes committed against her demanded, in her view, that she reported her perpetrator(s): 'When someone murders all your children and then rapes you, you have to raise a case against them'.

Several interviewees highlighted the feeling that they had nothing to lose as one important factor influencing their decision to raise their case,¹³³¹ for example because their husband had already left them, or because of their HIV infection:

M1: My husband ... told me that he could no longer live with a woman who had been gang-raped. He told me that after announcing to me that my entire family had been murdered. His words hurt me so much that I finally decided that I needed to raise a case against the people who had raped me ... The truth is that if my husband hadn't left me, I was not going to raise my rape case because I was too ashamed. I was gang-raped by a group of people that I don't know. ... I was later cut with a machete. After enduring all that, my husband also left me, so I felt like I had nothing to lose.

M11: We did not care about the consequences anyway because our lives were already messed up.

Similarly, victim-survivors who participated in Morris' research had also raised their cases because 'they seemed to take an attitude of "nothing worse can happen" and/or "I have nothing to lose"'.¹³³²

A few interviewees highlighted their emotional state, citing sorrow, anger and disappointment with their perpetrators as an encouraging factor to raise their case:¹³³³

M13: It was the sorrow I was feeling. ... I was so upset by the fact that I was never sexually active during my youth but things had to end that way.

¹³³⁰ Morris, Meghan Brenna (n 100)78-9. For example, five out of Morris' 32 informants cited their HIV infection as the main reason why they had raised their case, while another four mentioned 'the effects that the rape had had on them and their lives' in general, *ibid* 78-9. Nowrojee reports that Rwandan victim-survivors participating at the ICTR sought predominantly public acknowledgement of their personal experiences and suffering suggesting that individual suffering also rated highly for these victim-survivors, Nowrojee, "'Your Justice Is Too Slow" Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111, 127.

¹³³¹ M1, M4, M11, M12.

¹³³² Morris, Meghan Brenna (n 100) 78-9.

¹³³³ M5, M13, M14, M15, M23.

M23: There were two main reasons [why I raised my case]. He was a married man when he raped me and I was still young. I was bleeding all the way from his house to the hospital in XXX. He had taken me from my family and he was leaving me alone on the street while I was bleeding. Where was I going to go with my legs covered in blood? I asked him to buy me some sanitary pads to stop the bleeding but he instead ordered me to get out of his house and he locked the door. ... I was disappointed in his behaviour and I decided to file a case against the man.

At least two interviewees reported face-to-face encounters with their perpetrators as specific incidents prompting them to raise their cases:

M19: I saw him and remembered what he had done to me. I did not know him before and he did not know me but he brought me to the bushes ... The second time I saw him on the street, I immediately went to raise my case. He did terrible things to me.

M10: We were neighbours and I would cross paths with him all the time and feel terrified. I would always get shocked and go back because I never wanted to cross paths with him. One day, something happened in my heart, I don't know if it was God but I thought to myself that I should not continue to live in fear.

Several interviewees discussed encouragement by others, including their families and communities, *Inyangamugayo*, trauma counsellors and aid organisations, as a prompt to report their perpetrators:¹³³⁴

M3: The reason I was the first one to come forward was because people were telling me 'raise your case. We witnessed all the things that happened in your home.' They encouraged me to come forward and said they would support me.

M15: AVEGA has been there for us a lot and they motivated us to do it.

M11: There was one lady who I survived with who was also on the panel of *Inyangamugayo* ... She was the one who gave us the push to go and raise our cases.

M12: They [*gacaca* authorities] later told us that the people who had been raped should try to be strong and come raise their cases.

M8: The first thing that made me decide to raise my case was a conversation that I had with my brother.

Personal encounters with their perpetrators and encouragement by others were also noted in Morris' research as reasons why victim-survivors had decided to raise their case.¹³³⁵

One interviewee (M23) had a child as a result of the rape committed against her. M23 reported that one day, her son crossed paths with her perpetrator, who stopped the boy and

¹³³⁴ M1, M3, M8, M11, M12, M15.

¹³³⁵ Morris, Meghan Brenna (n 100) 78-9.

asked him 'why he never said hello to him when he was his real father'. This incident was one of the reasons that prompted M23 to raise her case:

I was unable to talk to my child about what had happened to me but the man turned around and talked to him about it. He had never been there for my son as his father. My child got traumatised by the news, which affected his grades. I decided to raise a case against him [her perpetrator] because of all that.

Raising their case was not a decision that the interviewees took lightly and they explained that they took time deciding to speak up:¹³³⁶

M6: The information collection had already started but I raised my case in the middle of it because I had to take some time to think about it. I had to think it through.

M19: I went to the court the first time and did not raise my case because I was so uncomfortable. You have to think about it and see if you are going to handle talking about it or not. I was only able to talk about it the second time around.

M3: Even though I wanted to come forward, I was hesitant at first because I feared that I might say something wrong or tell the wrong version of the stories and lose.

Some interviewees highlighted their determination to take their perpetrators to court:

M13: Even though I was fighting my condition, knowing who those men were lit a fire under me and I was motivated to go raise my case.

M15: I was so upset that even if you told me to walk all the way to Uganda to raise a case against them, I was going to do it.

M16: Because of all the things that I had gone through, I would have rather died than surrendering before I got justice. ... [E]verything that happened to me was giving me strength and pushed me to say out what I had seen ...

M18: I thought [the perpetrators] were going to kill me for accusing them in court but I was determined to expose the truth.

7.3 Raising the Case

Two interviewees (M2, M7) had raised their case even before *gacaca* was introduced. However, M7 explained that reporting her perpetrators before the start of *gacaca* did not result in any consequences for them:

¹³³⁶ M3, M6, M19, M23.

There was what we used to call a *conseiller*¹³³⁷ and he was still there when I came back after the genocide was over. I came and showed him my wounds and what had been done to me. He did not believe me, they just laughed at me. He would ask them [the perpetrators] if they had really done that to me and they would deny it. I later went to the sector and raised my case. They called those people and there was trial and they finally believed me.

At least eight interviewees recalled raising their case during *gacaca*'s information collection phase.¹³³⁸ Others noted that they had raised their case when *gacaca*'s trial phase had already started.¹³³⁹ While most interviewees had reported their perpetrator(s) themselves, some interviewees' cases were raised by other people, including family and other community members, as well as perpetrators who mentioned their victims' names when confessing to their crimes during other court processes.¹³⁴⁰ At least two interviewees (M8, M12) had asked their family members to help them raise their case.¹³⁴¹ In contrast, M2 mentioned that it had not been possible to get support from others to raise her case:

Everyone talked for themselves. You were the one to provide information. ... Everyone was to rise and talk. For instance there was a young lady ... her brother once came to testify on her behalf but they refused. They only wanted her to come to testify.

Two interviewees (M9, M20) reported that their cases had been raised without their knowledge by others. M9 explained:

I had never done anything wrong to deserve being raped, so a lot of people were upset about it and they raised my case before I was able to do it myself. ... I was not in that meeting. The people just came to let me know that my case had been raised.

Both interviewees (M9, M20) noted that they had subsequently been summoned in front of a *gacaca* court to answer questions regarding the testimonies given by others.¹³⁴² M20 explained:

¹³³⁷ Head of the cell.

¹³³⁸ M1, M3, M6, M8, M9, M17, M21, M22.

¹³³⁹ M10, M12, M14, M18, M20, M23. Since *gacaca* initially started as a pilot project, various areas of Rwanda had already entered the trial phase when other areas had only just started with the information collection phase. Therefore, information on information and trial phase does not give detail about a specific date.

¹³⁴⁰ M8, M9, M12, M20.

¹³⁴¹ M8 noted that she had asked her brother to raise her case for her. M12 explained that she had asked her sister for help.

¹³⁴² M20 further explained that in 2008, with the support of other victim-survivors, she was able to raise her case herself and participate in various trials against ten of her perpetrators.

[S]ome of the prisoners confessed to their crimes and asked for forgiveness when they were taken to court.¹³⁴³ Others would completely refuse or deny their crimes. Those who confessed and asked for forgiveness would directly share their testimonies, thereby mentioning the names of those they had raped. Throughout that process, people found out about what had happened to us from listening to the stories from the prisoners. I was summoned in front of the *gacaca* court by force and I was running crazy when I got there. There were the police and some employees of AVEGA to contain me because I looked like a crazy person.

Those interviewees who had raised their cases themselves had done so in various ways, including publicly in a *gacaca* hearing during the information collection, as reported by three interviewees:

M19: You raise the case in public in his home village. You would stand up and say that the man has hurt you in ways you cannot discuss in public and people would know what it was.

M2: [W]e did everything regarding trial in private but everything was spoken in public during the information-gathering phase. Besides, all the village or community knew everything. ... I just said that it was a certain person who did 'so and so'. ... You would just mention the names of people who were among the attacking groups. Sometimes you didn't even have to exactly explain further since the neighbours could find out themselves who you were talking about. The neighbours already knew them.

M5: Because I was so heartbroken, I gave the information in public before I knew that it could be talked about in private.

At least one interviewee (M21) explained that she had called upon the perpetrator(s) in a public *gacaca* hearing (without giving any detail), accompanied by a private letter given to an *Inyangamugayo* to specify the case.

Many interviewees explained that they had reported their case in private.¹³⁴⁴ Most of these interviewees recounted that they had approached an *Inyangamugayo* of their choice,¹³⁴⁵ including by submitting a letter detailing the act(s) of sexual violence or by talking to them privately:¹³⁴⁶

M23: During *gacaca*, they used to tell us that women who had been raped could find any *Inyangamugayo* whom they trust and present their case before it gets revealed in the *gacaca* courts. That's how I went to see XXX and I shared my case with her.

¹³⁴³ This court was not the *gacaca* court that tried the sexual violence against M20, but would have been another court process held at an earlier time.

¹³⁴⁴ M1, M4, M6, M7, M10, M11, M14, M17, M18, M22, M23.

¹³⁴⁵ M4, M6, M7, M10, M14, M18, M21, M22, M23.

¹³⁴⁶ M6, M10, M14, M21.

One interviewee (M1) explained that she reported her case to the prosecutor's office:

We would go to the prosecution office and there would be some trauma counsellors who would show us where to present the case in a private room.

Not all interviewees were able to initiate a trial against all of their perpetrators, including because the sexual violence happened in areas too far away from where the interviewee lived, or because the identities of the perpetrators were unknown to the interviewees (Table 7.1):¹³⁴⁷

M1: I was gang-raped by a group of people that I don't know. They lived far from my home town. I just knew one of those guys.

M17: The defendants were there. I was only able to recognise two of them. The others would come at night and I wouldn't know who they were.

Some interviewees mentioned that they initially did not know their perpetrator but that they made enquiries to find out their identity and whereabouts to report them:¹³⁴⁸

M19: I had to ask around in order to know where the person who raped me was living.

M13: When *gacaca* started, I was pretty sad about the fact that I was not going to recognise those men who raped me but I was lucky enough to have one of them come and tell me who they were. ... The person who told me who those people were was the one who helped me make a list of all the defendants. After that person made the list, I started looking for them.

At least two interviewees explained that they personally became active to ensure that their perpetrator was caught:

M19: They wrote my name down and then issued subpoenas for him to come to the court. He started hiding and made sure not to get any of those subpoenas. I gave up. One day, he went to register in order to get married and they alerted me. I had gone to XXX but I came back quickly and asked a soldier to help me catch him.

M5: [He] ... fled after the trial had begun. There was a person who tried to have us both meet and I told that person to tell him to come to me. I wanted to personally make sure that he was captured.

One interviewee (M9) explained that while she accused three perpetrators, only one of them was considered in a trial. According to M9, the *Inyangamugayo* 'refused to accept some of

¹³⁴⁷ For example M1, M12, M13, M16, M17. As previously explained, for cases to be considered by *gacaca*, the identity of a perpetrator had to be known.

¹³⁴⁸ M1, M13, M19.

the information I gave saying that those details were never mentioned during information collection'.¹³⁴⁹ Consequently, two of the perpetrators of M9 were never tried for raping her.

Not all interviewees reported all of their perpetrators, even if they knew the perpetrators' identities. M3 explained that one of her perpetrators had approached her after the genocide to apologise for raping her and she decided to forgive him and not report him. Another interviewee (M5) explained:

I was raped by two men but I ignore the name of the other one. I don't even know him because I no longer see him. I only used to see the one I was telling you about.

Emilienne further explained that during her time as trauma counsellor at *gacaca*, she met several women who had decided not to report their perpetrator(s) for various reasons. Some wanted to leave the past behind and did not want to relive what they had to go through during the genocide; others did not trust the confidentiality of the process and were worried that their stories would become known to the public; again others feared shame and dishonour when speaking about sexual violence in front of others, and preferred to protect themselves and their families by staying anonymous. Morris' research with Rwandan victim-survivors confirms the reasons why victim-survivors decided to not raise their cases discussed by the interviewees and Emilienne.¹³⁵⁰

7.4 The Functioning of the *Gacaca* Trial

The following sections summarise the interviewees' narrations of their *gacaca* trials. The interviewees' accounts differ at times from the procedures established to regulate *in-camera trials* for sexual violence cases – these differences are highlighted. Furthermore, the interviewees' reports provide information about the functioning of the courts that was not explicitly listed in *gacaca* law and regulations.

7.4.1 Location

Trials took place in the cell or sector where a crime had been committed,¹³⁵¹ which was in some cases (including M1 and M20) different from where the interviewees lived. M20, who

¹³⁴⁹ A similar account is noted in Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 43.

¹³⁵⁰ Morris, Meghan Brenna (n 100) 80-1. Besides, her research identified additional reasons why victim-survivors did not take their case to *gacaca*.

¹³⁵¹ *Organic Law N° 16/2004* (n 84) art 44.

had been raped by different perpetrators in different regions of Rwanda, had to travel to these regions for each trial:

M20: Since they were many people, I would appear in court on almost every *gacaca* day. It cost me a lot of time. The criminals were staying in different places and not close to each other. I went to XXX Commune, and then I came here to YYY ...

Researcher (R): Were all the defendants present the day they were sentenced to life in prison?

M20: Those from XXX were in XXX. I had to appear in court at each of the defendants' home town. Some were in YYY and others were in ZZZ.

Public *gacaca* hearings dealing with crimes of Category 2 and 3 took place outside in communal spaces, while crimes involving sexual violence were to be tried *in camera*.¹³⁵² Many interviewees noted that their trial had taken place in a room, and not outside.¹³⁵³ One interviewee (M16) specified that the room in which her trial had been held was part of an administrative building of a cell. Such communal rooms are mentioned in other research as the main locations where trials took place.¹³⁵⁴ Particularly in more rural areas of Rwanda, it is likely that such administrative buildings were rather basic, and would not have afforded confidentiality, as observed during interviews for this research. In remote regions, it is questionable whether any public buildings were available at all.¹³⁵⁵

7.4.2 Timing

While very few interviewees in this research were able to remember exactly when they had raised their case, it is likely that many of them had waited for several years for their case to be tried. For example, M1 explained that '[her *gacaca* trial] had started four years after [she] ... presented [her] ... case to the prosecutor's office'. M7 had initially raised her case even before *gacaca* had started.¹³⁵⁶ Several interviewees remembered raising their case during

¹³⁵² *Organic Law N° 13/2008* (n 95) art 6.

¹³⁵³ M1, M2, M4, M6, M8, M10, M11, M12, M16, M21, M22. One interviewee (M14) explained that her trial took place inside a prison cell, which is assumed to not having been the norm.

¹³⁵⁴ Haskell notes that sexual violence cases were held in 'communal rooms', Haskell (n 96) 116.

¹³⁵⁵ While all sexual violence cases were meant to be heard by the *gacaca* court of the sector level, the interview material suggests that not all trials were held in the capital of the sector, but some appear to have been held in a cell (e.g. M6, M14, and M1). It can be assumed that these cells were located in more remote locations. Emilienne recalled one case that was tried in 'a house on a hill' in a remote area. Emilienne explained that to prepare the victim-survivor in a private session prior to the trial, she had to find a private space somewhere in the forest.

¹³⁵⁶ 'Before *gacaca*' would mean before mid-2002 or before 2005, depending on whether the sector where the interviewee had reported her case was involved in the pilot phase of *gacaca* or not.

gacaca's information-gathering phase, which took place between 2002 and mid-2006.¹³⁵⁷ *Gacaca* courts trying sexual violence cases operated predominantly between June 2008 and mid-2009,¹³⁵⁸ meaning that for some interviewees, up to seven years may have passed between raising their cases and the trials.

7.4.3 Trial participants

The following sections consider the interviewees' descriptions of who participated in the *gacaca* trials dealing with their rape cases, which differs at times from what was specified in *gacaca* law. The *in camera* provision for trials concerning sexual violence cases restricted the participation in the trials to *Inyangamugayo*, the victim-survivor, the accused, *gacaca* court supervisors, security officers and a trauma counsellor as support for victim-survivors.¹³⁵⁹ This was verified by M3, who had also worked as an *Inyangamugayo*:

Whenever it would be time to try a rape case, they would try it in private. It would be the plaintiff, the defendant and the jurors. There would also be a trauma counsellor and an authority figure, usually the police, because there would be some people who would try to make a mess.

Two interviewees (M3 and M7) highlighted the special credentials of the *Inyangamugayo* trying sexual violence cases:

M3: At some point, some people were elected to judge rape cases. ... Not all *Inyangamugayo* headed those courts. They voted specific members to head those panels.

M7: The *Inyangamugayo* would keep the case in their records, and it was not any member of the panel, there would be a specific member for those cases. That member would be aware of that rape case. All the *Inyangamugayo* did not have the same clearance. There were some older men or women who had been chosen and they were the ones assigned to those cases.

The seat of a *gacaca* court trying sexual violence cases was meant to be made up of seven *Inyangamugayo* and two deputies.¹³⁶⁰ M2, however, who had also worked as an *Inyangamugayo*, indicated that trials were heard by five *Inyangamugayo*:

¹³⁵⁷ The exact year depended on whether the interviewee's sector was involved in the pilot phase of *gacaca* or not. At the national level, *gacaca* started with the information collection phase in 2004, which lasted until mid-2006. See Chapter 4 (4.2.3) for more information about *gacaca*'s functioning and timing.

¹³⁵⁸ Kaitesi and Haveman (n 36). It can be assumed that in cases where the judgments were appealed, appeals were conducted beyond mid-2009.

¹³⁵⁹ *Organic Law N° 13/2008* (n 95) art 6; Kaitesi (n 29) 232; Kaitesi and Haveman (n 36) 397. As explained in Chapter 4 (4.3.2), *gacaca* also tried people accused of genocide in absentia.

¹³⁶⁰ *Organic Law N° 13/2008* (n 95) art 4.

[T]he panel was made up of five people or *Inyangamugayo*. Both the sector and the appeal courts were composed of five *Inyangamugayo* each. They normally voted for seven people where two were to replace those who were absent.

The number of *Inyangamugayo* judging the interviewees cases, as noted by the interviewees, ranged from three to seven, thereby differing from the number specified in *gacaca* law. While many interviewees confirmed that a police or security officer was present during the trial,¹³⁶¹ one interviewee (M10) explained that police would only be present if the accused had been brought to trial from prison, but not if they were out of prison at the time of the trial.

Nineteen interviewees reported that at least one of their perpetrators was present during their trial, while four interviewees confirmed that they had a trial without any of their perpetrator present (trial in absentia, Table 7.1). Eleven interviewees reported that all perpetrators who they had reported participated in their trial. The other 12 interviewees met only some of their perpetrators, because the others had either fled or died. Most interviewees whose perpetrators had fled still had their perpetrators tried in absentia. In contrast, several victim-survivors in Morris' research reported that they had not taken their case to *gacaca* because their perpetrators had fled the country.¹³⁶²

¹³⁶¹ E.g. M6, M7, M8, M12, M18, M19, M22.

¹³⁶² Morris, Meghan Brenna (n 100) 80-1. Morris notes that *gacaca* 'rules mandated that all accused be physically present in the courts', but does not cite the source from which she gathered this information. Chapter 4 (4.2.3) notes that several sources confirm that *gacaca* permitted trials in absentia and rules as to how trials in absentia were to be conducted are outlined in *Organic Law N° 16/2004* (n 84) art 66.

Table 7.1: Perpetrators at *Gacaca*

	Perpetrator present during trial	Perpetrator fled before trial but tried in absentia	Perpetrator fled before trial and was not tried	Perpetrator died before trial	Perpetrators not reported
M1	1				'Gang'
M2	3			2	
M3	0	2			1
M4	1				
M5	0	1			1
M6	1		3		
M7	2				
M8	1				
M9	0	1	1		
M10	2				
M11	1				
M12	1	4			
M13	16				
M14	1				
M15	0	4			
M16	14	16			
M17	1	1			Some
M18	1	1			Some
M19	1				
M20	10				
M21	8	Some ¹³⁶³			
M22	4		3		
M23	1				Some soldiers in refugee camp
Total	70	At least 30¹³⁶⁴	7	2	

¹³⁶³ M21 noted during the interview that she was raped by 20 perpetrators but that only 8 could be captured and were present during her trial. She also noted that 'some others' were later sentenced without her being present, but the exact number is uncertain.

¹³⁶⁴ Since the exact number of perpetrators sentenced in relation to allegations by M21 is unknown, the total figure of perpetrators tried in absentia cannot accurately be determined. These perpetrators are therefore not included in the total figure, but are represented by the expression 'at least'.

One interviewee (M3) described her experience with having one of her perpetrators tried in absentia:

The challenge that I faced was that some of the people fled and others died. ... So, during the trial, I was testifying against a stack of paper but you had to do it as if you would be arguing with people face-to-face.

The interviewees whose perpetrators were tried in absentia appreciated that there was a trial in which their perpetrators were sentenced. Nevertheless, the interview material also suggests that these interviewees did not experience the same sense of relief as those whose perpetrators were present at the trial:

M15: I am still upset to this day because I was never able to see my aggressors again. They fled and never came back. I raised my case against them though. The dossier is there. We had a trial here at the cell and we even had to go to the XXX sub-prefecture. The other women can at least feel relieved because their aggressors were arrested and sent to prison. I was raped by four men. I hear one of them is dead but I don't really know what happened to all of them.

M5: What hurt me the most was that he [the perpetrator] fled and is still nowhere to be found. ... When that woman was done with her trial, they called mine against that man but he was not there. They said that they were also sentencing him to life in prison but I still don't know where he is. He must be wandering around out there. ...

Later in her interview, M5 described the fact that her perpetrator had fled as the most disturbing issue about her case.

At least two interviewees (M7, M16) who had raised cases against multiple perpetrators reported that all perpetrators whom they had accused and who had been captured participated in the same trial and were in the courtroom all at once.¹³⁶⁵ When asked if all 14 perpetrators were present at the same time, M16 responded:

M16: Yes. ... They locked them up, and then they would bring them in a vehicle from [prison]. They would have them together in the room as they had committed similar crimes.

Others explained that each perpetrator was questioned separately but that those perpetrators who had committed the crime together were jointly judged:¹³⁶⁶

M22: They would bring one after the other but whoever was done would remain in the room because they did not want them to collude. They were all present for the verdict.

¹³⁶⁵ M21 did not specify whether all eight perpetrators who participated in her trial(s) were in the room at the same time. M20 reported having to attend different trials in different areas, since her 10 perpetrators were from different areas, but it is unclear whether some of these perpetrators were tried in the same trial.

¹³⁶⁶ M2, M13, M22.

M13: They would call them one by one in order to avoid that they hear what the others said. About half of the interviewees indicated that they were accompanied by a trauma counsellor during their trial.¹³⁶⁷ One interviewee (M3) explained that she was supported by several trauma counsellors during the various sessions that her trial involved and that she had been ‘allowed to choose with whom to go’. Another three interviewees received support from other people but did not specify whether these people were qualified trauma counsellors or not, although they came from victim-support organisations such as AVEGA or IBUKA.¹³⁶⁸ While the *gacaca* law of 2008 specifies that only ‘trauma counsellors’ were permitted as support for victim-survivors during the trial, one interviewee (M13) explained that victim-survivors ‘would enter the court accompanied with a trauma counsellor or any other person that you trusted and thought could help you’. Similarly, Haskell notes that the attendance of a trauma counsellor and a relative or friend was permitted.¹³⁶⁹ Similarly, two interviewees (M13, M15) explained that it was allowed ‘to have one person present for emotional support’. Five interviewees reported that they had neither a trauma counsellor nor other support person on their side during their trial.¹³⁷⁰ When asked if anyone supported her during her trial, M4 responded: ‘Not at all. I would be all alone.’ Similarly, M5 explained that she was not accompanied by a trauma counsellor, stating: ‘No one supported me during *gacaca*. Even those who were supposed to support me were putting me down.’

Some interviewees mentioned that besides professional care by a trauma counsellor, they received additional support from other victim-survivors, family, and community members during their trial.¹³⁷¹ Other interviewees emphasised that they did not have any support from their families or communities.¹³⁷²

¹³⁶⁷ M1, M2, M3, M6, M8, M10, M12, M13, M17, M18, M19 were supported by a trauma counsellor, six of them by Emiliene. M7, M14 and M23 did not mention a trauma counsellor, but did not explicitly state that they did not have any support during the trial.

¹³⁶⁸ M16, M20, M22. M16 explained that she was supported by ‘people provided by district’, but it is unclear whether these support people were trauma counsellors or not. M20 mentioned that employees from the widows’ organisation AVEGA attended at least some of her trials. M22 explained that she was supported by a representative of the survivor organisation IBUKA, but does not specify their role or qualification.

¹³⁶⁹ Haskell (n 96) 116, citing an interview with a trauma counsellor in Kigali in August 10, 2009.

¹³⁷⁰ M4, M5, M11, M15, M21. Haskell notes a limited number of trauma counsellors available in Rwanda, which reportedly lead to some victim-survivors missing out on professional support during their trial, *ibid* 116.

¹³⁷¹ M6, M7, M8, M9, M10, M11, M20. The impact of this support is more fully discussed in Chapter 8 (8.3).

¹³⁷² M4, M5, M15, M21.

Contrary to the privacy regulation specified in the *gacaca* law of 2008,¹³⁷³ some interviewees explained that several perpetrator(s) had support people accompanying them during the trial,¹³⁷⁴ such as:

R: Did you have the trial in public and not in a private room?

M10: [The trial] happened in public in a way because that man's family members were all there. I also had some family members who would have come to support me. Some of the people in the audience were crying but others just laughed at me.

M11: [The trial] was in private even though it was not so private since he had some people who came to support him.

M21: We were accusing the perpetrators and they were there from prison. Their families were also present and it felt like you were against many people in that trial.

M4: During the trial, because he knows that my entire family has been murdered, he brought all the members of his family. We went into a room and they closed the door. His entire family was present.

R: Would the defendant's family be allowed into the room?

M19: Only his wife came.

At least one interviewee (M6) explained that her perpetrator was accompanied by his family to the trial location but that the family members had to wait outside the courtroom for the duration of the trial:

During the trial, they called me and I went. The entire defendant's family was gathered there and they already knew about the case. We were outside on a playground and all the families were there to show support. However, the trial happened inside a private room and the people were waiting outside on the playground to hear the outcome of the trial.

Several interviewees reported that witnesses attended their trial to testify.¹³⁷⁵ One interviewee (M15) spoke about witness testimonies being considered during their trial but did not explicitly state that the witnesses appeared in person in the court room. While research by HRW also found that various trials regarding sexual violence included the participation of witnesses, Haskell states that 'in the majority of cases described to [HRW], the only persons who testified in the *gacaca* hearing were the victim and the accused'.¹³⁷⁶

¹³⁷³ *Organic Law N° 13/2008* (n 95) art 6.

¹³⁷⁴ M4, M10, M11, M12, M19, M21. Chapter 8 (8.1 and 8.3) discusses how having other people in the court room affected the interviewees.

¹³⁷⁵ M2, M5, M14, M19, M22.

¹³⁷⁶ Haskell (n 96) 117.

Some interviewees participated in a trial together with other victim-survivors who were accusing the same perpetrator(s).¹³⁷⁷ Two interviewees (M5, M21) explained that they were present in the court room at the same time as other victim-survivors who were accusing the same perpetrator. M5 noted: 'We entered the court together because it happened to us at the same time'. Another interviewee (M11) recounted that even though several victim-survivors were accusing the same perpetrator, each plaintiff was called into the courtroom separately.

7.4.4 Testimonies

All interviewees reported that they gave testimony during their trial, either orally, in writing or by a combination of both. Most interviewees recounted that they were asked to speak first, before the accused or other witnesses were heard.¹³⁷⁸ M10 explained that '[she] was asked to speak first because [she had been] the one who submitted the case'. When describing how they had given testimony, some interviewees explained that they had given 'their version of the events'.¹³⁷⁹

M6: We started the trial and they started with me, so I gave them my version of events. I would talk about what happened to me and show them the man who had done it to me.

At least two interviewees (M2, M4) noted that they had to answer several questions, including:

M2: they would ask you directly who you were together with before or after they had probably provided that information. They would ask me questions and I responded to them.

Several interviewees reported that they gave detailed accounts of how they had been sexually violated, either because they were asked to provide detail or chose to do so:¹³⁸⁰

M1: I went into the details of how he would rape me from behind this time around. I had failed the first trial because I was too ashamed to go into the details of how he would rape me. I explained it in detail during the appeal and the defendant denied it all. ... I was ashamed to go deep into it at first but I made an effort to let it all out in order to unveil the truth. His defence was that his arm does not work and he was not able to rape me but I proved him wrong by telling the *Inyangamugayo* how it all exactly went down [*interviewee gets up during the interview and bends over to demonstrate how she was raped*].

¹³⁷⁷ M5, M11, M21.

¹³⁷⁸ M10, M11, M12, M14, M19.

¹³⁷⁹ M8, M11, M16. The original interview response was given in Kinyarwanda. Therefore, the expression 'give one's version of the events' were not the interviewees' exact words, but corresponds to how the original words were translated by the translator.

¹³⁸⁰ M1, M2, M6, M8, M19.

R: Did you have to reveal everything [about the sexual violence] so as to make it clear?

M2: It required you to talk about everything. You had to provide all the details.

M8: We had the trial and I told them what he had done to me, and I did not leave out any detail.

Other interviewees explained that they did not have to answer any or only a few questions during the trial.¹³⁸¹ Reasons that the interviewees cited for this included: 1) the *Inyangamugayo* 'based themselves on what was written in the case file, which came from the testimony of one of the perpetrators';¹³⁸² 2) the interviewee's version of the events had been recorded when she had initially raised her case;¹³⁸³ and 3) the interviewee had provided a letter with her testimony.¹³⁸⁴ One interviewee (M11) reported that she was asked to write the letter 'on the spot' right before entering the court room to have her trial:

It was not just me. It was a team of women. We were all accusing the same guy. We got there and they asked each one of us to write a letter of accusation against him. You would write the letter on the spot and then you would get in and have the trial. ... They would summon you with a piece of paper and then you would come and write your testimony in a letter to accuse the defendant.

Despite her written testimony, M11 explained that she was still asked to 'state her version of the events' in the beginning of the trial. In contrast, M21 recounted that after writing her testimony on a piece of paper 'there was nothing you could add to that' and she was not asked any questions during her trial.

After the testimonies of the interviewees, the accused were reportedly asked to respond to the allegations. Most interviewees noted that at least some of those they had accused denied all allegations and pleaded not guilty (Table 7.2); nine interviewees explained that all their perpetrators who participated in their trial denied everything. Four interviewees saw some of their perpetrators confess and others deny. Another four interviewees explained that their perpetrators first denied the allegations, but confessed at a later stage during the trial.¹³⁸⁵

¹³⁸¹ M5, M6, M11, M13, M21.

¹³⁸² M13.

¹³⁸³ M5.

¹³⁸⁴ M11, M21, M6.

¹³⁸⁵ M18 noted that one of these perpetrators confessed after he had already received the final judgement 'in order to get his sentence cut'. Two perpetrators reportedly confessed after witness statements had confirmed the interviewee's allegations against them (M1, M14). M6 noted that initially, her perpetrator he had denied all allegations but asked her for forgiveness after she provided a detailed account of the sexual violence.

Five interviewees witnessed at least some of their perpetrators confessing or apologising straight away, without any denial of the allegations.

Table 7.2: Perpetrators' Responses to Accusations

	Perpetrators present during trial	Perpetrators denied / pleaded not guilty	Perpetrators confessed	Perpetrators apologised / asked for forgiveness	Perpetrators first denied, then confessed / apologised
M1	1	1			
M2	3	3			
M3	0				
M4	1	1			
M5	0				
M6	1				1
M7	2	2			
M8	1	1			
M9	0				
M10	2	1	1		
M11	1				1
M12	1		1		
M13	16	15		1	
M14	1				1
M15	0				
M16	14	13	1 ¹³⁸⁶		
M17	1			1	
M18	1				1
M19	1	1			
M20	10	1		9	
M21	8	8			
M22	4	4			
M23	1	1			
Total	70	52	3	11	4

Several interviewees reported that testimonies by witnesses were considered during their trials.¹³⁸⁷ One interviewee (M7) explained that her witnesses had given testimonies prior to the trial and that these testimonies were considered during the trial as written statements. Other testimonies were provided by witnesses in person during the trial. It appears that witness testimonies were considered after both the victim-survivors and the perpetrator(s), if present, had given their statements.

¹³⁸⁶ M16 reported that one perpetrator had accidentally confessed at some stage in the process, but later denied all allegations again.

¹³⁸⁷ M2, M5, M14, M15, M19, M22.

7.4.5 Final verdict and sentence

All but one interviewee reported that those perpetrators who were tried at *gacaca* were eventually found guilty and sentenced to prison.¹³⁸⁸ Most of the interviewees' perpetrators were sentenced to life imprisonment with special provisions (Table 7.3)¹³⁸⁹ which constituted the maximum penalty for genocide-related crimes at the time of the *in-camera trials*. Some perpetrators received sentences between 20 and 30 years, which corresponds to the range of possible prison sentences for perpetrators who confess to Category 1 crimes as outlined in Organic law 13/2008.¹³⁹⁰ The interviewee whose perpetrator was not found guilty (M4) reported that he had initially been found guilty but that he appealed and was acquitted during the appeal.

¹³⁸⁸ As explained below (7.4.6), some perpetrators were initially acquitted but found guilty during an appeal.

¹³⁸⁹ *Organic Law N° 31/2007* mentions life imprisonment and life imprisonment with special provision separately, suggesting that both penalties were distinct, *Organic Law N° 31/2007* (n 904). However, *Organic Law N° 13/2008* only lists life imprisonment with special provision, suggesting that any perpetrator sentenced to life imprisonment was automatically sentenced to life imprisonment with special provisions, even if the interviewee did not specifically mention these special provisions, see *Organic Law N° 13/2008* (n 95) art 17.

¹³⁹⁰ *Organic Law N° 13/2008* (n 95) art 17.

Table 7.3: Verdicts and Sentences

	Life imprisonment	20-30 years	Unsure	Acquitted	Comments ¹³⁹¹
M1	1				
M2	3				
M3	2				
M4				1	
M5	1				
M6		1			28 years in prison
M7	2				
M8	1				
M9		1			Presumably 30 years in prison (interviewee was unsure)
M10		2			Perpetrator who confessed = 27 years perpetrator who denied = presumably 30 years (interviewee was unsure)
M11			1		Time in prison (exact time not specified)
M12	5				
M13	15	1			1 Perpetrator who confessed = 20 years, 15 perpetrators who denied = life imprisonment
M14			1		Perpetrator was sentenced 'according to 1 st category', which presumably meant at a minimum 20-30 years in prison or even life imprisonment
M15			4		'Time in prison' (exact sentence not specified)
M16	30				
M17		1	1		30 years in prison
M18	1		1		
M19	1				
M20	10				
M21	8		Some		Life imprisonment for 8 perpetrators who were present during trial, some others who had fled were later sentenced, verdict unknown
M22	4				
M23	1				
Total	85	6	At least 8	1	

¹³⁹¹ For those sentences that fell within a range of years (20-30) or where the interviewees were unsure about the exact sentence (and number of perpetrators) further details are provided in the Comments section.

Several interviewees specified that the *Inyangamugayo* reached a sentence immediately after hearing everyone's testimony.¹³⁹² One interviewee (M18) reported that her perpetrator confessed after the *Inyangamugayo* had already announced his sentence, which is why the *Inyangamugayo* went to re-deliberate his sentence but decided to maintain the original penalty. At least two interviewees (M10, M12) explained that their trial was adjourned, since the *Inyangamugayo* could not agree on a final judgement right away. Both interviewees were asked to return to the court on another day to hear the sentence.

As outlined in *gacaca* law, some interviewees confirmed that verdicts and penalties were deliberated by the *Inyangamugayo* behind closed doors.¹³⁹³ Several interviewees commented on how the outcomes of their trials were announced.¹³⁹⁴ Two interviewees (M6, M7) recalled that the final sentence was announced in public, as prescribed by Regulation 16/2008.¹³⁹⁵ M7 explained:

They went outside to read the verdict to the public. Everyone in court got out and I also got outside, and then they read the verdict to everyone.

One interviewee (M1), however, explained that the final sentence in her trial was announced while the trial was still in closed session: 'They would give the verdict in private and the defendant would inform his family and friends outside'. While it appears that most perpetrators were present to receive their sentences, one interviewee (M12) explained that her perpetrator had already been brought back to prison when his verdict was announced, and only his family was there to hear the verdict.

7.4.6 Appeal

Any judgement reached at *gacaca* could be appealed. Three interviewees explained that their perpetrators were acquitted during their first trial, prompting the interviewees to appeal the judgement.¹³⁹⁶ One interviewee (M23) saw her perpetrator sentenced in a first trial but acquitted in an appeal initiated by the perpetrator. The interviewee then appealed the acquittal of her perpetrator twice and her perpetrator was finally sentenced again. Those

¹³⁹² M1, M6, M13, M15, M18.

¹³⁹³ M1, M6, M18.

¹³⁹⁴ M1, M6, M7, M12.

¹³⁹⁵ Regulation 16/2008 (n 896) art 4. See also Kaitesi (n 29) 232. Kaitesi and Haveman explain that the public announcement of the verdict reflected a rule that had been established by *gacaca* law 'as a safeguard for basic human rights', see Kaitesi and Haveman (n 36) 397.

¹³⁹⁶ M1, M13, M16. As mentioned earlier, M16 appealed five times.

interviewees who appealed their judgements cited corruption, bias or lack of knowledge of the *Inyangamugayo* as the reasons for the perpetrators' initial acquittal. M13 explained:

I went to trial in the court at the cell and I also went to the court of appeal. *Gacaca* was headed by civilians who sometimes would not be very educated and they would sometimes try the case incorrectly because of ignorance and you would have to appeal. We had to go to the Supreme Court of Appeal and that is when those people were sentenced.

Appeals were judged by a different panel of *Inyangamugayo*, since the appeal court constituted a separate entity of the *gacaca* system. One interviewee (M1) requested a panel of *Inyangamugayo* from another area to try her appeal in order to increase the chances that they could not be as easily bribed as the ones who had initially acquitted her perpetrator (M1 noted that the *Inyangamugayo* of the first trial had been from the same community as her perpetrator):

He was found not guilty the first time and I just cried and went back home. I called [the trauma counsellor] because she was the one who would usually come with me and I told her that the defendant had been found not guilty. I applied for an appeal but I asked that the trial happens in a different cell. They summoned some *Inyangamugayo* from XXX and they came to judge my trial in YYY. The defendant's wife was the one who had bribed the *Inyangamugayo* before but she was not aware that I had filed for an appeal so she did not have any time to look for money to bribe the *Inyangamugayo* again. She was the one bribing the *Inyangamugayo* because the husband was in prison.

At least two interviewees (M16, M23) appealed more than once to be finally judged by *Inyangamugayo* who were reportedly not biased or bribed by their perpetrators or their families.¹³⁹⁷ M16 explained that she appealed five times, until her case was 'sent to a court outside of her neighbourhood' and escalated 'all the way to the national level'. M16 explained:

I was the only person defending my case and the *Inyangamugayo* would take bribes. As I was carrying out my defence against the whole village including the head of our cell, they would bribe the jurors and that would drive me crazy. ... In 2012, I wrote a note to Ms. Mukantanzwa who was in charge of *gacaca* courts on the national level,¹³⁹⁸ describing how I had been treated unfairly in four trials. She appointed a court in XXX, in YYY to try my case. That was when I finally defended my case and was treated with some justice.

¹³⁹⁷ The possibility of more than one appeal was also confirmed by Emilienne, who explained that she also assisted victim-survivors as their trauma counsellors in appeals. She reported that in some case, two or three appeals took place for one case. She further recalled several victim-survivors who gave up after their first trial and who decided not to appeal an acquittal of their perpetrator. She noted that these victim-survivors still required her support, because it was a difficult decision for each of them.

¹³⁹⁸ Domitilla Mukantanzwa was the Executive Secretary of the *Gacaca* Courts.

As another example, M23 explained:

[The perpetrator] was ... summoned for a hearing and I ended up convincing the court and won the case. He filed for an appeal and we were both given another appointment to show up to court, and for this time he was found not guilty. XXX and YYY contested the court's decision and filed for a second appeal for me. ... We had a third trial and they also found him not guilty because he had paid a bribe. I decided to make an official appeal and make all the courts we had appeared in overturn their decision because I thought it was unfair.

Four interviewees participated in appeals initiated by their perpetrators.¹³⁹⁹ While three of these interviewees reported that the final appeal court found their perpetrators guilty, one interviewee (M4) explained that her perpetrator bribed both witnesses and *Inyangamugayo* and was therefore acquitted during the appeal:

Because the facts that I was stating made him look guilty, he was sentenced to jail time. ... He was sentenced to life in prison but when he got to prison, he paid a bribe and was able to appeal. He gave so many bribes even to the *Inyangamugayo* and he is now out. ... When I went back to trial, they did not believe what I was saying. ... They concluded that the man was not guilty because the people whom he had bought cattle and goats for said that he immediately left with them and I knew he didn't. The people in his family and the other people who were in the attack defended him and gave him an alibi. ... When they released him, he immediately fled. I could not continue to file complaints for someone who was not there, someone I didn't see.

7.5 Corruption and Bias of *Inyangamugayo*

Besides the bribing of *Inyangamugayo* during appeals, many other interviewees reported incidents of corruption and bias in relation to their *gacaca* hearings and trials.¹⁴⁰⁰ These incidents included perpetrators and their families bribing *Inyangamugayo*,¹⁴⁰¹ witnesses,¹⁴⁰² and other plaintiffs.¹⁴⁰³ Several interviewees recounted how the *Inyangamugayo* judging their cases had been bribed:¹⁴⁰⁴

M18: There was a big issue when it came to the *Inyangamugayo* because they would sometimes distort the information to cover the criminals or they would sometimes take bribes and let the criminals walk. ... I gave them some information during the information collection and they tore the files ...

¹³⁹⁹ M2, M4, M19, M23.

¹⁴⁰⁰ M1, M2, M3, M4, M16, M18, M19, M23.

¹⁴⁰¹ M1, M3, M4, M16, M18, M19, M23.

¹⁴⁰² M2, M4.

¹⁴⁰³ Discussed, for example, by M1.

¹⁴⁰⁴ M1, M3, M4, M16, M18, M19.

M19: The man who raped me had a powerful son who lived in Kigali. I don't know what his son did but he would always send his father a ton of money. They paid a bribe ...

Several interviewees recalled situations where their perpetrators and/or families tried to corrupt them:¹⁴⁰⁵

M23: [H]is wife attempted to trick me into receiving 600, 000 RWF from her. It was a trap.

M6: In the meantime, before trial started, he had sent someone to me to ask me what I wanted. He wanted to buy my silence with money.

M8: He later sent his children to beg me for forgiveness and they came and told me: 'You are now married and you have children. Would you go and get him out of prison if we gave you some reparation?' That was a trap so that they could also send me to prison for taking a bribe from them.

Resisting bribes was an act that appeared to be highly important to some interviewees.¹⁴⁰⁶

M18: There are some people who could not resist the temptation to take the money offered by the rapists but I did not even think about it.

M4: He gave some people some money to keep quiet but I could not let him get away with raping me and giving me HIV. So I did not take the money ...

M7: They first gave me some money to remain silent but I refused to take it. There was one of them who came to me and offered me 30,000 RWF to keep quiet but I didn't take it. I told him that I would only take money from him in front of the *Inyangamugayo* after they have made him pay for what he had done to me. I told them that I did not need their money because they had really hurt me.

M8: God blessed me and I did not get blinded by the love of money or material things because that could have landed me in prison. I thank God for giving me the strength to refuse their money and wait to make it in another way.

Several interviewees reported issues with biased *Inyangamugayo*,¹⁴⁰⁷ including:

M4: I cannot find anything good to say about *gacaca* because they would choose some of their own people and say that they did not participate in attacks and they would become an *Inyangamugayo*. Could you be impartial to your own people?

R: Are you saying that there were some people on the panel of *Inyangamugayo* who were present during the attack against you?

M4: Yes.

M22: We had the trial and they lost and were sentenced to prison time. It was not easy. Some of the *Inyangamugayo* were not impartial because they would be trying their family members but the evidence got them convicted.

¹⁴⁰⁵ M4, M6, M7, M8, M23.

¹⁴⁰⁶ M4, M7, M8, M18.

¹⁴⁰⁷ M4, M20, M22, M18.

One interviewee (M3), who worked as an *Inyangamugayo* herself, explained that she considered some of the verdicts reached in *gacaca* trials more generally to be unfair:

There were times where the ruling was unfair. The last ruling was unfair even though I was an *Inyangamugayo* and we all knew how it worked.¹⁴⁰⁸ ... They were unfair to others as well. There were times when they would draft the ruling and I would refrain from it.

M3 further explained that she witnessed some cases (not necessarily relating to sexual violence) where innocent people were falsely accused and judged in *gacaca*:

Some of our neighbours would sometimes take someone who had done nothing but good and decide to involve them in cases that had nothing to do with them. They would see that there is a chain of people who he/she could fit in and they would decide to involve the person regardless of whether they were innocent or guilty.

The interviewees' accounts of corruption and bribery are consistent with the complaints of victim-survivors cited in other research.¹⁴⁰⁹ Most interviewees who mentioned corruption and bias also discussed their strategies of dealing with these issues. These strategies included appealing the judgement in their cases, if necessary several times, requesting alternative juries to try their cases and seeking support from trusted *gacaca* authorities.

7.6 Conclusion

This chapter discussed the functioning of the *gacaca* courts trying the sexual violence cases raised by the interviewees, preparing the assessment of *gacaca* against the interviewees' justice needs. The interviewees' descriptions of trial participants, process procedures and judgements provide new information on the functioning and outcomes of *gacaca* dealing with sexual violence. This information is much richer than the *gacaca* law and regulations on sexual violence cases discussed in Chapter 4, enabling more detailed descriptions of the *gacaca* process. By outlining in detail the interviewees' descriptions of the functioning of *gacaca*, this chapter contributes to answering several research questions, including the two primary research questions and question 2.4. While the trials of most interviewees appear to have

¹⁴⁰⁸ This ruling did not relate to her case of sexual violence, but to another case that she had raised at *gacaca* concerning property or deaths of family members.

¹⁴⁰⁹ Haskell (n 96) 105-7; Sosnov (n 725); Penal Reform International, *Gacaca Jurisdictions and its Preparations* (n 473) 44-6; de Brouwer and Ruvebana (n 40) 949. Nevertheless, the NSGC, in its 2012 report, rejects most criticism of bribery, explaining that only 12 *Inyangamugayo* were found guilty of taking bribes in 2010, see National Service of *Gacaca* Courts (n 75) 193, referring to Ombudsman Office, List of suspects convicted of Corruption offense (all semesters), Kigali, 2010. In regards to issues of *gacaca*, including bribes and corruption, Clark notes that '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.', Phil Clark, *How Rwanda Judged its Genocide* (Manuscript, Africa Research Institute, April 2012).

been conducted according to *gacaca* law, based on the interviewees' accounts, not all procedures were followed in practice.¹⁴¹⁰ For example, several interviewees explained that their perpetrators' families attended their trial, which does not correspond to the *in camera* regulation defined in *gacaca* law.¹⁴¹¹

No information about the outcomes of *gacaca* trials regarding sexual violence was publicly available at the time of writing of this thesis. Therefore, this chapter contributes new information regarding the sentences reached for sexual violence cases. According to the interviewees, at least 100 of their perpetrators were judged as part of the interviewees' cases and at least 30 of them were judged *in absentia*. With the exception of one perpetrator, all other perpetrators were found guilty and sent to prison for periods ranging from 20 years to life imprisonment with special provision. Some interviewees explained that they appealed several times to have their perpetrators found guilty and sentenced. The option to appeal constituted a strategy for some interviewees to manage issues of corruption and biased *Inyangamugayo*, which were highlighted by many interviewees as a shortcoming of *gacaca*.

¹⁴¹⁰ This point contributes to answering the part of research question 2.4a) that asks about how the experiences of the interviewees related to the intentions of the legislation and procedures that established the process and goals of *gacaca*.

¹⁴¹¹ *Organic Law N° 13/2008* (n 95) art 6.

8 CHAPTER 8: PROCESS-RELATED JUSTICE NEEDS

Chapters 8 and 9 analyse the justice needs of the interviewees and assess the extent to which *gacaca* met these needs. Thereby, these chapters answer several research questions, including the two primary research questions and research questions 2.1 and 2.2. In addition, the chapters fulfil several purposes. Firstly, they assess the relevance of the set of victim-survivors' justice needs outlined in Chapter 5 for the interviewees and provide further examples to illustrate the various components of each justice need. That set of victim-survivors' justice needs is predominantly based on data collected in developed countries concerning an individual context of sexual victimisation. Chapters 8 and 9 add much needed empirical evidence from a post-conflict context. Secondly, the chapters assess *gacaca*'s strengths and limitations in meeting the interviewees' justice needs, based predominantly on the interviewees' descriptions of *gacaca* and additional information provided by Emilienne. In addition, Chapters 8 and 9 consider *gacaca* procedures as stipulated in *gacaca* law and regulations. References are also made to other relevant research in relation to Rwanda including *gacaca* and the ICTR where possible, as well as to research focusing on justice needs in transitional justice settings, which has been conducted primarily in relation to the SA TRC and ICTY. Therefore, Chapters 8 and 9 also address research question 2.4.

Due to the complexity of the set of justice needs, the analysis of these justice needs and the assessment of *gacaca* is discussed across two chapters. While Chapter 9 looks at outcome-related justice needs, this chapter focuses on process justice needs, including 1) an enabling environment, 2) participation, and 3) information and support, and is thus divided into three parts. Each part discusses one of the three process-related justice needs, firstly analysing the relevance of the need for the interviewees, and secondly assessing how *gacaca* addressed the need. Each part concludes with a brief discussion, highlighting the most important needs for the interviewees and summarising *gacaca*'s main strengths and limitations in meeting the relevant need. The three discussion parts are then summarised in the conclusion of the chapter, with the major findings highlighted.

8.1 An Enabling Environment

An 'enabling environment' is created through supportive treatment by authorities engaged in a justice process.¹⁴¹² An enabling environment also requires procedures¹⁴¹³ that support victim-survivors' participation in a justice process, including measures to provide for some privacy and safety of victim-survivors (and their families if applicable).

8.1.1 Relevance of an enabling environment to the interviewees

The interviewees' need for an enabling environment at *gacaca* can be deduced from the multiple psychological sufferings that resulted from the sexual violence and other genocide experiences. These sufferings include trauma, anxiety and high levels of emotional stress, as well as feelings of degradation, worthlessness, shame and dehumanisation. While the interviewees' *gacaca* trials would have taken place 14-15 years after the genocide, all interviewees reported that they continued to suffer psychological issues at the time of the trial. Many interviewees, for example, recounted suffering episodes of trauma during their participation in the *gacaca* trial:¹⁴¹⁴

M20: Since they were many [perpetrators] ... I would appear in court on almost every *gacaca* day. ... I was very disturbed at that time, I went crazy, and I got traumatised ...

M19: God. [At the time of the trial] I was extremely traumatised. I had just buried my son.

Besides trauma, several interviewees reported high levels of sorrow, stress and fear during their participation in the process:¹⁴¹⁵

M13: The first thing that would happen to me whenever I entered the court was that I was submerged with fear.

M2: I was just crying [during the trial] and drying off my tears.

M7: When we were going through the *gacaca* trials, we were in so much sorrow. We were not happy.

Considering the interviewees' fragile psychological state, it was important that *gacaca* authorities would demonstrate sensitivity and care to support the interviewees' participation

¹⁴¹² As outlined in Chapter 5 (5.1), the term authorities in this thesis includes *gacaca* personnel who had a position defined in *gacaca* law, including the *Inyangamugayo* and the *gacaca* coordinator.

¹⁴¹³ As discussed in Chapter 5, procedures include those that are formal (established through *gacaca* legislation and policies) and those that are informal (for example, determined in the context of or by a specific *gacaca* court).

¹⁴¹⁴ M1, M3, M4, M6, M7, M8, M9, M19, M20, M22. Emilienne recounted a case where the victim-survivor suffered a serious episode of trauma at the end of the first day of her trial and had to be taken to hospital to receive medical treatment.

¹⁴¹⁵ M2, M4, M6, M7, M13, M16, M18, M22.

in the process. Furthermore, feelings of low self-worth and dehumanisation at the time of their trial, as described by several interviewees,¹⁴¹⁶ highlight the need for respectful treatment of the interviewees:

M15: I still did not feel human yet at that point. ... I had been stripped of my humanity.

M7: I did not feel like I was a person. I felt like I was some other creature, not a human being. It was like if they took you to the XXX market and started talking about what happened to you in front of everyone there.

Several interviewees explained that they were too ashamed to reveal information about their victimisation in public,¹⁴¹⁷ which is why they preferred to report their case and have it tried in private:

M8: At that time, people were giving their testimonies in public so I asked my brother to give my testimony for me ... The reason why I asked my brother to give the information for me was because I felt too ashamed to stand in front of people and talk ... There is a big difference [between talking about sexual violence in public versus in private] because there are some people who are not compassionate and they are going to talk about your private history wherever they go. I did not want that to happen to me. It is different when a grownup learns about it compared to a kid. Having the trial in private gave me some peace of mind and allowed me to talk about all the details without leaving anything out.

R: Would it have been possible for you to recount you experience of sexual violence in public,
M1: No. It would not be possible to discuss it in public because even in private one would want to faint.

The need for privacy is also evident when considering the range of social repercussions associated with identifying as a victim-survivor.¹⁴¹⁸ Victim-survivors' concerns about stigma following testimony about sexual violence at *gacaca* have been raised in other research with Rwandan victim-survivors (Chapter 4, 4.2.3). Morris, for example, found during her research with Rwandan victim-survivors that almost 25 per cent of her informants did not report their cases at *gacaca* because they feared stigma or did not feel comfortable disclosing any information about their experiences.¹⁴¹⁹ Similarly, Emilienne explained that many Rwandan victim-survivors chose not to raise their case because they were too worried about stigma and other social repercussions. Nevertheless, one interviewee (M6) commented that 'it

¹⁴¹⁶ For example M4, M7, M15.

¹⁴¹⁷ Including M1, M8, M11.

¹⁴¹⁸ See Chapter 3 (3.1 and 3.2.3) for a discussion of social repercussions for victim-survivors.

¹⁴¹⁹ Morris, Meghan Brenna (n 100) 80.

would have not made any difference' for her if her trial had happened in public, since she had also been raped in public and '[e]veryone knew about it' anyway.

Several interviewees recounted that they suffered community rejection and harassment for reporting their perpetrators:¹⁴²⁰

M5: [P]eople would be talking behind my back saying that I was the woman who was going to put everyone in prison, that I was a terrible person. I would live terribly. Even when things were over, someone would talk to me like: 'I heard it's your habit to get people imprisoned, you can have me arrested as well.'

Some even mentioned being seriously threatened and/or physically attacked, including attempted murder, prior to and during *gacaca* to prevent them from testifying:

M16: They were mad at me before to the extent that they hired people to kill me whether by running me over on the street or murdering me in my home. ... [A]fter they figured out that I managed to survive, they started hunting me by hiring people to run me over with a car.

M2: Their families, children and wives, disturbed us a lot. ... [T]hey attacked and tried to kill me at my house to prevent me from witnessing what they did ...

M22: What followed was that the defendants' family members were mad. ... They would try their best to get rid of all evidence. They even tried to kill me.

Furthermore, some interviewees reported being harassed by their perpetrators' families and communities after *gacaca* had finished, including reprisal attacks for having testified against their perpetrator(s):¹⁴²¹

M16: I later started getting stalked and harassed. They would steal my domestic animals. They would also write tracts to make me feel afraid. They once dug a grave with a cross on it in my front yard.

M23: One day, I was on my way to the market and ... [the perpetrator's] children beat me up. ... They would see me trying to buy some tomatoes at the market and they would start throwing rocks at me. ... They then started throwing rocks at my roof and I would not be able to sleep. I called the head of our cell and they organised a night patrol to stop those people from throwing rocks at my house.

The interviewees' accounts of intimidation and reprisal attacks are consistent with the experiences of other Rwandan victim-survivors who participated in *gacaca*, as reported by several researchers and human rights organisations.¹⁴²² The threats, attempted murder and

¹⁴²⁰ M2, M5, M16, M20, M22.

¹⁴²¹ M2, M11, M16, M23.

¹⁴²² Haskell (n 96) 117-8; Ka Hon Chu, de Brouwer and Roemkens (n 123) 541; de Brouwer and Ka Hon Chu, 'Survivors' Views on *Gacaca*' (n 99).

reprisal attacks against some of the interviewees and other Rwandan victim-survivors highlight the need for safety measures to protect affected victim-survivors and their families prior to, during and even after participating in *gacaca*.

8.1.2 Did *gacaca* reflect an enabling environment?

This section discusses how far *gacaca* met the various components that form part of an enabling environment. These components, (Chapter 5, 5.1.1), include 1) supportive treatment by authorities, which involves respectful treatment, sensitivity and care, as well as neutrality of decision-making authorities, and 2) supportive procedures, such as privacy and safety measures.

8.1.2.1 Supportive treatment by authorities

About 17,000 *Inyangamugayo* were selected for their integrity to try sexual violence cases, (Chapter 4, 4.2.3), and were specifically trained to become familiar with relevant legal and psychological aspects, including how to support traumatised victim-survivors to participated in *gacaca*.¹⁴²³ The training for the *Inyangamugayo* demonstrates that *gacaca* trials concerning sexual violence cases were established with the aim of reflecting characteristics of an enabling environment, such as sensitivity and care in dealing with victim-survivors.

The interview material suggests that many *Inyangamugayo* succeeded in creating an enabling environment through their behaviour, evidenced by many interviewees speaking positively about their *Inyangamugayo*.¹⁴²⁴ This experience is consistent with research by HRW, which also highlighted victim-survivors' positive experiences with their *Inyangamugayo*.¹⁴²⁵ Several interviewees confirmed that their *Inyangamugayo* displayed sensitivity and care, and that they felt supported to share their story:¹⁴²⁶

M18: The *Inyangamugayo* listened to me carefully and they gave me some time to catch my breath whenever I got emotional.

M10: During *gacaca*, [the *Inyangamugayo*] listened to us. Whenever you had some difficulty speaking, they let you think for a while or give you time to fight crying.

M15: The president of the *Inyangamugayo* ... understood me. She got it done.

¹⁴²³ Kaitesi and Haveman (n 36) 399.

¹⁴²⁴ M1, M2, M7, M10, M11, M15, M18, M19, M21, M22.

¹⁴²⁵ Haskell (n 96) 117.

¹⁴²⁶ M2, M10, M11, M15, M18.

M2: There was a man who interrogated me at sector level. He was the president of the court. He would consider your problem like his own problem.

Furthermore, several interviewees described their *Inyangamugayo* as neutral and felt that they had judged their case in an impartial manner,¹⁴²⁷ which also aligns with the definition of an enabling environment:

M22: They carefully examined the evidence and tied it to the crime in order to make an impartial verdict.

M2: Like any other *Inyangamugayo* did, they made fair decisions particularly on this crime of sexual violence. ... Not everything happened the way we wished it to be but the *Inyangamugayo* accomplished their justice responsibilities properly.

M18: The *Inyangamugayo* challenged ... [the perpetrator] for me. They were impartial and did not believe his lies.

Positive experiences with *Inyangamugayo* were also reported by Haskell, noting that 'most interviewees ... believed the *Inyangamugayo* acted appropriately and in a manner that was sensitive to the situation'.¹⁴²⁸ Nevertheless, several interviewees also reported issues with their *Inyangamugayo*, including bias and corruption. Some interviewees highlighted that dealing with bribed and biased *Inyangamugayo* aggravated their negative experience of the trial:

M1: The defendant's family sold their land and they gave bribes to the *Inyangamugayo*. ... The *Inyangamugayo* would then turn on me and make me sound like a crazy person.

M4: [H]e appealed and paid a lot of money because he was a businessman. When I went back to trial, they did not believe what I was saying. They made me feel like I was crazy.

M22: The fact that some of the *Inyangamugayo* were not impartial hurt me.

At least one interviewee (M6) indicated that she felt her case was not dealt with in a sensitive manner. She explained that after she had privately submitted a letter detailing her case to an *Inyangamugayo*:

They kept the letter and kind of made circles around it while trying other cases. They continued to try other cases and they finally read the letter one by one. Some of them who knew me read it and some others who did not know me read it as well.

At least two interviewees (M13, M16) questioned the competence of some *Inyangamugayo*. M13 thought that some *Inyangamugayo* were 'not very educated and ... would sometimes

¹⁴²⁷ M1, M2, M7, M18, M19, M21, M22.

¹⁴²⁸ Haskell (n 96) 117.

try the case incorrectly because of ignorance'. M16 said the *Inyangamugayo* in her case did not follow prescribed procedures:

I was first disappointed by the fact that they were not recording what was taking place during the trial. You know they had to record everything to be reported afterwards. As they were not recording, it was really making me unhappy.

Experiences of corrupt, biased, insensitive and/or incompetent *Inyangamugayo*, as described by the interviewees, caused additional hardship and aggravated the interviewees' negative experiences of the trials. Nevertheless, most interviewees identified strategies for dealing with these issues, including lodging an appeal or requesting a panel of *Inyangamugayo* from another area.¹⁴²⁹

8.1.2.2 Supportive procedures

This section analyses the interviewees' experiences with various *gacaca* procedures to assess how far *gacaca* reflected an enabling environment for the interviewees. The analysis is based on *gacaca* law and regulations that regulated the *gacaca* process,¹⁴³⁰ as well as the interviewees' descriptions of *gacaca*'s functioning. Privacy and safety measures are of particular importance when victim-survivors engage in a justice process, which is why they are considered separately in this section.

8.1.2.2.1 Meeting the perpetrator

While *gacaca* law limited the amount of people participating in the trial, it also indicated that both the victim-survivor and the perpetrator were to attend the trial and would therefore be in the courtroom at the same time.¹⁴³¹ According to Haskell, victim-survivors had the choice to submit a letter with their allegations with the district coordinator, 'who then presented it to the *gacaca* court'.¹⁴³² This procedure allegedly waived the obligation to attend the trial in person,¹⁴³³ which, according to Haskell, provided 'some degree of relief to women who were too frightened to appear in *gacaca* or to confront the men who had allegedly raped them'.¹⁴³⁴ Therefore, the option to submit a letter would have aligned with some of the criteria of an

¹⁴²⁹ These strategies are discussed in more detail in Chapter 8 (8.2).

¹⁴³⁰ As discussed in Chapter 4 (4.2.3), the functioning of *gacaca* courts trying sexual violence was regulated by *Organic Law N° 13/2008* and Regulation 16/2008.

¹⁴³¹ *Organic Law N° 13/2008* (n 95) art 6.

¹⁴³² Haskell (n 96) 117.

¹⁴³³ HRW documented two cases in which this letter was used as the victim-survivor's testimony, Ibid 117.

¹⁴³⁴ Ibid.

enabling environment. However, while various interviewees reported that they submitted their allegations in writing, all interviewees still physically attended their trial and the interview material does not confirm that the interviewees' attendance in court was optional. On the contrary, Emilienne explained that from her experience 'survivors did participate in their trials and they did not have a choice to do so or not; it was a necessity'.¹⁴³⁵

Many interviewees noted that being in the same room as their perpetrator(s) was one of the most difficult parts of their *gacaca* experience, contributing to the re-traumatisation of some interviewees:¹⁴³⁶

M6: When I got in and saw the defendant, I almost felt sick and I stepped back outside because I did not want to look him in the eye. ... He raped me whenever we met. I thought about how I was going to be killed carrying my baby on my back and remembering that was the reason why I didn't want to look him in the eye. I didn't want to look at him because it reminded me of my situation back then and that brought me a lot of sorrow. ... I did not feel well during the entire trial. I was traumatised by seeing that person again. He was not my neighbour and I did not see him all the time. It shocked me to see him because it was the first time ever since the day he raped me. We met again in court.

The psychological difficulties associated with having to meet their perpetrator(s) is confirmed by Kaitesi's research,¹⁴³⁷ as well as by Emilienne, who noted that having to meet the perpetrator in the court room was, in her view, for many of her clients the most difficult part in the whole *gacaca* process.

¹⁴³⁵ Email from Emilienne MUKANSORO to Judith Rafferty, 25 February 2019. In the email and in the original interview with Emilienne, she explained that initially, it was said that victim-survivors could have submitted their accusations in writing instead of having to attend the trial. However, Emilienne noted that only very few women chose this option. She recalled only a few trials that were based on victim-survivors' written statements. Emilienne explained that since only very few victim-survivors submitted a written statement in lieu of participating in person, *gacaca* courts in certain regions of Rwanda did not accept written statements altogether. Emilienne was unsure whether these procedures would have applied across Rwanda, but she believed that in most of the sectors where she had worked (which are the same sectors where the interviewees' *gacaca* trials were held), victim-survivors had to participate in their trial. Emilienne also noted that in various cases in which she assisted, it would have been possible for her to negotiate with the *Inyangamugayo* that she would represent a particularly vulnerable client, as is discussed further below in Section 8.3.3. Nevertheless, Emilienne explained that most victim-survivors, even particularly vulnerable ones, decided to be present at their trial. Emilienne happened to have discussed in one of her therapy groups why most victim-survivors did not choose the (initially available) option of a written statement, especially when considering that meeting the perpetrator during the trial was such a traumatic experience for many of the women. The victim-survivors in that group explained that they did not trust the *Inyangamugayo* to adequately consider their written testimony, and therefore chose to attend to ensure that their story was fully heard.

¹⁴³⁶ M1, M4, M6, M11, M12, M13, M16.

¹⁴³⁷ Kaitesi (n 29) 234.

Several interviewees reported that their perpetrator(s) made attempts to intimidate them through gestures, words and actions during the trial:

M1: The *Inyangamugayo* were there and he was also sitting in a small distance on a bench. He was crossing his fists all the time to show me that he could kill me if he got a chance. He was making a lot of gestures to try and intimidate me and derail my thoughts. ... He knew that I had some trauma left in me and he was trying to appear as intimidating as possible so that I would lose my train of thoughts and lose the trial.

M16: I had fought with those who were booing me and I even took a stick to defy those who were yelling at me. ... As we started to proceed with the trial ... [one of the defendants] said; 'please ask that sister of ours to tell us where she left her kids since she arrived here without them'. ... [I]n order to hurt me and weaken my confidence during the trial he requested an objection to try to make me forget everything and focus on where I left my children.¹⁴³⁸ He wanted to convince me that I should focus on my children instead of the case. Imagine someone who killed your children asking you to remember where you left them. He drives you crazy.

M18: [The perpetrators] defended their case using hurtful words to make me give up but I kept going. ... They verbally abused me [during *gacaca*] and I don't think I am ever going to forget it.

These accounts demonstrate that the requirement to physically attend their trial did not constitute an enabling environment for many interviewees, in particular because of the high re-traumatisation potential when meeting their perpetrator(s). At the same time, the analysis of the interviews suggests that at least for some interviewees there were some benefits associated with the interviewees' attendance at their trial. The interviewees' physical presence provided opportunities for participation, including by way of asking questions and relaying a message to the perpetrator. Emilienne noted that meeting the perpetrator was the main reason for some of her clients to participate in *gacaca*, since they wanted to face their perpetrators to either ask questions or relay a message to them. Meeting their perpetrator face-to face also allowed some interviewees to witness offender accountability, and experience vindication as well as a restoration of a power balance, discussed in more detail in Chapter 9. Therefore, while it jeopardised an enabling environment for some interviewees, the requirement to physically attend the trial and be in the same room as their perpetrator(s) assisted various interviewees in having some other justice needs met.

¹⁴³⁸ Three of the four children of M16 were killed during the genocide.

8.1.2.2.2 Being present during perpetrators' statements and witness testimonies

Based on the analysis of the interviews, it does not appear that the interviewees were given the opportunity to leave the room while their perpetrator(s) or witnesses gave their statements:

R: You said that there were lots of witnesses coming. Did you hear what all the witnesses said?

M2: You were not taken aside because they were talking about problems that were concerning you. So you had to be there.

Many interviewees found it difficult to listen to these testimonies and explained that they suffered episodes of trauma when hearing details about the crimes committed against them:¹⁴³⁹

M7: Hearing about what has happened to us made us go back into that terrible life we lived. That was the main cause of our trauma.

M13: [T]hey asked each perpetrator about their role in that crime. They were the only ones to answer questions about beating me up, cutting me with machetes, etc. They said who did what. They accused each other and told all their roles in what happened.

R: How did listening to that make you feel?

M13: It was not easy for me. As some of them denied what they did, I spent a month in the hospital after the trial because I was having a hard time coping with that information. I had a mental breakdown ...

R: How did you feel about him confessing to everything?

M12: I got traumatised. I did not want to look him in the eyes. What they did to us was terrible. There were some women who died because of it. They brought him back to prison and I was looking away the entire time.

Gacaca law stipulated that perpetrators' confessions would be considered for the reduction of the final penalty, as long as defendants gave 'a detailed description of the confessed offence'.¹⁴⁴⁰ Seeing that some interviewees suffered re-traumatisation because of such details being given, having to be present during the perpetrators' confessions did not reflect

¹⁴³⁹ M5, M7, M12, M13, M16, M22. Emilienne also recounted a case where a young victim-survivor who had been gang raped during the genocide, faced numerous perpetrators all at once during her trial. Emilienne explained that each perpetrator pleaded guilty and provided lengthy and specific details about how exactly he had raped the girl. Emilienne asked the president of the court to stop the perpetrators from giving these details, since they caused particular distress for the victim-survivor. Emilienne recounted that her request was initially denied, because the details were assumed to be necessary so that the *Inyangamugayo* could render a judgment. However, upon the urging of the Emilienne, the *Inyangamugayo* accepted her request and asked the perpetrators to stop providing details. Emilienne noted that the perpetrators continued to try to provide detail of their actions, and she got the impression that they were doing it on purpose to hurt the victim-survivor.

¹⁴⁴⁰ *Organic Law N° 16/2004* (n 84) art 54.

a supportive procedure.

Besides struggling with detailed confessions, some interviewees explained that it was difficult for them to cope when hearing their perpetrators deny all allegations, or when distorted or shortened versions of the events were presented in the courtroom:

M8: After spending some time in prison, he appealed and I thought that he was going to ask for forgiveness during his appeal, but he instead insisted that he had never done anything to harm any Tutsi. When he said that, I got traumatised and upset.

R: How did you react to those witnesses' testimonies?

M22: It was also hard because there were some of them who omitted some details. They would not want to talk about rape because they knew that it came with a heavy sentence.

R: How did you feel about them omitting that?

M22: It hurt me.

These comments highlight the importance of both having a counsellor available and preparing victim-survivors in advance for a range of potential reactions of their perpetrators during a justice activity.¹⁴⁴¹

8.1.2.2.3 Giving testimony

Many interviewees noted that giving testimony stood out as one of the most difficult experiences during *gacaca*.¹⁴⁴² M15 explained that '[t]he hardest thing was talking about rape'. Several women mentioned that they experienced episodes of trauma when giving testimony about their experiences of sexual violence in front of the other trial participants.¹⁴⁴³ Some interviewees explained that they provided a written statement of their testimony,¹⁴⁴⁴ relieving them from having to talk during their trial:

R: Did they ask you to repeat your story like you had written it in the letter you handed them or did they ask more questions to the defendant?

M6: They didn't because when I was writing that letter, I didn't leave anything out. I wrote the letter and included all the accusations against that defendant. When it was time for the trial, they didn't ask me many questions. They just asked me how I was feeling ...

¹⁴⁴¹ This point is discussed in more detail below (8.1.3).

¹⁴⁴² M1, M6, M7, M8, M15, M20, M21, M22.

¹⁴⁴³ M6, M7, M8, M20, M22. This point is discussed in more detail in Chapter 9 (9.1.1).

¹⁴⁴⁴ M6, M11, M21. M6 explained that her initial letter of accusation, which she had written to raise her case, was used for the basis of her testimony during her trial. M11 recounted had not raised her case in writing, but was asked to write her accusations down on a piece of paper when she arrived at the court for her trial. M21 noted that she had raised her case in writing, but wrote her allegations down again 'on a piece of paper' to be used as her written testimony during her trial.

M21: I put my case in writing because I saw some women try to talk about rape before me and they would just break down and cry. The majority of us decided to put it in writing. It was the best option. Whoever testified in public had to face nasty stares from the defendants' families. The defendants had their people who came to back them up and they would be many but you were just one person. ...

R: What was difficult about your own trial?

M21: What was difficult was the thought of having to talk about it so I decided to write it down ... Having to explain what happened to us when it is something that you should never have to put into words.

These examples show that the option to provide a written testimony addressed, at least to some extent,¹⁴⁴⁵ the need for sensitive procedures of some interviewees. Nevertheless, it appears that only three interviewees made use of this option. The interview material is not clear whether the other interviewees were not given the opportunity to provide a written statement, or whether they chose not to do so.

8.1.2.2.4 Location and timing of *gacaca* trial

Gacaca trials took place in the area where the crime had been committed, which was in some cases a different location from where the affected interviewees lived. Having to attend a trial in a location other than their home caused various issues for the interviewees. Firstly, it meant that the victim-survivor had to travel and dedicate considerable time to participate in *gacaca*. M20 had been raped by multiple perpetrators and had to 'appear in court on almost every *gacaca* day' in two different sectors, which 'cost (her) a lot of time'. M20 explained that having a trial in a different area also increased the risk of biased or corrupted *Inyangamugayo* being on the panel:

Basically, the defendants from XXX seemed to have no respect for me. Also, their *Inyangamugayo* attempted to ignore some of the things that I was saying because they were related to the defendants.

For M1, having to attend a trial in a different place added further stress and anxiety to the already challenging experience of testifying in *gacaca*:

I presented my case in XXX near YYY and that was not my home town. I was scared of that place because that is where all the horror that I went through happened. I went there at night to give my testimony.

¹⁴⁴⁵ As previously mentioned, all interviewees, including those who had submitted a written testimony, still had to attend their trial and all but one were still asked to answer at least some questions by the *Inyangamugayo*.

M1 did not report some of her perpetrators because ‘those people live so far away so I could not go there to present a case against them’.

Up to seven years may have passed between raising a case and having it tried by a *gacaca* court. The lengthy wait between reporting the case and the actual trial has been criticised by Kaitesi and Haveman, who explain that because of the competency regulations regarding trying sexual violence cases and the ‘clear ineffectiveness’ of the ordinary courts in prosecuting these cases, victim-survivors (as well as perpetrators) ‘did not have the chance to access justice without undue delay’.¹⁴⁴⁶ Nevertheless, hardly any interviewee criticised the timing of their trial. On the contrary, one interviewee (M8), when asked how much time had passed between raising her case and her trial, responded: ‘They made sure that I did not have to wait for a while’. Only one interviewee (M6) indicated that in her view, it took a long time for her case to receive any attention after she raised it. While M6 had raised her case ‘in the middle of it [the information-gathering phase] she explains that she ‘was never called’ until they ‘finally called [her] ... in 2008’.

8.1.2.2.5 Privacy

Gacaca law underwent various changes during its time of operation to protect the privacy of victim-survivors better when reporting their cases. From 2004, the reporting of sexual violence cases was no longer permitted in public, even if victim-survivors had preferred to do so.¹⁴⁴⁷ Various interviewees discussed these privacy requirements:

M7: Even if I tried to say something about what happened to me, they would not want me to talk about it in public. ... The rape cases always happened in private. They were never discussed in public.

R: Does that mean that you never mentioned anything about you being raped in public?

M1: No, that was not allowed. We had the trial in private.

R: Would you talk about rape in those meetings?

M17: It would sometimes come up. It was not allowed to talk about rape in public; you would do it in private. They called the people who had been victims of rape to come and discuss it in private.

¹⁴⁴⁶ Kaitesi and Haveman (n 36) 396.

¹⁴⁴⁷ As discussed in Chapter 4 (4.2.3), victim-survivors could report their cases in private to an *Inyangamugayo* of their choice, to the judicial police authorities or the public prosecution service, either in writing or verbally, *Organic Law N° 16/2004* (n 84) art 38.

The law of 2004 also allowed victim-survivors to report their perpetrator(s) in writing,¹⁴⁴⁸ and several interviewees raised their cases in this way.¹⁴⁴⁹ While this reporting option reflects a sensitive approach that considers needs for privacy, it seems as though it did not always work as well in practice as had been intended. One interviewee (M21) explained:

I wrote the letter from home and I went to hand it in. Right after handing that letter in, people started spreading rumours that I had been raped and that I had HIV. You would hand in the letter in public and their families would also be told that he was being accused of rape so they would know what the letter was about. They would also tell their families about our cases whenever they would go to visit them in prison.

Furthermore, it appears that not all *Inyangamugayo* who received information about sexual violence cases observed confidentiality, as in the case of M6 (discussed above).

Some community members reportedly witnessed a victim-survivor drop off a handwritten note and guessed what the matter was about, confirming a concern that had been raised by Eftekhari.¹⁴⁵⁰ All *gacaca* trials dealing with sexual violence were to be held *in camera*.¹⁴⁵¹ Considering the pressing need for privacy of the interviewees, the *in camera* regulation was an important feature of *gacaca* to support victim-survivors. The interview material suggests that in those trials, where the privacy provisions were observed, the interviewees appreciated having to speak in front of a minimum number of people. M8 noted: 'I was happy that there were no other people in the room'.

While the *in camera* regulation had been well intended to protect the identities of affected victim-survivors, the interview material supports concerns raised by Haskell that it was not always possible to prevent the public from learning what a trial was about.¹⁴⁵² Many interviewees reported having been raped in public so their communities were already aware of it. Emilienne confirms that in her opinion, only very few women were not known as victim-

¹⁴⁴⁸ Ibid art 38.

¹⁴⁴⁹ M6, M10, M14, M17, M21. M6 explained that the initial letter of accusation that she had submitted to report her perpetrator was used for the basis of her testimony during her trial. The other interviewees noted that they either gave verbal testimony or wrote up a separate version of their testimony to be used during the trial.

¹⁴⁵⁰ Eftekhari (n 469) 21.

¹⁴⁵¹ *Organic Law N° 13/2008* (n 95) art 6. Kaitesi (n 29) 232. See Chapter 4 (4.2.3) and 7 (7.4.3) for information on who was permitted to attend an *in camera* trial.

¹⁴⁵² Haskell (n 96) 114.

survivors, since most women had been raped in public.¹⁴⁵³ Some interviewees had raised their cases in public before the privacy provision for reporting cases was introduced, including M2:

We did everything regarding the trial in private but everything was spoken in public during the phase of gathering information. Besides, all the village or community knew everything.

One interviewee (M6) explained that her rape was public knowledge, since '[t]he people who raped us would go and brag about it in public'. This point is further supported by Emilienne who explains that even if a woman had been raped in a private environment, perpetrators frequently talked about what they had done, revealing the identity of the affected victim-survivor. Several interviewees mentioned that the public could guess what a trial behind closed doors was about, as evidenced by the following excerpt of the interview with M1:

R: Did anything related to your case happen in public?

M1: No, everything happened in private. ...

R: Do you think the public got to know what happened to you?

M1: Of course people knew. They knew about everything even before the case. Whenever I arrived, I heard people whispering: 'There is that woman who was raped and her baby was killed.'

R: Did people know about your case at the time you went to the prosecutor's office?

M1: Yes. People also could tell that we were not coming to *gacaca* to talk about being cut with a machete.

The experience of M1 is consistent with research by HRW, explaining that 'on the day of *gacaca* sessions ... community members would see a woman and a man enter a room (with others) and therefore guess the nature of the case'.¹⁴⁵⁴ Similarly, Emilienne mentioned that everyone at the time of the trials was aware that rape cases were tried behind closed doors, and thus knew that a trial held in private was about sexual violence.¹⁴⁵⁵ Trials were likely to have been held in buildings that did not allow for complete privacy of a trial. This concern is supported by de Brouwer and Ruvebana who explain that one of their informants, while participating in an *in camera* trial, reported that 'people from the community were able to

¹⁴⁵³ Emilienne recounted how a victim-survivor during a therapy group session had explained that being raped felt like being part of a sports match or combat, because there were so many people watching.

¹⁴⁵⁴ Haskell (n 96) 114.

¹⁴⁵⁵ The issue of the privacy provisions not being practicable in the context of small communities in Rwanda was discussed in Chapter 4 (4.2.3). Emilienne noted that while trials were usually held in private so that victim-survivors did not have to share their stories in front of the eyes of a large crowd, the fact that the trial was about sexual violence was frequently publicly known.

listen and make disparaging remarks to her from the courtroom windows'.¹⁴⁵⁶ M1 explained that while her trial was held in private, the defendant's family and other community members were waiting outside the building where the trial was held, making it impossible to appear at the trial and leave in a private manner:

R: How did the general public learn about the details of the trial?

M1: They were sitting outside every time I came to the trial and they were whispering. The defendant's family also updated people about what was going on.

R: So there were some people sitting outside but the trial happened in private?

M1: Yes, the defendant's family and friends were sitting outside.

Some trials were attended by more participants than *gacaca* law permitted.¹⁴⁵⁷ Several interviewees explained that their perpetrators were accompanied by numerous family members during the trial. At least one interviewee (M11) indicated that the attendance of an audience at her trial compromised her need for privacy, since her identity and experience were afterwards shared with the public:

The one thing that was upsetting about *gacaca* was that they told us that the trial was going to happen in private between the defendant and the plaintiff but then they allowed the defendant's family members to be present during the trial and they ended up telling everyone what we said in confidence.

Having additional audience participate in their trial also made giving testimony harder for some interviewees.¹⁴⁵⁸ M10 reported that all her perpetrator's family members attended the trial and that she felt ridiculed by their reactions during the trial:

I had to say it in front of people and some were shocked and others laughed at me. You would start talking and they just started laughing. ... The one thing that was difficult was that from the time you started speaking, the people from the defendant's family started mocking you. ... They said things like 'you are alive because he raped you, you could have died' and other hurtful things like that. ... I had trouble speaking because they made me want to cry ...

Gacaca regulation 16/2008 specified that the judgement of an *in camera* trial was to be announced in public,¹⁴⁵⁹ which was confirmed by at least two interviewees (M6, M7). While

¹⁴⁵⁶ De Brouwer and Ruvebana (n 40) 949.

¹⁴⁵⁷ Discussed, for example, by M4, M10, M11, M19, and M21. This point is also supported by Emilienne who explained in similar words that while *gacaca* was meant to be held in private, it was not private in reality, because the perpetrators' families were present in many of the trials that she attended.

¹⁴⁵⁸ M4, M10, M21.

¹⁴⁵⁹ Regulation 16/2008 (n 896) art 4.

this regulation was established ‘as a safeguard for basic rights’,¹⁴⁶⁰ it still appears that it had the potential to compromise the victim-survivor’s need for privacy. Sexual violence cases were transferred to *gacaca* when most other cases had already been dealt with and people were likely to be aware that trials held behind closed doors with verdicts pronounced in public involved sexual violence cases.

8.1.2.2.6 Safety

Security officers were, by law, permitted to attend trials dealing with sexual violence.¹⁴⁶¹ The accounts of at least two interviewees suggest that the participation of security officers was an important safety feature of *gacaca* since the perpetrator(s) reportedly attacked some of the interviewees during the trials:

M20: One of them who refused to confess stood up and attempted to strangle me but fortunately they called the police and the employees from AVEGA. They surrounded us when the criminals were being sentenced. The other criminals had their hands free while awaiting their sentence but the one who attacked me was in handcuffs.

M7: After they sentenced them, one of the defendants came and found me outside where I was standing and he pushed me with his shoulder and when I was about to fall on my head, the people behind me kept me from falling. They called a policeman who was there and he came and arrested him.

Various interviewees received threats and were intimidated or attacked prior to, during and after their *gacaca* trial.¹⁴⁶² Two interviewees (M16, M23) explained that *gacaca* authorities made attempts to help alleviate the interviewees’ safety concerns. M23 noted that the *Inyangamugayo* addressed a bribery attempt by her perpetrator’s wife:

[H]is wife attempted to trick me into receiving 600, 000 RWF from her. It was a trap. I went to the police to denounce the bribe ... They asked the *Inyangamugayo* to advise her and they made sure that she understood that paying bribes was wrong.

M23 was also harassed and attacked by her perpetrator’s children on various occasions.¹⁴⁶³ M23 explained that she received help from the police and *gacaca* to deal with these incidents:

¹⁴⁶⁰ Kaitesi (n 29) 232; Kaitesi and Haveman (n 36) 397.

¹⁴⁶¹ *Organic Law N° 13/2008* (n 95) art 6.

¹⁴⁶² M2, M16, M22, M23.

¹⁴⁶³ M23 noted that she was beaten up by her perpetrator’s children, had tomatoes thrown at her at the market and rocks thrown at her house at night.

I went to the police and they gave me a phone number that I could call or text whenever they would attack me. ... I texted the police and told them who was attacking me. The police came and arrested those kids and called their parents. We went back to *gacaca* and they resolved the issue.

M16, who experienced threats and attempted murder attacks, explained that guards were sent to protect her from the harassment that she experienced after her perpetrators were sentenced at *gacaca*. However, M16 also mentioned that the guards' efforts to protect her were 'in vain'.

While the interviewees' accounts suggest that security staff present during the trials achieved a certain level of safety for the interviewees in the courtroom, it appears that the interviewees received only little help with threats and attacks outside of the courtroom. As noted by Emilienne and supported by the interview material, many interviewees and other affected victim-survivors suffered ongoing harassment from the perpetrators' families after *gacaca*.¹⁴⁶⁴ Apart from the account of M23, it does not appear that *gacaca* provided any assistance to address ongoing harassment of the interviewees by the perpetrators' families.

8.1.3 Discussion

An enabling environment was important to support the interviewees during *gacaca* in light of their fragile mental health at the time of their trial, as well as to alleviate feelings of shame when talking about crimes of a sexual nature. The interviewees were in particular need for safety and privacy to protect them from physical harm and to prevent their identities and experiences from becoming public. Several scholars have noted that the privacy of *gacaca* dealing with sexual violence prevented victim-survivors from accessing justice¹⁴⁶⁵ but this is not supported by this research. On the contrary, it appears that the privacy of the process was essential for some interviewees to participate in *gacaca* and it is questionable whether they would have pursued their cases if the trial had been held in a more public process. Nevertheless, while many interviewees appreciated the privacy of the process, it is possible that not being allowed to denounce perpetrators of sexual violence in public, even if a victim-survivor had wished to do so, may have given affected victim-survivors the impression that their experiences were too disgraceful to be spoken about, increasing their feelings of shame. This point is also discussed by Amick, who holds that the in-camera regulation

¹⁴⁶⁴ More fully discussed in Chapter 10.

¹⁴⁶⁵ For example, Amick (n 32); Kaitesi (n 29).

‘institutionalized the idea that women should be fearful or ashamed of speaking about crimes of sexual violence’.¹⁴⁶⁶

Gacaca contributed to an enabling environment in various ways, in particular through supportive treatment of the interviewees by their *Inyangamugayo*, as described by many interviewees. Various procedures contributed to an enabling environment, including:

- Privacy provisions regarding the reporting and trying of sexual violence cases;
- Option to provide allegations in writing, both to report their case and as a means to support their testimony during the trial;
- Permitting the participation of 1) security officers to provide for physical safety of victim-survivors, and 2) trauma counsellors to support victim-survivors psychologically.

However, while these procedures may have been adequate and well-intentioned, not all of them were actually practical or practiced, as reported by some interviewees. The aforementioned privacy provisions were meant to protect a victim-survivor’s identity. However, in the context of Rwandan close-knit communities, it was not always possible to keep secret that a trial was about sexual violence. Despite the privacy provision outlined in *gacaca* law, the attendance of the perpetrators’ families was, according to some interviewees, permitted in some of their trials. It appears that written statements in lieu of the interviewees’ physical presence and oral testimony were not accepted by all *gacaca* courts.

Various other procedures of *gacaca* do not align with the criteria of an enabling environment, such as the location and timing of the interviewees’ trials, even though these points were not openly criticised by most of the interviewees. Nevertheless, the experiences of some of those interviewees who suffered sexual violence in places outside their home communities suggest that the legislation regarding the location of the *gacaca* trial exacerbated, or even prevented, access to justice for some of the interviewees. Having said that, other victim-survivors may have preferred to have their cases tried outside their own communities to avoid being tried by people known to them and information being revealed to their own communities.

¹⁴⁶⁶ Amick (n 32) 54.

8.2 Participation

The main components of the process-related justice need of participation are: choice of justice mechanism; ability to influence whether a case is pursued; ability to influence the process; ability to influence the outcome; having a speaking role in the justice process; and the ability to ask questions and receive answers.

8.2.1 Relevance of participation to the interviewees

Participating in a justice process can assist victim-survivors to restore a sense of control and to regain a sense of power relative to the perpetrator. Rebuilding a sense of control and power is a critical step in the healing process of a traumatised individual. Considering the level of trauma experienced by the interviewees, as well as anxiety, fear and feelings of worthlessness, restoring a sense of control and power appears to be essential for the individual recovery of the interviewees. Therefore, participation appears to be a particularly important justice need for the interviewees. Asking the perpetrators questions and receiving answers was an important concern and motivator for some interviewees to participate in *gacaca*. Many interviewees discussed issues of corruption and bias of *Inyangamugayo* and opportunities for participation appeared to allow some interviewees to manage these issues. The extent to which the *gacaca* system provided for such opportunities is discussed in the next section. Finally, the interview material also suggests that at least some interviewees would have been interested (and were still interested at the time of the interview) in being involved in shaping the outcome of their trial.

8.2.2 Participation at *gacaca*

To evaluate the opportunities for participation of victims in a justice activity, scholars distinguish several components of participation. The following components found application in the evaluation of *gacaca*: 1) choice of justice mechanism; 2) ability to influence whether a case is pursued; 3) ability to ask questions and receive answers; and 4) ability to shape the agreement.

8.2.2.1 Choice of justice mechanism

Victim-survivors who experienced sexual violence during the genocide were not given a choice in terms of which justice mechanism they could use. Before a change to *gacaca* law in

2008, all sexual violence cases were allocated for trial to Rwanda's ordinary courts.¹⁴⁶⁷ After the change, all remaining sexual violence cases were transferred to *gacaca*. Provided that victim-survivors were aware of the jurisdictions of the various genocide crimes, those who raised their cases before 2008 would have thought that their cases were going to be tried by Rwanda's national courts. Nevertheless, no interviewee commented on having expected that her case was tried by Rwanda's ordinary courts and only one interviewee (M13) suggested that she had initially preferred to have her case tried by a professional court:¹⁴⁶⁸

When *gacaca* started, I did not have high hopes because I didn't think it was going to achieve a lot. I usually thought that trials should be handled by educated professionals.

Some interviewees, however, discussed the lack of justice options more generally. Even though the lack of options is not a shortcoming of *gacaca* itself, but of Rwanda's overall justice apparatus, the interviewees' opinions on justice options are still briefly considered below.

One interviewee (M9) did not appreciate *gacaca*'s focus on determining guilt and punishing perpetrators with imprisonment. Instead, she would have preferred a more restorative process:

I just wish that we could have someone who could organise that we meet with those people. They should help us come together and they would ask us for forgiveness and we would forgive them. We would have good relationships after that.

Apart from M13 and M9, no interviewee indicated that they would have preferred to have their case tried by an institution other than *gacaca*. On the contrary, several interviewees highlighted the benefits of *gacaca* compared with the ordinary courts:

M22: [The *gacaca* courts] were like a miracle. Regular courts delay things but *gacaca* courts made the trials really short.

M3: I love *gacaca* because if it hadn't happened, we would have had to go to regular courts and some of us could have died from it.

M17: [W]e really liked *gacaca*. If *gacaca* hadn't happened, the trials about genocide would have never stopped in this country.

The difficulties associated with having sexual violence cases tried by the ordinary courts were outlined in Chapter 4 (4.2.2), and were also discussed by Emilienne. She explained that after

¹⁴⁶⁷ Exception to this are the cases that were tried by the ICTR, see Chapter 4 (4.2.1).

¹⁴⁶⁸ Overall, M13 spoke positively about her experience with *gacaca* and her interview did not suggest that she would have preferred to have her case tried by a professional court, only that she had thought this prior to her *gacaca* trial.

the official closure of the *gacaca* courts, some victim-survivors wanted to have their case tried by the ordinary courts. However, Emilienne thought this option would be difficult because she assumed that unlike the victim-survivor, the perpetrator would be able to afford a legal representative.

8.2.2.2 Ability to influence whether her case is pursued

The decision to lodge a sexual violence case rested with the victim-survivor, which had been determined by the *gacaca* law of 2004 and was confirmed by later versions of *gacaca* law.¹⁴⁶⁹ Prior to 2004, anyone could have brought up a case of sexual violence, which allegedly led to some community members deliberately and maliciously denouncing women as rape survivors at *gacaca*.¹⁴⁷⁰ Therefore, after 2004, *gacaca* reflected a system in which victim-survivors had full ability to influence whether their case was pursued, since victim-survivors, not the state, were considered to be the complainants under *gacaca* law.¹⁴⁷¹ With the exception of two interviewees¹⁴⁷² whose cases were raised by others without their knowledge, (M9, M20), all interviewees noted that they had made the decision themselves to raise their cases.

8.2.2.3 Ability to shape the final outcome

The outcomes of *gacaca* trials dealing with crimes of sexual violence, which were classified as Category 1 crimes, were determined by the *gacaca* sentencing scheme. This sentencing scheme did not allow for the input of plaintiffs to final sentences reached at individual trials. The interview material suggests that the interviewees were not involved in shaping the final outcome of their trial, even though some appeared to disagree with the sentences in their cases.¹⁴⁷³ At least two interviewees (M6, M17) commented that they found the sentences handed down in their trials were too lenient. One interviewee (M9) commented that she did not endorse imprisonment as an outcome of *gacaca*:

The prosecution can find evidence to convict someone without them having to confess but it does not make me happy. I did not think that sending people to prison was my main objective.

¹⁴⁶⁹ *Organic Law N° 16/2004* (n 84) art 38; *Organic Law N° 13/2008* (n 95) art 6.

¹⁴⁷⁰ More fully discussed in Chapter 4 (4.2.3).

¹⁴⁷¹ *Organic Law N° 13/2008* (n 95) art 6; Kaitesi and Haveman (n 36) 397

¹⁴⁷² The analysis of the interview with M20 suggests that she still made a determination herself to have her case proceed to a trial. The material of the interview with M9 does not clarify whether she had made a decision herself to have her case tried, or whether she was summoned to testify in her own case

¹⁴⁷³ For example M4, M6, M17.

Besides, it appears that some interviewees may have preferred perpetrator responsibility to punishment.¹⁴⁷⁴

While the sentencing procedure of *gacaca* did not allow victim-survivors to influence the final sentences in their cases, there may have been opportunities for *Inyangamugayo* to consider victim-survivors' opinions on confessions and apologies of their perpetrators. Confessions and apologies could reduce a perpetrator's prison sentence,¹⁴⁷⁵ as long as they met the criteria for confessions, guilty pleas, repentance and apologies/requests for forgiveness specified in *gacaca* law.¹⁴⁷⁶ At least two interviewees (M18, M6) mentioned that they did not accept the apologies given by their perpetrators at *gacaca* as genuine. Nevertheless, it appears that all confessions and apologies given by perpetrators in the interviewees' trials resulted in at least some reduction of the final penalty,¹⁴⁷⁷ which presumes that the *Inyangamugayo*, contrary to the interviewees' opinions, found that these confessions and apologies met the requirements specified in *gacaca* law.¹⁴⁷⁸ The only exception to this might be M13, who explained: 'The court agreed with me that ... (her perpetrators' explanation of their motives) was not accurate and that is why they were punished' without a reduction of the final penalty.¹⁴⁷⁹ This comment suggests that M13's evaluation of her perpetrators' motives may have influenced the final sentence handed down by the *Inyangamugayo* trying her case.

One interviewee (M22) explained that the population's involvement in appointing the *Inyangamugayo* made her feel that she had some influence on her case: '[W]e were the ones who voted for the *Inyangamugayo* and there was no way they could all be subjective'.

While *gacaca* did not allow for the input of plaintiffs into final sentences, *gacaca* law permitted requests of a judgement to be reviewed,¹⁴⁸⁰ or for judgements to be appealed.¹⁴⁸¹

¹⁴⁷⁴ This topic was discussed, for example, by M1, M10, and M12.

¹⁴⁷⁵ See Appendix 1.

¹⁴⁷⁶ These criteria were outlined in Chapter 4 (4.2.3).

¹⁴⁷⁷ Confessions and requests for forgiveness given after an individual had been put on the list of suspects resulted in a prison sentence of between 25 to 30 years. Six interviewees reported that some of their perpetrators pleaded guilty during their trial. Only one perpetrator enjoyed the maximum reduction of penalty possible, all others received sentences of 27 years or longer.

¹⁴⁷⁸ *Organic Law N° 40/2000* (n 85) art 54.

¹⁴⁷⁹ Her perpetrators had blamed Satan and the government at the time of the genocide for the crimes that they had committed.

¹⁴⁸⁰ *Organic Law N° 16/2004* (n 84) art 93.

¹⁴⁸¹ *Ibid* art 90.

Several interviewees made use of the appeal option, some even appealed several times. Several interviewees spoke about additional opportunities that they had to influence their *gacaca* trial. M2 explained that she was not comfortable with the *Inyangamugayo* who were meant to hear her case, since they would have been from her neighbourhood. She requested a panel from another location. M1 recounted that she requested her appeal to be judged in a different cell to prevent her perpetrator's wife from bribing the *Inyangamugayo*, as the wife had allegedly done during the initial trial. M23 made some specific requests for her third and final appeal, which appeared to have been considered by her *gacaca* court:

I requested that we have another trial in a different court and that they should summon us by surprise this time. They sent a different panel of *Inyangamugayo* and because they had not received any bribe from him, they found him guilty and sentenced him to life in prison.

Emilienne confirmed that it was possible in certain cases to have *Inyangamugayo* exchanged, but noted that this happened only very rarely. Haskell reports that 'victims had the right to request that a judge be disqualified from hearing their case'.¹⁴⁸² She explains that in sexual violence cases, 'the ability to disqualify a judge appeared almost automatic and did not require the victim to demonstrate a judge's actual bias or conflict of interest' as was the case in other category 1 and 2 cases.¹⁴⁸³

8.2.2.4 Having a speaking or other type of physical presence in the process

All interviewees confirmed that they were present during their trial and that they had the opportunity to present their case either orally or by submitting a written statement in lieu of speaking (or a combination of both) during their trial. At least three interviewees explained that they had the opportunity to ask questions and receive answers during the *gacaca* trial.¹⁴⁸⁴ The training of *Inyangamugayo* to prepare them for trying sexual violence cases had included the handling of direct confrontation between victim-survivors and their perpetrator(s),¹⁴⁸⁵ suggesting that the participation of victim-survivors in their trials was encouraged. The kinds of questions the interviewees wanted answered and what impact receiving answers had on them is discussed in detail in the next chapter.

¹⁴⁸² Haskell (n 96) 117.

¹⁴⁸³ Ibid.

¹⁴⁸⁴ M3, M13, M20.

¹⁴⁸⁵ Kaitesi and Haveman (n 36) 399.

8.2.3 Discussion

Participation was particularly important to help victim-survivors to regain a sense of power and control, which had been destroyed by the sexual violence. Active participation by way of asking the perpetrators questions was discussed as an important experience by several interviewees and for some, it was a main motivator to participate in *gacaca*. At the same time, several interviewees did not seek any interaction with their perpetrator but highlighted the negative impact of this encounter. These differing experiences confirm that participation preferences are not uniform but may differ from individual to individual.

Gacaca provided several opportunities for the interviewees to participate in the process. Most interviewees had decision-making power about having their case tried at *gacaca*.¹⁴⁸⁶ While leaving the decision to raise a case with the victim-survivor was put in place to prevent further victimisation,¹⁴⁸⁷ Kaitesi notes that ‘it is unusual – and highly disputed – for the victim in a criminal case to determine whether the case should be tried or not’.¹⁴⁸⁸ Nevertheless, having decision-making power aligns with victim-survivors’ needs for participation and distinguishes *gacaca* from conventional criminal justice initiatives, which have frequently been criticised for limiting the influence of victim-survivors on whether or not their cases are pursued.

Gacaca was also particularly strong in terms of meeting the interviewees’ justice need of participation by giving each interviewee an opportunity to speak in the process, including by presenting their allegations (orally and/or in writing) as well as by allowing them to ask their perpetrator(s) questions or relaying a message if they wished to do so. This is another point that sets *gacaca* apart from conventional criminal justice, which has been criticised for silencing victim-survivors and not allowing them to speak in the process. Having said that, it appears that giving verbal testimony during the trial was a requirement rather than a choice for many interviewees and many interviewees highlighted how difficult they found it to talk

¹⁴⁸⁶ As discussed in Chapter 7 (7.3) and in this chapter, two interviewees had their cases raised by others without their knowledge.

¹⁴⁸⁷ Kaitesi and Haveman note that

some accusations were lodged maliciously by others in order to expose and further attack the victims, especially given the social context, where victims of these crimes are stigmatised by their families whenever they learn that one is a victim or rape or sexual torture’.

Kaitesi and Haveman (n 36) 398.

¹⁴⁸⁸ Ibid 397.

at *gacaca* about the sexual violence.¹⁴⁸⁹ This diversity in preferences of participation – including whether to present their allegations verbally or in writing, whether to interact with their perpetrator or not, etc. – highlights once more the importance of giving victim-survivors choices about how they wish to participate in a justice process.

The interviewees had only limited opportunities to influence the outcome of their trials, including by way of appealing a sentence, or by requesting *Inyangamugayo* from another area to try their case. Apart from these options, the interviewees were generally not involved in shaping the final outcomes of their trials, even though it appeared that some would have preferred a different outcome to what was decided in their case. Another limitation in terms of participation option – albeit of Rwanda’s post-genocide justice system and not of *gacaca* per se – lay in the lack of alternative justice mechanisms to deal with sexual violence cases.

8.3 Information and Support

The justice need of information and support consists of several components. The following components found application in the assessment of *gacaca*: 1) advice on a) different types of justice mechanisms available, b) key players and procedures of a justice initiative, c) developments in one’s case and possible outcomes, and d) potential implications for the victim-survivor when engaging in the justice process; and 2) advocacy and support.

8.3.1 Relevance of information and support to the interviewees

When the trials of sexual violence cases started, relevant procedures had only just been established by Organic law 13/2008 and regulation 16/2008. The *in-camera* trials dealing with sexual violence differed significantly from the public *gacaca* hearings that the interviewees are assumed to have been familiar with. Since the *gacaca* trials that dealt with sexual violence cases constituted a new and unique process, it is likely that most interviewees did not have detailed knowledge about what was going to happen during their trial beyond the general information about *gacaca* provided to all Rwandans. It is likely that up to seven years lay between raising their cases and the final trials for some of the interviewees, suggesting that it would have been important for them to receive some information about the progress of their case during this time.

¹⁴⁸⁹ This point is discussed in more detail in Chapter 9 (9.1.1).

The need for support can firstly be deduced from the previously discussed high risk of re-traumatisation of the interviewees during *gacaca*. M16 explained:

Nobody had cared to understand me before. ... [Some other *gacaca* coordinators] ... got close to me during the last trial. If I had had them before, it could have given me support and it could have prevented me from getting these mental problems.

Secondly, all interviewees had lost family members during the genocide and, when asked what could have helped them during *gacaca*, some interviewees explained that they would have loved to have had family support:¹⁴⁹⁰

M13: I used to think that I should have always had someone from my family with me during *gacaca* [but all had died during the genocide].

M3: If I had had siblings, that would have been good, should have been good, because the one who died, they went with every story, they were the real witness. If I had had them, that could have helped. The entire journey that I passed, which was very hard, would not have been the same and could have been easier if my relatives had been there, because they already knew everything. Because most of the time after participating [in *gacaca*] I was traumatised because I was alone.

M8: My mother was not around to help me with all that. I did not have my family around to help me deal with it ...

The longing for family support during *gacaca* seemed particularly pressing where perpetrators attended their trial with strong family support:

M19: The one thing that made us upset [during *gacaca*] was that you were alone during the trial. The defendant had his entire family to back him up and you were alone.

M4: We got there and I was all alone, I didn't have any family members with me ... I had just come from a refugee camp and I was in pretty bad shape. I did not have any good clothes and when you don't have any clothes, you do not even shower because you just give up on yourself. ... We got there and he was accompanied by his large family and I was standing there alone. I was looking pitiful and people would have been thinking that I was a trifling little lady who was about to die. They did not think I was going to live.

The interview material furthermore suggests that psychological support was needed not only before and during, but also after their *gacaca* trial, which is evidenced by the interviewees' experiences of re-traumatisation during their trial. M13 explained that she had a mental breakdown after her *gacaca* trial and that she had to be 'followed up ... closely' by a psychologist from a local health centre. The need for support for victim-survivors in the

¹⁴⁹⁰ M1, M3, M4, M8, M13, M19.

aftermath of *gacaca* was also noted by Emilienne, who noted that based on her experience, many victim-survivors were particularly vulnerable after their trial.

8.3.2 Information and support at *gacaca*

Gacaca's contribution to information and support was assessed by analysing whether the courts provided sufficient information to victim-survivors about their functioning and potential/actual outcomes, and whether victim-survivors received advocacy and support during the process. These points are discussed separately below.

8.3.2.1 Information about key players and procedures

To introduce *gacaca* to the Rwandan public and communicate any major changes made to the process during its years of operation, the Rwandan Government ran 'sensitization campaigns' across Rwanda.¹⁴⁹¹ As part of these campaigns, Emilienne recalls flyers and radio programs.¹⁴⁹² However, in her view, the main work of informing the population about *gacaca* was done by staff of IBUKA. Emilienne recounted that in her role as trauma counsellor she assisted in organising meetings in all sectors of Rwanda whenever major changes were made to *gacaca* law so that the IBUKA staff could explain these changes to the population.¹⁴⁹³ It thus seems likely that the changes of *gacaca* law in 2004 and 2008 regarding sexual violence were communicated in the same manner, although this was not specifically confirmed by any interviewees in the study.

Approximately half of the interviewees reported their cases in private by approaching the prosecution office or an *Inyangamugayo*, including by way of submitting a letter of accusations. These approaches suggest that these interviewees were aware of the various options of how to report a case.¹⁴⁹⁴ Those interviewees who had raised their cases in public, or had their cases raised by a support person in public, may have done so before the changes to the law in 2004.¹⁴⁹⁵ One interviewee (M5) explained that she raised her case in public,

¹⁴⁹¹ Bornkamm (n 76) 40, 48, 67; Email from Emilienne MUKANSORO (n 1460).

¹⁴⁹² Email from Emilienne MUKANSORO (n .1460).

¹⁴⁹³ Ibid.

¹⁴⁹⁴ Those who raised their case in public may have done so before the changes to the law in 2004, or they did so after 2004, either because they chose to do so or because they were not aware of other options.

¹⁴⁹⁵ As noted in Chapter 7 (7.3), most interviewees did not recall in which year they had raised their case. They were only able to specify whether they thought that it was during the information collection or trial phase. Since information collection and trial phase started at different times across different areas of Rwanda, it is not possible to assess in which year the interviewees would have raised their case.

because she was not aware that she could have reported it in private.¹⁴⁹⁶ While many interviewees had some knowledge about reporting options, the interview material is not clear in terms of how the interviewees attained this information, whether it was through those ‘sensitization campaigns’ organised by the Rwandan Government or by NGO staff. One interviewee (M4) explained that she ‘asked some people for advice on how to present (her case)’. M23 said that she was given information about reporting options but did not specify who provided that information:

During *gacaca*, they used to tell us that women who had been raped could find *Inyangamugayo* whom they trust and present their case before it gets revealed in the *gacaca* courts.

At least three interviewees mentioned that they had worked as an *Inyangamugayo* themselves,¹⁴⁹⁷ and they appeared to be well informed about certain procedures and legislation. Most other interviewees seemed to have been informed at a minimum that sexual violence cases were to be tried in private and several interviewees noted that it was allowed to be accompanied by a support person.

One interviewee (M11) mentioned that she and other victim-survivors received some information about the *gacaca* process from an *Inyangamugayo* prior to her trial and that this information helped to put them at ease:

The *Inyangamugayo* talked to us about the process and there was one lady whom I survived with who was also on the panel and she explained to me what the process was going to be. Her name was XXX and she also had been raped. She told us not to be afraid. ... She assured us that the police were there to ensure our security. The people who were there would do their best to comfort us and it was nice.

8.3.2.2 Information about developments in one’s case and possible / actual outcomes

Assessing how well *gacaca* informed the interviewees about developments in their case is difficult, because this point was rarely discussed during the interviews. M6 mentioned that while she had raised her case ‘in the middle of (the information collection’, it took until 2008 for her to be informed about the status of her case. This example suggests that some victim-

¹⁴⁹⁶ Since M5 did not specify when she raised her case, it is uncertain whether the option to report in private had already been put into place or not.

¹⁴⁹⁷ M2, M3, M16.

survivors may not have received any information between raising their case and the notification that their case was to be tried at *gacaca*.¹⁴⁹⁸

Most cases discussed during the interviews appear to have been tried in one day,¹⁴⁹⁹ suggesting that provision of these interviewees with information about the developments of their case once it had reached the trial phase would not have been needed.

Some interviewees seemed to have some understanding of *gacaca's* sentencing scheme, which may have assisted some in making sense of the sentences given to their perpetrators.¹⁵⁰⁰

M13: Rape is a crime that usually should be punished by the death penalty but they explained to us that since the death penalty does not exist anymore in Rwanda, if the perpetrator confesses to the crime, they are sentenced to 20 years in prison. The guy to whom they sent me confessed and he got 20 years but the rest of those people pled not guilty and they were sentenced to life in prison.

At the same time, at least two interviewees (M6, M21) commented that they were not sure about or did not fully understand the outcome of their own case. M21 explained: 'I hear that some of them have been sentenced to 30 or 40 years', suggesting that she may not have been well informed about the outcome of her trial. M6 thought her perpetrator, who had been sentenced to 28 years imprisonment, was only convicted for murder, but not for raping her.

M6: I heard the sentence he was given and I thought it was just for killing people.

R: [The researcher] wants to know if they explained to you why they chose those 28 years.

M6: They just read their verdict and I didn't meet with them afterwards so that they could explain it to me. ... After they read their verdict, we just went home. I did not want to appeal because they were going to tell me that they gave him those years because he had asked for forgiveness. They say that when someone asks for forgiveness, their sentence has to be reduced. I thought that if I appealed, it would be up to the same people to try him again so I didn't even bother.

While M6 did not specifically make this suggestion, it is possible that additional information about the final sentence may have helped her to better understand how the perpetrator's sentence had been determined.¹⁵⁰¹

¹⁴⁹⁸ M7, M14.

¹⁴⁹⁹ As discussed in Chapter 7 (7.1), some cases required several trial sessions across several days.

¹⁵⁰⁰ Including M13 and M21.

¹⁵⁰¹ A better understanding of the final sentence may have contributed to a greater sense of validation of the interviewee's suffering. The justice need of validation and in how far final sentences influenced the interviewees' sense of validation is more fully discussed in Chapter 9 (9.5).

8.3.2.3 Information about potential implications

The interview material suggests that at least some interviewees were aware of some potential consequences when raising their case. Several interviewees noted that they had not raised their cases lightly but that they had carefully deliberated about whether or not it was worth reporting their perpetrator.¹⁵⁰² One interviewee (M6) reported that the letter with allegations against her perpetrator, which she had privately submitted to an *Inyangamugayo*, ended up '[making circles]' among the *Inyangamugayo* and was allegedly viewed by all of them 'one by one'. When asked how she felt about her letter '[making circles]' M6 responded: 'That was bound to happen', indicating that M6 had been aware of such consequences when raising her case.

The interview material does not suggest, however, that any information about potential implications was provided by the NSGC. Emilienne noted that while at least some victim-survivors were aware of some potential consequences when participating in *gacaca*, such information was neither provided by the Rwandan Government nor by survivor organisations in general.¹⁵⁰³ According to her, information about possible implications was predominantly provided by the trauma counsellors who accompanied victim-survivors during *gacaca*.¹⁵⁰⁴ Emilienne acknowledged, however, that even the trauma counsellors were unable to assess the full range of possible implications.¹⁵⁰⁵ She explained that many victim-survivors were neither accompanied by a trauma counsellor nor did they have the opportunity to meet their trauma counsellor prior to the trial, and therefore never had the chance to discuss possible implications with a professional.¹⁵⁰⁶

8.3.3 Advocacy and support at *gacaca*

Gacaca functioned without legal representation of either the plaintiff or the accused, which is why no interviewee was represented by a lawyer or other legal support person. Nevertheless, Organic law 13/2008 allowed for a trauma counsellor to accompany victim-survivors during their trial, thereby laying the foundations for psychological support of victim-

¹⁵⁰² Including M19, quoted above (7.2).

¹⁵⁰³ Email from Emilienne MUKANSORO to Judith Rafferty, 2 March 2019.

¹⁵⁰⁴ *Ibid.*

¹⁵⁰⁵ *Ibid.*

¹⁵⁰⁶ *Ibid.*

survivors.¹⁵⁰⁷ Kaitesi explains that during the drafting of the law, Members of Parliament had acknowledged that victim-survivors needed ‘to be prepared ... to assess their willingness to confront the pain of speaking out’ and requested ‘that the draft should consider whether the victim may choose someone to participate in their trial’.¹⁵⁰⁸ Kaitesi further notes that the Parliament felt strongly about victim-survivors ‘being given some form of assistance during the trial, ranging from psychological, legal or any other assistance that would prevent any further pain’ to the victim-survivors.¹⁵⁰⁹ While the final law only refers to trauma counsellors and does not specifically mention legal assistance for victim-survivors, the interview with Emilienne suggests that her role as trauma counsellor was not limited to providing psychological support but could extend to advocacy and, in some cases, representation of the victim-survivor during the trial. Emilienne recalled a few cases where she advocated for her clients by discussing modifications of procedures with the *Inyangamugayo*.¹⁵¹⁰ Emilienne believed that in some of the cases that she accompanied, it would have been possible for her to negotiate with the *Inyangamugayo* that she would attend in place of her client.¹⁵¹¹

The majority of interviewees confirmed that they were supported by a trauma counsellor (six of them by Emilienne) or another support person assigned to their case during their trial. Emilienne noted that not all victim-survivors had the opportunity to talk to a trauma counsellor prior to their process but sometimes met them the first time in the court room. While Emilienne expressed concern about the lack of preparatory meetings between victim-survivors and their counsellors in some cases, she also admitted that these might sometimes have been impossible because of logistical challenges. At least one interviewee (M12) explained that she met her trauma counsellor for the first time in the courtroom, while two interviewees (M13, M22) mentioned that they were familiar with their trauma counsellors before their trials started. Five interviewees reported that they were not accompanied by a

¹⁵⁰⁷ *Organic Law No 13/2008* (n 95) art 6. The article specifies that ‘Trauma Counsellors may follow up a matter being tried *in camera*.’

¹⁵⁰⁸ Kaitesi (n 29) 231.

¹⁵⁰⁹ *Ibid* 231.

¹⁵¹⁰ For example, Emilienne recalled one case where she had asked for a special authorisation for the victim-survivor to be absent from the trial because of the victim-survivor’s poor mental health. Emilienne suggested that there may have been other because of the similar cases like this, where other trauma counsellors or psychologists may have represented their clients at various stages during a trial. Another example of how Emilienne advocated for one of her clients is discussed in footnote 1439.

¹⁵¹¹ Emilienne elaborated that being able to negotiate process features was mainly due to the fact that she was well known by the *Inyangamugayo* in the areas where she worked.

trauma counsellor at all and that there was no one else to support them during their trials. The lack of support of some victim-survivors was also discussed by Emilienne and by Haskell who reports that 'due to the limited number of trauma counsellors around the country' some victim-survivors 'appeared on their own or with a relative or friend'.¹⁵¹²

Several interviewees who were accompanied by a trauma counsellor highlighted the benefits of receiving this support to help them cope and give them strength.¹⁵¹³

M1: I am thankful that the government thought about having some trauma counsellors who were always there for us and went home with you in case you had a trauma episode. The trauma counsellors sympathised with us and helped us go through our pain. I think that our trauma counsellor listened to so many things that we told her and I sometimes think what we told her becomes a burden for her to carry around all the time. ... She was with us every step of the way. She was our rock during rape trials and she always came with us all the way to our homes. She was like a parent to us.

R: What made you strong during *gacaca* and helped you to keep going?

M10: The one thing that made me stronger was seeing those trauma counsellors because I knew that they were going to be there to help if I was not doing well. It helped me feel strong and tell my story without fear.

M6: There was a trauma counsellor who was assigned my case. ... It helped in the sense that I did not feel alone and I knew that whatever happened, she would be there to help me.

At least two interviewees (M23, M16) received advocacy support (and other support) by other professionals involved in their case. M23 recounted that two AVEGA representatives assisted her in having her perpetrator arrested and also took on an advocacy role by appealing a not-guilty verdict of the same perpetrator. M23 explains that the AVEGA staff 'contested the court's decision and filed for a second appeal for ... [her]'.¹⁵¹⁴ M16 did not specify whether she had a trauma counsellor on her side but explains that in her fifth and final trial 'the district provided ... [her] with people to support ... [her] and even police for ... [her] protection'.

Some interviewees were supported by family or community members during *gacaca*, or participated in their trial together with other victim-survivors. These interviewees noted how important this support was for them:

M10: I also had some family members who came to support me. ... We had many people who went with us to trial. There were some neighbours who came to support me. I was not alone.

¹⁵¹² Haskell (n 96) 116.

¹⁵¹³ Including M1, M2, M3 M6, M10, M18. Out of these, M1, M3 and M18 were accompanied by Emilienne.

¹⁵¹⁴ Furthermore, M23 noted that she received advice by the jury member on how to handle harassment by the perpetrator's family.

M20: There were some other people present who were stronger and they stood up and supported me ... They also had been raped. We were a group of women ... There were so many eyewitnesses who volunteered to testify and there were also many of the other victims whose cases had already been tried. They supported me so much ...

M6: I always think about the people who survived with me and who were close to me through the entire process. They have helped me cope with my situation. There are some of them who saw my letter and they came to visit me. They knew about my situation and they came to see me to help me cope with it and stay strong.

M8: I was lucky to have the support of my husband the entire time. ... [H]e was the one who pushed me to go to *gacaca* and not be afraid. My husband's support made me stronger and I could look the perpetrator in the eyes and not be afraid.

In contrast, not having a trauma counsellor or other support person on their side during the trial appeared to be a very difficult experience for those interviewees who attended their trial on their own:¹⁵¹⁵

M5: Only the people I met at *gacaca* supported me. My neighbours said that they did not want to get into conflicts. I would go alone. ... I don't know what kept me from fainting because I went ... [to *gacaca*] alone. ...

M15: I wish I had had someone to help me with the trial. I did not like the feeling of being alone against the world. ... The people who were there would sometimes deny what happened to me and I did not have anyone to back me up.

M4: *Gacaca* did not make me stronger because I did not have anyone to back me up. It could have been better if my family had been around. ... I didn't have any family members with me, no neighbour came to support me, when you are miserable, no one cares about you.

These experiences suggest that support from a trauma counsellor and/or other support person was important to facilitate participation for victim-survivors in their *gacaca* trials.

While psychological support received during the trial was greatly appreciated, nearly half the interviewees indicated that they would have preferred more support during *gacaca*.¹⁵¹⁶ Some of them specified that they had hoped for some legal advice and advocacy during *gacaca*:

M20: During the *gacaca* trials, it would have been better if we had had people like lawyers to help us defend our allegations. There was a time AVEGA said it was going to send lawyers to help people in courts, then I was so happy, and I was like: 'I won't waste my time appearing in courts anymore. I will only send them papers and the lawyer sorts out the rest.'

M5: I wish had had someone to advise me because they made things so hard for me that I could not even sleep.

¹⁵¹⁵ M4, M5, M11, M15, M21.

¹⁵¹⁶ M1, M3, M4, M5, M8, M11, M13, M15, M16, M18, M19, M20.

M16: I asked for help from some government officials that I didn't even know. At times, I crashed meetings at the district where there were some people attending from Kigali. I would write them a note asking them to advocate for me but they would ignore it.

M11: We did not have the right to claim any reparations at that time. They just told us that we had had our case and that was it. We did not have anyone to represent us and claim that for us. Whenever the trial was over, that would be the end of it. They brought the criminal to prison and we went back home.

Some interviewees reported having received support and advice about their case from their *Inyangamugayo* and other *gacaca* authorities.¹⁵¹⁷ M5 explained that she sought and received advice about her case from a *gacaca* coordinator, while M18 noted that she '[talked] to one woman who was on the panel of *Inyangamugayo* at the cell level'. M13 noted that one *Inyangamugayo* 'who was in charge of counselling' assisted her 'with putting the case file together'.

Such support was confirmed by M16, who worked as an *Inyangamugayo* herself and who also tried sexual violence cases as the court's president. She explained that she supported victim-survivors in various ways during their trial:

I started to talk with different women and if they agreed, I would write down everything for them. Then I would hand them the note for their trial. This was to prevent them from forgetting. ... [E]veryone wanted my court as they felt welcomed to me due to the fact that I had talked to them before. ... It made me feel more confident and empowered me as well as others.

Emilienne suggested that more support prior to the trial would have been needed to prepare victim-survivors and to discuss possible implications with them. Nevertheless, she also noted that it was impossible to provide this support with the limited resources available:

We often met a group of women only once in one meeting and prepared them all together at the same time, but that wasn't really enough. Not all women had the opportunity to talk to a trauma counsellor before their process, I don't even think that would have been possible.¹⁵¹⁸

Emilienne noted that there was only limited psychological support available for victim-survivors after *gacaca* finished:

¹⁵¹⁷ M5, M11, M13, M16, M18.

¹⁵¹⁸ Email from Emilienne MUKANSORO (n 1503).

Unfortunately, numerous women were not accompanied after *gacaca*, not even during *gacaca*, there were some initiatives of organisations of genocide survivors like AVEGA and IBUKA, but only few for women who were in need of support. Even today, there is a large number of victims of rape who participated in *gacaca* and who have never been accompanied psychologically. The *gacaca* authorities did not organise long term psychological support and there are only few initiatives like mine.¹⁵¹⁹

One interviewee (M13) explained that one of her *Inyangamugayo* privately organised a support group for victim-survivors in the aftermath of their trials:

We are 95 women in that [support] group. I have been a member for three years. I was encouraged to join this group by its president who was also the president of the *Inyangamugayo* during my trial. She wanted to gather all the women who have the same situation so that she could try to do something good for them. She was on the panel of *Inyangamugayo* during *gacaca* trials and that is how she got to know the women who had been raped. She did some sort of research in the effort to help people.

8.3.4 Discussion

While only a few interviewees specifically mentioned information as a justice need, detailed information about the functioning of *gacaca* appeared necessary since the in-camera trials at *gacaca* were a unique process that most victim-survivors would not have been familiar with prior to their trial. The need for advocacy and support, in particular psychological assistance, was discussed by many interviewees and can also be deduced from the previously noted poor psychological health of the interviewees at the time of their *gacaca* trial, and the high risk of re-traumatisation. The need for support was particularly pressing for those whose perpetrators attended their trial accompanied by their families, to address at least some of the power imbalance.

It appears that at least some interviewees had some, albeit limited, knowledge of the functioning of the trial, including the roles of key players, some procedures, as well as possible outcomes according to the *gacaca* sentencing scheme. The interview material is not clear about whether this knowledge was relayed through the NSGC, or third parties, including NGOs such as IBUKA. Some interviewees were aware of some possible implications when engaging in *gacaca*. However, because of the high risk of significant social and economic consequences when identifying as a victim-survivor in Rwanda, more information and support

¹⁵¹⁹ Ibid. As outlined in Chapter 2, Emilienne ran several therapy groups and individual therapy for victim-survivors. Initially, some of these groups were financed by a non-governmental organisation. However, funding for these groups ceased in 2016 and since then, Emilienne has been running her support groups privately without the financial support of an organisation.

to help victim-survivors make an informed decision about whether or not to participate in *gacaca* may have been advised. This concern was also raised by Emilienne, who noted that victim-survivors had overall little knowledge about what was going to happen during their trial, claiming that they needed much more information and would have benefited from preparative work for their participation in the *gacaca* trial.

Gacaca made several important contributions to victim-survivors' need for support, including by permitting a trauma counsellor to accompany victim-survivors during their trial. While the counselling support was not delivered by the NSGC itself, *gacaca* collaborated with several NGOs who provided these trauma counsellors. Chapter 4 discussed how additional support was reportedly provided through the Rwandan Ministry of Health by way of training and services to prevent re-traumatisation as well as to assist victim-survivors who experienced re-traumatisation during *gacaca*.

While many interviewees appreciated the support they received from trauma counsellors, their families or other support people, five interviewees (and according to Emilienne many victim-survivors overall) attended their trials on their own. Therefore, it appears that support to assist victim-survivors who participated in *gacaca* was limited. Nearly half of the interviewees specifically mentioned that they had hoped for more support during *gacaca*, including emotional support from their family and community, but also advice and advocacy. The interviewees' call for more support is consistent with Morris' findings of her study with Rwandan victim-survivors who participated in *gacaca* and who also flagged more support as their most common suggestion for improving *gacaca*.¹⁵²⁰ In addition, it appears that Rwandan victim-survivors would have benefited from psychological support, not only during but also in the aftermath of their trial.

8.4 Conclusion

This chapter analysed the relevance of process-related justice needs for the interviewees, and assessed how they were met by *gacaca*. It addressed both primary research questions. Process-related justice needs include an enabling environment, participation and information and support. All these needs were important in view of the interviewees' poor psychological health at the time of the trial and the high risk of re-traumatisation. In terms of an enabling

¹⁵²⁰ Morris, Meghan Brenna (n 100) 70-1.

environment, supportive treatment by the *Inyangamugayo*, as well as privacy of the process, were particularly important in view of cultural norms concerning sexual violence, as well as the risk of stigma and associated social repercussions. Physical safety of the interviewees during *gacaca* was a specific concern because of the reported harassment and threats from their perpetrators and/or the perpetrators' families and communities, aimed at preventing the interviewees from testifying.

Overall, participation appeared important to assist the interviewees in re-establishing some control and power relative to their perpetrators. More specifically, it appeared important that the interviewees had decision-making power to raise their case, as well as opportunities to relay their version of the sexual violence and ask their perpetrators questions. The information component of the justice need of information and support was only rarely discussed, possibly because other needs were more pressing. On the other hand, the need for advocacy and support were discussed by many interviewees and appeared to be particularly pressing for those who experienced high levels of trauma at the time of their trial, as well as for those who had lost numerous family members during the genocide and who faced well-supported perpetrators during their trials. Many interviewees highlighted specifically the need for psychological support and emotional support from their families.

Gacaca met at least some components of each process-related justice need, but also fell short in meeting others. Since the basic environment in which the *gacaca* trials took place allowed for limited opportunities to create an enabling environment, much depended on the behaviour of the *Inyangamugayo* and the victim-survivors' support person(s) to either facilitate the interviewees' participation in the process or make it more difficult. While many interviewees discussed issues of corrupt and biased *Inyangamugayo*, many also highlighted that they felt well supported by the *Inyangamugayo* who judged their cases. Therefore, supportive treatment by their *Inyangamugayo* stands out as a key achievement of *gacaca* in terms of creating an enabling environment.

Gacaca provided several opportunities for participation, including by giving victim-survivors power to decide whether they wanted to have their case tried, as well as by giving the interviewees a presence in the process. The latter was achieved by allowing the interviewees to tell their version of the events in their own words, and by permitting and facilitating direct interaction between the interviewee and perpetrator(s), if the interviewees wished to do so.

These opportunities for participation positively distinguish *gacaca* from conventional criminal justice processes, which have frequently been criticised for their lack of participatory options. At the same time, meeting their perpetrator was one of the most difficult things for many interviewees in the whole *gacaca* process, and not all interviewees experienced this personal encounter as beneficial, but instead described it as a traumatising experience. Having to give detailed oral testimony during the trial was also not appreciated by all interviewees. Several interviewees appreciated the option of submitting their testimony in writing as an alternative to having to give detailed oral accounts. However, it appears that this option was not accepted at all *gacaca* courts.

While the interviewees had only limited knowledge about the *gacaca* process or potential outcomes and implications of their participation, many interviewees were aware of at least some procedures, key players and possible outcomes, indicating that they had received at least some information about the handling of sexual violence cases at *gacaca*. At the same time, *gacaca's* role in communicating information about *gacaca* to victim-survivors could not be ascertained. The interviewees' experiences with *gacaca* suggest that more information prior to their trial, in particular regarding potential consequences when participating in a process that could not guarantee anonymity, would have been helpful. This point was also stressed by Emilienne.

Finally, *gacaca* contributed significantly to meeting the interviewees' needs for support by creating the legal framework to enable trauma counselling support during the *gacaca* trial and by collaborating with several Rwandan NGOs who provided these counsellors. Five interviewees reported that they attended their trial on their own, suggesting that support resources were not always available. Apart from counselling support, the interviewees reported having received advocacy and other support from their families, *Inyangamugayo* and other *gacaca* authorities, as well as by NGO staff. At the same time, the interviewees discussed the need for more psychological and other support, including advocacy, before, during and after *gacaca*, as well as for more emotional support from family members. The absence of family support during some of the interviewees' trials is not a shortcoming of *gacaca* itself but a consequence of the genocide and may therefore be particular to the Rwandan context. Nevertheless, the fact that many interviewees sought support from those close to them may be relevant for the design of future justice processes in other settings.

9 CHAPTER 9: OUTCOME-RELATED JUSTICE NEEDS

This chapter analyses the interviewees' outcome-related justice needs and assesses how *gacaca* met these needs. The outcome-related justice needs considered for the analysis were introduced in Chapter 5 and are listed in Table 9.1 below. Based on these needs, the chapter is divided into seven sections. Similar to the structure of Chapter 8, each section analyses firstly the relevance of each justice need for the interviewees, followed by an assessment of how the need was supported by *gacaca*. Each section concludes with a discussion of the most important outcome-related justice need for the interviewees, as well as of the main contributions and limitations of *gacaca* in meeting the need. The conclusion of the chapter then summarises the major findings of these discussions.

Table 9.1: Outcome-related Justice Needs

Outcome-related Justice Needs
1. Truth
a. Truth-telling
b. Truth-seeking
2. Consequences
a. Punishment
b. Alternative consequences
3. Perpetrator responsibility
4. Validation and Vindication
5. Safety
6. Reparation
7. Empowerment

While the chapter considers seven outcome-related justice needs, a neat analysis of the interview data according to these needs was not always possible for two reasons. Firstly, the experiences of the interviewees were so complex and diverse that different interpretations of these experiences are possible. Secondly, most of the outcome-related justice needs are interlinked and certain comments of the interviewees related conceptually to several needs simultaneously. Where the interviewees' experiences concerned several needs at the same

time, they are discussed as part of the justice need that appeared to be most relevant, while links and relationships to other relevant justice needs are highlighted and discussed.¹⁵²¹

9.1 Truth Recovery

Truth involves two distinct categories: truth-telling and truth-seeking. The various components of these two categories and their relevance to the interviewees are discussed in the next two sections.

9.1.1 Truth-telling

Truth-telling involves victim-survivors telling the story of what happened to them and the impact of the crimes committed against them, preferably in a significant setting. Truth-telling may serve as a means to provide evidence as part of a justice process. Victim-survivors may value truth-telling for individual reasons, including personal catharsis and the desire to expose the perpetrators and the crimes committed, as well as details about the victimisation of self and others. The justice need of truth-telling also includes a process of being heard by someone who matters. Victim-survivors have different preferences in terms of who they would like to hear their truth. They may wish to tell the truth to their communities, to official authorities, to the broader public, to their perpetrators or to several of these audiences.

9.1.1.1 Relevance of truth-telling to the interviewees

Truth-telling was discussed by nearly all interviewees and emerged as one of the main reasons why the interviewees had participated in *gacaca*. As the analysis below shows, the interviewees had different preferences for who they wanted to receive their truth. The target audience included their own families, the perpetrator's family, their communities (and the perpetrators' community if these were different from their own), the *Inyangamugayo*, as well as a broader audience such as the Rwandan Government, and possibly people outside Rwanda. Different elements of the truth were highlighted as important. Most interviewees thought that it was important to reveal the truth about their perpetrators and what they had done, while some interviewees wanted to focus on their personal victimisation and suffering (and that of other victim-survivors). Depending on which element of the truth was important, different truth-related objectives emerged. Chapter 7 discussed that several interviewees

¹⁵²¹ All of the outcome-related justice needs are covered in one comprehensive chapter because of the complex interconnections that are discussed as part of the analysis.

gave detailed accounts about what the perpetrators had done to them, because they viewed the information as necessary to have them convicted and punished. Besides providing evidence, many of those who focused on telling the truth about their perpetrators also appeared to pursue exposure of the perpetrators. Those who focused on their personal victimisation seemed predominantly to seek exposure of the crimes committed and their consequences as well as personal catharsis. The next section distinguishes the relevance of exposure and personal catharsis for the interviewees and then assesses *gacaca*'s contributions to truth-telling overall, and to exposure and personal catharsis in particular.

9.1.1.1.1 Relevance of exposure

Many interviewees emphasised the exposure of their perpetrators as their main motivation to tell the truth.¹⁵²²

M2: [R]aising my case, I was not feeling well so I wanted to reveal those people to the community before I die.

M1: I was motivated by my desire for justice. I wanted *gacaca* to expose all the criminals. There were so many people who we could not suspect to be criminals but other people would point the finger at them. We were shocked by some people.

Those who sought exposure of their perpetrators predominantly wanted to do so in front of the perpetrators' communities.¹⁵²³ Only one interviewee (M7) mentioned the Rwandan Government as the preferred receiver of her truth:

I wanted to do my best to expose the tragedy that had happened in this country. I wanted it to be uncovered so that people could see it ... I also wanted the government to see atrocities that its people had committed.

At least one interviewee (M19) also sought exposure of her perpetrator 'in front of God':

My aggressor ... was a pastor. He was disguising as a good person and I wanted to expose him in front of God.

As the comment of M19 also shows, some interviewees appeared to value the exposure of perpetrators particularly because the perpetrators and their families had tried to 'hide' and disguise the crimes committed during the genocide:

¹⁵²² M1, M2, M3, M5, M7, M16, M18, M19.

¹⁵²³ Including M2, M5, M7, M10, M16, M19. As discussed in Chapter 6, several victim-survivors were raped by people from their community.

M7: Their crime had to be exposed and they did not want it to come out because they had wives.

M5: I thought that *gacaca* was going to come and unveil the hidden secrets ... They did not want what they did to get out and they were not happy to see it in unveiled for all to see.

Some interviewees appeared to think the exposure of their perpetrator(s) would lead to social sanctioning (alternative consequences), and/or help to experience safety, validation, vindication and perpetrator responsibility.¹⁵²⁴ Specific examples are discussed under each respective justice need.

One interviewee (M16), who survived as the only individual from a house where 30 women had been kept to be raped daily,¹⁵²⁵ wanted to expose the truth about what had happened to her and to all the other women and children in the house. M16 explained that she felt it was her duty to 'speak on ... behalf [of herself and other victim-survivors] and on the behalf of the people [they] ... lost' and 'fight for justice, in the name of all the victims ... [she] had been with'.

I raised my case because the genocide highly affected women. ... What matters is to show people the truth of what took place in that neighbourhood, and no one else could do it except me. ... Many people I knew who had been violated died then.

One interviewee (M21) wanted to reveal the crimes done to her so that her family was aware of her experiences and the harm she suffered:

Since I already knew that I have HIV at that time, I thought I was going to die but I wanted my children to continue following the trial. I wanted them to know that I was going to die because of being a victim. I wanted them to know what had happened to me, the reason why I was going to die and the consequences of genocide.

9.1.1.1.2 Relevance of personal catharsis

Overall, personal catharsis was discussed to a far lesser extent than exposure as an objective of truth-telling. Nevertheless, a few interviewees indicated that they felt it was important to talk about their personal victimisation to receive validation for their pain and suffering, which fits the definition of personal catharsis discussed in Chapter 5 (5.1.2):¹⁵²⁶

¹⁵²⁴ Safety: M7, M10; vindication and validation: M16; punishment: M19, M7; perpetrator responsibility: M7, M19.

¹⁵²⁵ Discussed in Chapter 6 (6.2).

¹⁵²⁶ M6, M16, M18, M21.

M6: I thought that my story was not something I should keep hidden because those *Interahamwe* were after my life. ... I knew that they had hurt me and messed with my health and that I was going to have to face some consequences from it. I wanted to share my pain with other people. ... I wanted the people to understand that I have gone through a lot.

The comment also suggests that it was important for M6 to talk about the consequences suffered, which relates to ‘talking about the impact of a crime’, an important element of truth-telling. While only a few interviewees discussed personal catharsis in the context of their *gacaca* participation, many interviewees highlighted the value of talking to others about their experiences outside *gacaca*.¹⁵²⁷ One interviewee (M3) explained that for reasons of personal catharsis, she wanted to talk about the truth to her perpetrator’s family after *gacaca* had finished:¹⁵²⁸

When [the dad of her perpetrator] ... was released from prison, because I wanted to get it off my chest, I went to him and we talked about it. ... I thought that it would not be healthy for me to stay angry at them [her perpetrator’s parents] because it was going to create some animosity amongst us, so I went to talk to them so that I could get it off my chest.

Several interviewees mentioned that they valued talking about their experience in general, without specifying a receiver of their story,¹⁵²⁹ such as M3:

I never struggle to talk about it because God gave me the strength and I find that talking about it makes me stronger than keeping quiet.

The interview material indicates that a safe and confidential environment was important for the interviewees to benefit psychologically from talking about their experiences. Many highlighted the value of sharing their stories with other victim-survivors who could relate to the interviewees’ suffering.¹⁵³⁰ Nearly all interviewees appreciated the opportunity to share their stories with the researcher of this thesis.¹⁵³¹

9.1.1.2 Truth-telling at *gacaca*

All interviewees confirmed that they gave testimony during their trial, primarily orally, but in some cases in writing or a combination of both. Several interviewees reported having given

¹⁵²⁷ More fully discussed in Chapter 10 (10.3).

¹⁵²⁸ As another example, Emilienne recounted a story about a victim-survivor who wanted to talk to her perpetrator’s children to reveal to them what their father had done to her. The children had been shunning and harassing her for many years after the genocide and, according to Emilienne, the victim-survivor thought it was important to make the children aware of what their father had done to her.

¹⁵²⁹ M3, M6, M12, M14, M17, M20.

¹⁵³⁰ More fully discussed in Chapter 10 (10.3).

¹⁵³¹ Noted in Chapter 2 (2.9) and more fully discussed in Chapter 10 (10.3).

‘their version of the events’, indicating that they were able to relay their story in their own words, which is an important component of truth-telling. Several interviewees indicated that they felt they were heard by their *Inyangamugayo* during their trial, reflecting another element of truth-telling.¹⁵³² M1 noted:

M1: I was really happy about getting a second chance during the appeal because ... [the *Inyangamugayo*] listened to me and I had a chance to give them all the details of the crime.

The interviewees appreciated the opportunity to tell their story for the purpose of exposure and personal catharsis. The next sections analyse how these two purposes of truth-telling were supported by *gacaca*.

9.1.1.2.1 Exposure at *gacaca*

Some interviewees had raised their cases at a public *gacaca* hearing during the early stages of the information collection phase, when all information was collected in public, and had therefore had an opportunity to expose to their communities their perpetrators and the crimes committed. However, those interviewees who reported their perpetrator(s) after 2004, had to do so in private and were not allowed to expose any details of sexual violence to their communities, even if they wished to do so.¹⁵³³ Nevertheless, some interviewees who reported perpetrators after 2004 may still have achieved some public exposure of their perpetrators and at least the nature of the crimes committed without having to give any details in public, as noted by M19:

R: You mentioned earlier that you needed to expose that man. Do you think you were successful?

M19: People knew who he was. They only listen to you in private during the trial. You raise the case in public in his home village. You would stand up and say that the man has hurt you in ways you cannot discuss in public and people would know what it was.

Gacaca trials dealing with sexual violence were to be held *in camera*, which is why the audience to hear victim-survivors’ full stories was by law limited to those who were permitted to attend a sexual violence trial. However, some of the interviewees’ trials were not as private as they had thought and hoped, and some reported that the perpetrators’ families and other community members attended their trial.¹⁵³⁴ While the privacy of affected interviewees

¹⁵³² Including M1, M10, M18.

¹⁵³³ More fully discussed in Chapter 8 (8.1).

¹⁵³⁴ See Chapter 7 (7.4.3) and Chapter 8 (8.1).

would have been compromised by the attendance of other community members, it is possible that some interviewees experienced this as an exposure of their perpetrators to their community.

The judgements reached during sexual violence trials (and the names of affected defendants), were to be announced in public,¹⁵³⁵ which meant that at least some information about perpetrators was supposed to be exposed to the community. However, contrary to this regulation, at least one interviewee (M1) reported that her verdict was announced privately in the forum of her *in-camera* trial, and it is possible that verdicts reached in other cases were similarly announced behind closed doors. Nevertheless, no interviewee criticised the privacy regulation as an obstacle to truth exposure. On the contrary, many interviewees explained that in their opinion, *gacaca* was successful in exposing the truth.¹⁵³⁶ When asked what the best thing was about *gacaca*, M3 responded: 'It's that the truth was revealed.' Other examples are:

M16: I am happy for the *gacaca* courts that helped to reveal to everyone the truth ... There is nothing else except the truth that was revealed.

M1: *Gacaca* exposed the truth. It gave us an opportunity to know who people really were and know how to live with them. The criminals were exposed and punished for their crimes.

M18: The truth was exposed even though the criminals felt like the crime was not big enough to be noticed.

One interviewee wanted the truth to be shared beyond the borders of Rwanda and explained that she thought *gacaca* achieved this objective:

M7: During *gacaca*, the people who committed crimes were exposed and we really liked *gacaca*. ... The truth was unveiled even to the foreign countries that were denying that genocide did happen. They realised that genocide really happened and that people were looking for justice.

9.1.1.2.2 Personal catharsis at *gacaca*

Most interviewees indicated that their testimonies focused on the details of the crimes committed without elaborating on the impact of the crime. In order to have a therapeutic effect, talking about the experiences of sexual violence must not be limited to 'a recitation of fact' but should also include 'a reconstruction of how the victim-survivor felt when she

¹⁵³⁵ Regulation 16/2008 (n 896) art 4, outlined in Chapter 4 (4.2.3).

¹⁵³⁶ Including M1, M3, M5, M7, M11, M16, M18, M19.

suffered the act(s) of sexual violence'.¹⁵³⁷ Therefore, it appears that *gacaca*'s contribution to personal catharsis was limited. Talking about their experiences of sexual violence in detail at *gacaca* was extremely difficult for many interviewees and led, at least in the short term, to re-traumatisation for some. M6 explained:

I talked about all that in court and I stopped at some point because I thought they had already heard enough and I didn't have to say anything more. ... [T]alking about it made me go back to that dark place and I couldn't talk about it anymore at some point.

These experiences confirm concerns about the risk of re-traumatisation rather than personal catharsis in the context of truth-telling as noted by other researchers. Nevertheless, verbalising the facts of a traumatic event can be the first step of developing a more holistic narrative, which again forms part of the individual recovery of a traumatised individual. Having to give details at *gacaca* about the crimes experienced may have assisted the interviewees in constructing a story of their victimisation. M10 explained that the *Inyangamugayo* in her trial supported her to tell her story by respecting her feelings and giving her time to 'think for a while or ... to fight crying'. M10 further explained that this experience built her strength to tell her story:

You can hear that I do not want to cry now while talking about it. You can ask me anything about *gacaca* now and I would not cry. ... I am no longer scared of talking about things.

Several interviewees noted that giving their testimony at *gacaca* reassured them that it was 'okay' to talk about sexual violence,¹⁵³⁸ which appears to have validated the experiences and diminished feelings of shame for some of these interviewees.¹⁵³⁹ When asked what was good about *gacaca*, M12 explained: 'I was happy about the fact that we were given an opportunity to talk about what has happened to us'. Further examples are:

M15: What has made us confident was that the *Inkotanyi* gave us a platform to talk about what has happened to us. When they won, they made sure that we understood that it is okay to talk about what we went through.

M16: Luckily, the government was giving us time to express ourselves.

¹⁵³⁷ Herman, *Trauma and Recovery* (n 342) 176-7.

¹⁵³⁸ M12, M15, M16, M18.

¹⁵³⁹ Discussed more fully below (9.5).

Several interviewees highlighted that they felt heard by their *Inyangamugayo* and supported to tell their story, which is also likely to have contributed to the interviewees' experiences of personal catharsis.

Finally, several interviewees noted – especially because it was so difficult to speak about sexual violence – that talking about sexual violence at *gacaca* felt to them like an achievement and sign of strength and bravery:¹⁵⁴⁰

M10: During *gacaca*, I would have trouble speaking because they would make me want to cry but I would gather my strength and keep going.

M15: There were some women who felt ashamed of what had happened to them and they would keep it as a secret. I didn't. ... There were so many women who were raped but only about 1 per cent of them can have the courage to talk about it. The majority have decided to keep quiet because of fear. It was hard to come up with the courage to talk about it.

In this sense, giving testimony appears to have supported the personal catharsis of some interviewees, in particular in terms of receiving validation, and contributed to their empowerment, which is more fully discussed in Sections 9.5 and 9.7.

9.1.2 Truth-seeking

Truth-seeking involves asking questions and receiving answers about a person's victimisation, such as why a perpetrator committed the crime and why a person was targeted. In the context of mass violence, truth-seeking may also involve information unrelated to the original crime, such as questions about what happened to loved ones.

9.1.2.1 Relevance of truth-seeking to the interviewees

At least three interviewees explained that they had questions about their victimisation, which they sought to have answered by their perpetrators during *gacaca*.¹⁵⁴¹ All three interviewees specified that they wanted to know the reasons for the victimisation:

M13: I just wanted to know those people so that I could ask them why they did what they did to me.

M20: I kept asking them if there was something I had done to offend them. 'Wasn't I a kind person to you?' I asked ...

M3: I knew that people had killed my people, done things to me, killed my siblings. I wanted to know what made them do that and know who those people were.

¹⁵⁴⁰ M3, M10, M15, M16, M18, M19. Further examples are outlined in Section 9.7.2.

¹⁵⁴¹ M3, M13, M20.

M3 further explained that she wanted to find out more information about her perpetrators and their reasons for targeting her so that she would know 'how to behave towards them in the future'.¹⁵⁴²

9.1.2.2 Truth-seeking at *gacaca*

Victim-survivors asking questions and perpetrators answering them appears to have been actively supported by *gacaca*, since *Inyangamugayo* had specifically been trained to handle direct interactions between the victim-survivor and the perpetrators. The three interviewees who had wanted to ask questions confirmed that they had the opportunity to do so and receive answers during the *gacaca* trial.¹⁵⁴³

M3: I basically got my answers. During the trial, I was able to ask some questions and they would answer some and shy away from others. However, they answered the majority of my questions after the trial ended.

While truth-seeking was discussed only by these three interviewees, it appears that *gacaca* met the expectations of these interviewees in terms of allowing them to pose their questions. *Gacaca* seemed to provide a forum that encouraged at least some perpetrators to respond to at least some of these questions.

9.1.3 Discussion

While truth-seeking during *gacaca* was discussed as important by only three interviewees, truth-telling emerged as an important theme from all interviews. The interviewees valued truth-telling for several reasons, including to provide evidence to enable the conviction of their perpetrators, to expose perpetrators and their crimes, and to reveal their personal victimisation and that of others. Only a few interviewees appeared to have envisioned truth-telling at *gacaca* as an opportunity for personal catharsis. It appears that exposing the truth was expected to assist with meeting several other justice needs, including safety, validation, vindication, consequences for the perpetrator, and perpetrator responsibility. The importance that the interviewees placed on truth exposure is consistent with the findings of other researchers in relation to genocide survivors more broadly, such as de Brouwer and Ruvebana. The authors found that Rwandan survivors saw truth exposure as a precondition

¹⁵⁴² As another example, Emilienne recalled working with a victim-survivor who participated in *gacaca* to find out from her perpetrator what had actually taken place, since she had been a young child when she was raped and could not fully remember the events.

¹⁵⁴³ M3, M13, M20.

to experiencing a 'sense of justice and reconciliation' as well as to support their 'ability to heal and forgive'.¹⁵⁴⁴

One interviewee discussed the duty to speak for the dead and for other victims as a driver for truth-telling, and a few interviewees indicated an interest in contributing to a public record of the genocide. However, it is notable that most interviewees were motivated to testify for personal reasons, rather than feeling a moral duty to speak for the missing or dead, or wanting to contribute to a public record as highlighted for example in research with participants at the ICTY and the SA TRC.

Gacaca contributed to truth-telling in several ways. Firstly, all interviewees gave testimony at *gacaca* by giving 'their version of the events'. In so doing, *gacaca* stands out positively from conventional criminal justice processes, which have frequently been criticised for not permitting victim-survivors to explain in their own words what happened to them and the impact it had on them.¹⁵⁴⁵ Having said that, the interviewees do not seem to have discussed the impact of their sexual violence at *gacaca*, which is also likely to have limited *gacaca's* contribution to personal catharsis. At the same time, it appears that *gacaca* provided overall more opportunities for personal catharsis than the interviewees had thought prior to their participation. Despite the re-traumatisation of some interviewees and their struggle to talk about sexual violence at *gacaca*, testifying seems to have assisted the interviewees in developing their story of victimisation and allowing them to experience validation, vindication and empowerment.

Many interviewees valued *gacaca* as a forum that allowed them to expose the truth, including to their communities and to the *Inyangamugayo*, even though truth exposure to their communities was limited at *gacaca* because of the privacy provisions regarding reporting and trying cases of sexual violence. Several interviewees appeared satisfied that their truth was heard by the *Inyangamugayo*, and they may not have sought a more public exposure of their perpetrators. Several other interviewees, however, mentioned that they had wished to expose their perpetrators to their communities and the Rwandan Government and it is questionable whether this exposure was fully achieved considering the aforementioned privacy provisions and the lack of information about these trials publicly available in the

¹⁵⁴⁴ De Brouwer and Ruvebana (n 40) 948.

¹⁵⁴⁵ Daly, 'Sexual Violence and Victims' Justice Interests' (n 12) 116.

aftermath of *gacaca*. De Brouwer and Ruvebana support this concern, noting that while *gacaca* contributed to revealing the truth about genocide crimes, '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'.¹⁵⁴⁶ Kaitesi argues that *gacaca's* privacy regulations regarding sexual violence cases 'denied women a system that allows for a choice to speak or not'.¹⁵⁴⁷ This thesis constitutes an additional means to ensure that the interviewees' experiences are made available to a broader audience.

9.2 Consequences

Consequences include punishment and alternative consequences. Therefore, after a brief overview of the overall relevance of consequences to the interviewees, the following sections distinguish analysis of punishment and alternative consequences in the context of *gacaca*.

9.2.1 Relevance of consequences to the interviewees

The interviewees were unanimous in their views that there had to be consequences for their perpetrators. The need for consequences was discussed by several interviewees using an expression that was translated as perpetrators needing to 'pay' for their crimes.¹⁵⁴⁸

M13: I always thought that whenever I was going to know who had hurt me, I would make sure that they pay for it and that is what pushed me to not keep quiet.

M7: I told him that I would only take money from him in front of the *Inyangamugayo* after they have made him pay for what he had done to me.

While these examples illustrate the interviewees' call for consequences, further analysis of the interview material revealed that 'paying' for the crimes could mean formal punishment (predominantly imprisonment) or alternative consequences, primarily exposure and social sanctioning of their perpetrators to their community, or a combination of both.¹⁵⁴⁹ The next sections discuss the relevance of punishment and alternative consequences to the interviewees, as well as how these were supported by *gacaca*.

¹⁵⁴⁶ De Brouwer and Ruvebana (n 40) 947.

¹⁵⁴⁷ Kaitesi (n 29) 218.

¹⁵⁴⁸ M18, M22, M13, M15, M3, M19, M7. These interviewees used Kinyarwanda language that the translator translated as 'pay for it'.

¹⁵⁴⁹ Including M7, M13, M15, M19, M22.

9.2.2 Punishment

Punishment in this thesis refers to formal state punishment. From a legal point of view, punishment is imposed for several purposes, including retribution, rehabilitation, deterrence and incapacitation. Other reasons why victim-survivors may request punishment include safety, validation and vindication.

9.2.2.1 Relevance of punishment to the interviewees

Punishment was by far the most requested and discussed consequence during the interviews. All 23 interviewees spoke at some stage during the interviews about punishment. Nearly half the interviewees cited punishment when asked what they had hoped and/or expected to achieve by raising their case at *gacaca*.¹⁵⁵⁰ Some interviewees indicated that for them, justice meant punishment.¹⁵⁵¹

M8: When you talk to the authorities about your situation, they are going to bring justice to it. ... I want them to know so that they could bring some form of justice my way.

R: What did you want to happen to the perpetrator when raising your case?

M8: I wanted him to be punished. I did not want him to be killed but I wanted them to punish him.

Punishment was valued for several reasons, including the four aforementioned legal justifications for punishment – retribution, rehabilitation, deterrence and incapacitation – as well as non-legal effects. After a summary of *gacaca*'s overall contribution to punishment, the interviewees' views on the purpose of punishment are discussed and an analysis is presented of how well *gacaca* supported these purposes.

9.2.2.2 Punishment at *gacaca*

Twenty-two interviewees reported that at least one of their perpetrators was found guilty and punished. Crimes of sexual violence were punished with prison sentences ranging from a minimum of 20 years to life imprisonment with special provisions, depending on whether and when the accused confessed.¹⁵⁵² According to the interviewees, many convicted perpetrators were sentenced to life imprisonment (with special provisions), while some perpetrators

¹⁵⁵⁰ M1, M2, M8, M10, M11, M12, M14, M15, M17, M21.

¹⁵⁵¹ M1, M7, M8, M16.

¹⁵⁵² See Appendix 1.

received reduced sentences of 20-30 years because they had pleaded guilty before or during the trial.

Many interviewees expressed positive feelings about their perpetrators being punished.¹⁵⁵³

M7 noted: I was happy about the fact that the people who hurt me were found and punished. That is what made me happy. When asked about how she felt about the sentence of life imprisonment for her perpetrator, M22 explained:

I was happy about it.

R: Why were you happy about it?

M22: Whenever someone has committed a crime against you and they get punished for it, it makes you happy.

Several interviewees indicated that they were satisfied with the verdicts reached by the *Inyangamugayo* and that they considered the according penalties as fair and appropriate:

M1: He got a punishment [life in prison] equivalent to the crimes he had committed.

M2: [The *Inyangamugayo*] made fair decisions particularly on this crime of sexual violence.

M12: [The *Inyangamugayo*] rendered a fair verdict.¹⁵⁵⁴

In contrast, two of the interviewees (M6, M17) whose perpetrators had received less than a life sentence – 28 and 30 years in prison – thought the penalties were too lenient. When asked how she felt about the prison sentence of 30 years for her perpetrator, M17 responded:

I did not think it was enough.

R: What did you want him to get?

M17: I wanted him to go to prison for life.

While most interviewees thought that punishment of their perpetrators was important, not all appreciated the prison sentence of their perpetrators in the same manner, including M9:

The prosecution can find evidence to convict someone without them having to confess but it does not make me happy. I did not think that sending people to prison was my main objective.

While M9 accepted that punishment was the government's way of dealing with crimes, she noted that she would have preferred to see her perpetrator demonstrate responsibility with

¹⁵⁵³ Including M1, M2, M3, M7, M12, M13, M14, M16, M22.

¹⁵⁵⁴ All five perpetrators accused by M12 were reportedly sentenced to life imprisonment.

the ultimate goal of reconciliation.¹⁵⁵⁵ Several other interviewees commented that they would have preferred perpetrator responsibility to punishment.

Many of the interviewees indicated that they wanted their perpetrators to be punished by *gacaca* for the harm they had caused and appeared to endorse a retributive approach to punishment.¹⁵⁵⁶

M14: I wanted to make sure that he gets punished for what he did to me.

M21: We wanted the people who had killed our family members and raped us to be punished.

M12: I expected that *gacaca* was going to punish the people who hurt us when we were innocent.

Some interviewees emphasised that their perpetrators should suffer as a consequence of having inflicted suffering on the interviewees, which also fits a retributive understanding of punishment.¹⁵⁵⁷

M5: I would like him to be captured and be put in prison. I would like to see him suffer with my own eyes, the way he made me suffer in the bushes.

M2: I thought that it would be better to give them a punishment. At least even after my death they wouldn't keep living happily with their families, their wives and children.

At least two interviewees (M7, M13) emphasised that their perpetrators were 'rational moral agents' who should be 'held responsible for their actions', which also aligns with a retributive approach to punishment. Even though the perpetrators of M13 tried to blame the government which had ordered the genocide for their own actions, she explained that 'a human being is capable of differentiating what is good from what is bad', which is why, in her view, her perpetrators deserved to be punished. M7 explained:

I accepted (the sentence) because they had hurt me and I was a human being ... They should not have done what they did to me as people who also have children. They shouldn't have left me to die the way they did.

While the above comments highlight the need to punish particular perpetrators for their actions, some interviewees mentioned that they valued the sanctioning of crime in general, for example as a sign that the rule of law was valued in Rwanda and that crime and impunity were not tolerated.¹⁵⁵⁸ M13 noted '[t]he fact that the people understood that whoever

¹⁵⁵⁵ As noted in Chapter 4 (4.2.3), reconciliation was also a goal of *gacaca*.

¹⁵⁵⁶ Including M1, M2, M5, M6, M7, M13, M14, M15, M16, M17, M21.

¹⁵⁵⁷ Sumner, 'Retribution' (n 1083) 387.

¹⁵⁵⁸ Including M6, M7 and M13.

commits a crime is going to be punished' as one of *gacaca's* major achievements. She further stated: 'I also rejoice to the fact that I live in a country that does not tolerate impunity and advocates for victims.' M6 explained:

The person who is found guilty of a crime needs to be punished and the one who is not found guilty should go home ... Whoever has committed a crime needs to be punished for it. The culture of impunity needs to be abolished ... They were found guilty because they knew what had happened to me so there was no way they could escape it. That was a crime that was done to many people and they told them that there was no way they were going to escape from it.

Respect for the rule of law was expressed by another two interviewees (M3, M9) who also acknowledged that punishment was something that 'the government (was) supposed to do' to deal with crime. One interviewee (M14) appreciated punishment as a measure to prevent future crime:

I wanted to be sure that we have some laws to protect us. ... I liked that they punished the people who raped us. It made me think that their children and relatives were going to see that something like that should never happen again.

However, another interviewee (M17) commented that in her view, the prison sentences handed down by *gacaca* were inadequate to deter future crime:

M17: They could have made sure to punish those criminals so hard that the crime would never happen again. They were just sentenced to serving time in prison and they might run anytime.

Punishment was also discussed as a measure to rehabilitate perpetrators,¹⁵⁵⁹ albeit to a much lesser extent than retribution and deterrence:

M13: [W]hen a criminal confesses to their crime, they feel relieved. We wish all the others had confessed and agreed to be corrected so that they could come back to the society as better Rwandans and never repeat what they did.

At the same time, M13 appeared to be sceptical about the value of imprisonment for the rehabilitation of the perpetrators, explaining that 'most of them come out of prison as the same people'. Nevertheless, at least two interviewees (M7, M14) explained that in their view, the punishment of perpetrators made the perpetrators understand that what they did was wrong:

¹⁵⁵⁹ M7, M13, M14.

M14: They [the *Inyangamugayo*] would be impartial during the trials and they punished the criminals. They [the defendants] understood that what they did brought nothing positive to them.

M7: There is no longer a feeling of guilt because those who were found guilty of crimes have realised that it was something they should not have done to another human being in the first place. If the person was sentenced to some time in prison and they have come out, when you meet on the street, they say hello to you and they continue their way and you go on your way.

The comment by M7 also indicates that in her view, punishment and completion of the prescribed sanction contributed to the rehabilitation of at least some of those involved in the genocide and to peaceful coexistence of perpetrators and victims.¹⁵⁶⁰

Many interviewees explicitly appreciated imprisonment as punishment for their perpetrators.¹⁵⁶¹ When asked what punishment she thought her perpetrator deserved, M8 responded: 'I wanted them to take him out of my sight and imprison him.' When asked what the best thing was about *gacaca*, M2 noted: 'The best thing was the fact that they got imprisoned as a punishment.' Many interviewees appeared to value imprisonment because it enabled their safety from individual perpetrators.

For some interviewees it was important that their perpetrators should suffer as a consequence of the crimes committed. One interviewee (M7) emphasised that in her view, imprisonment was an appropriate punishment to enable the suffering of perpetrators, which they deserved:

I think [imprisonment] is actually a very big punishment. It is very big because that person is going to leave their home and children behind. On the other hand, the person that he hurt and left with a disability has also suffered a lot. He committed that crime thinking that there were not going to be any consequences.

Besides an appreciation of the legal underpinnings of punishment, the sentencing of their perpetrators was valued for other non-legal effects, including empowerment, validation and vindication. These points are discussed below as part of each respective justice need.

9.2.3 Alternative consequences

Alternative consequences to formal state punishment include the exposure and social sanctioning of perpetrators, removal of perpetrators from their everyday life, redress of

¹⁵⁶⁰ Peaceful coexistence was introduced in Chapter 4 (4.1.4).

¹⁵⁶¹ Including M1, M2, M6, M8.

material harm associated with sexual violence through reparation, and other symbolic forms of punishment.

9.2.3.1 Relevance of alternative consequences to the interviewees

The only alternative to formal state punishment which several interviewees¹⁵⁶² seemed to endorse as an appropriate consequence for the crimes committed was the public exposure of the perpetrators.¹⁵⁶³

M19: I asked around and found out that [my perpetrator] ... was a pastor. ... He sent some members of his church to beg me to forgive him and keep quiet and I refused. I told those people what he had done to me and the number of people he had killed. I needed them to know who their pastor really was.

This comment of M19 suggests that she hoped the exposure of her perpetrator in front of his community would result in social sanctioning, such that he would be deprived of ‘undeserved honour, status, respect and privilege’,¹⁵⁶⁴ which he was likely to have previously enjoyed in his role as the pastor.¹⁵⁶⁵ Similarly, the fact that several interviewees valued exposure specifically because the perpetrators had tried to disguise the crimes committed during the genocide, suggests that these interviewees had hoped that exposure of the crimes would lead to psychological if not social consequences for the perpetrators.

While several interviewees raised the need for reparation or other material and financial support to deal with the material harm of the violence suffered, they did not discuss reparation in the context of consequences for perpetrators. Therefore, the topic of reparation is not discussed as an alternative consequence but as a distinct justice need later, in Section 9.6.

9.2.3.2 Alternative consequences at *gacaca*

Gacaca’s contributions to exposure of perpetrators were discussed earlier in this chapter as part of the justice need truth-telling. Section 9.5 below considers how far this exposure also led to social sanctioning of perpetrators. Besides exposure of perpetrators through truth-telling by the interviewees, *gacaca* supported alternative consequences in various ways. For example, the punishment of perpetrators according to *gacaca*’s sentencing scheme included

¹⁵⁶² M7, M18, M19.

¹⁵⁶³ Also discussed above (9.1.1).

¹⁵⁶⁴ Herman, ‘Justice from the Victim’s Perspective’ (n 9) 589-90, discussed in Chapter 5 (5.1.2).

¹⁵⁶⁵ *Ibid* 589-94.

not only imprisonment but also the deprivation of certain rights.¹⁵⁶⁶ The sentencing scheme applicable to perpetrators convicted of Category 1 crimes prescribed that '[t]heir names together with a short description of their identities and the crimes they committed, shall be posted on the history section of the Genocide memorials, at the offices of their sectors, registered in their 'criminal record' and 'published on the internet'.¹⁵⁶⁷ Provided that these consequences were indeed enforced, *gacaca* would have contributed to some additional exposure and sanctioning of perpetrators. The extent to which the perpetrators' communities, including the affected victim-survivors, would have been aware of and had access to this information is, however, questionable.

9.2.4 Discussion

Punishment was by far the most requested consequence and incapacitation (through imprisonment) and retribution appeared to be the two most endorsed reasons. Future deterrence and rehabilitation, the other two legal justifications for punishment, were also appreciated but only by a few interviewees. The high importance placed on formal punishment in general, and retribution and incapacitation in particular, is noteworthy, since it stands out as different from the findings of Nowrojee's research with Rwandan victim-survivors who participated at the ICTR.¹⁵⁶⁸ Reasons for the interviewees' focus on punishment (and imprisonment) are considered in detail in Chapter 11.

Nearly all perpetrators who had been reported by the interviewees were convicted by *gacaca*, and most of them were sentenced to life imprisonment (with special provisions). By punishing perpetrators with severe penalties, several other outcome-related justice needs, including safety, validation and vindication appear to have been met. All interviewees spoke about the need for punishment of the actual and individual perpetrator(s) only. No interviewee

¹⁵⁶⁶ These included the right to be elected; to become leaders, to serve in the armed forces, to serve in the National Police and other security organs, to be a teacher, a medical staff, magistrates, public prosecutors and judicial counsels, see National Service of *Gacaca* Courts (n 130).

¹⁵⁶⁷ Ibid.

¹⁵⁶⁸ As discussed in Chapter 5 (5.1.2), Nowrojee notes that Rwandan victim-survivors who participated at the ICTR did not prioritise punishment, see Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111. The same chapter discussed that victim-survivors in Herman's research also did not prioritise formal punishment, see Herman, 'Justice from the Victim's Perspective' (n 9) 590.

mentioned the need for punishment of those who instigated and ordered the violence, as was the case in Stover's research with survivors who had participated at the ICTY.¹⁵⁶⁹

Alternative consequences were endorsed to a much lesser degree than formal state punishment. Public exposure of their perpetrators, which was hoped to lead to social sanctioning, was the only alternative consequence discussed by some interviewees. While the exposure of perpetrators of sexual violence was limited at *gacaca* because of its privacy provisions, the interviewees regarded truth exposure through truth-telling as one of *gacaca*'s strongest points. Besides exposure of perpetrators through the interviewees' testimony, *gacaca* supported alternative consequences through its sentencing schemes. The sentence of life imprisonment, which many perpetrators received, also entailed a deprivation of certain rights and the publication on the internet of the perpetrator's identity and summary of the crimes committed.

9.3 Perpetrator Responsibility

Perpetrators may demonstrate responsibility by confessing, showing remorse, apologising, explaining actions, answering questions, paying reparations, or any other actions that provide support to the victim-survivor and that are aimed at reducing or repairing the harm caused. Demonstration of responsibility may need to occur in front of official authorities, such as a court and/or a public forum to be acceptable to individual victim-survivors. Others may prefer a personal demonstration of responsibility by the perpetrator (given in private or in public). If perpetrators do not voluntarily offer responsibility, official authorities such as a court may need to support/facilitate perpetrator responsibility.

9.3.1 Relevance of perpetrator responsibility to the interviewees

Besides truth recovery and consequences, perpetrator responsibility was one of the most directly discussed justice needs during the interviews. Most interviewees whose perpetrators

¹⁵⁶⁹ As discussed in Chapter 5 (5.2.1), for Stover's informants, achieving 'full justice' involved 'capturing and trying all war criminals, from the garden-variety killers (the so-called "small fry") in their communities all the way up to the nationalist ideologues who had poisoned their neighbours with ethnic hatred', see Stover, 'Witnesses and the Promise of Justice in The Hague' (n 980) 115

were present at their trial¹⁵⁷⁰ explained that it was very important for them to hear confessions and requests for forgiveness from their perpetrators:¹⁵⁷¹

M9: I actually wanted to meet him in person and ask him if there was nothing that he wanted to confess since we are all working hard to go to heaven. ... I wanted people to confess to their crimes and agree to what they had done. ... I wanted people to tell the truth and ... own up to their crimes.

M8: What I wanted was for him to ask me for forgiveness in front of the authorities so that they could be aware of it.

Some interviewees also spoke about wanting perpetrators to explain their actions or to feel ashamed for what they had done, which also fits the concept of taking responsibility:

M5: I wanted them to explain what they did publicly and I thought that alone was going to be enough.

M7: I wanted [the truth] to be uncovered so that people could see it and I wanted the perpetrators to feel ashamed before the eyes of the victims.

Most of these examples indicate that for many interviewees it was important that perpetrators took responsibility in a public forum for others to witness.

One interviewee (M23), who had a child as a result of being raped, had raised her case to ensure that her perpetrator would accept moral responsibility for his actions at the time of the genocide and take financial responsibility for the child.

9.3.2 Perpetrator responsibility at *gacaca*

The guilty plea procedure that allowed reduced sentences at *gacaca* initially did not apply to Category 1 crimes, which included sexual violence.¹⁵⁷² Instead, confessing to a Category 1 crime would have resulted in the death penalty,¹⁵⁷³ which may have prevented perpetrators of sexual violence from coming forward voluntarily during the early stages of *gacaca*. While the law was changed in 2001 to extend benefits of reduced sentences through confessions to perpetrators of Category 1 crimes, perpetrators who confessed crimes of sexual violence still faced a minimum of 20 years imprisonment, which may still have prevented some from voluntarily confessing to crimes of sexual violence at *gacaca*.

¹⁵⁷⁰ As outlined in Chapter 7 (Table 7.1), four interviewees noted that they had had a trial without any perpetrator present and according to the interviewees, at least 30 accused had been tried in absentia.

¹⁵⁷¹ Including M1, M3, M8, M9, M10, M11, M12, M13, M14, M20, M22.

¹⁵⁷² See National Service of *Gacaca* Courts (n 75) 19-23.

¹⁵⁷³ *Ibid.* See also Kaitesi (n 29) 202-3.

Out of the 70 perpetrators who were present at their trials, 52 denied all allegations and did not demonstrate any responsibility. Most interviewees (17) experienced at least one of their perpetrators not taking responsibility¹⁵⁷⁴ and many interviewees commented on a general lack of responsibility shown by perpetrators at *gacaca* (including for crimes other than sexual violence) in their own trial and in other interviewees' trials:

M9: I would see the crimes that some people had committed and how they were denying it instead of confessing and asking for forgiveness, and I would ask myself why that was. I wondered why they would stand there and swear in the name of God and then lie about what they had done when God could see inside their hearts and discover the truth. I wondered if they really wanted to reconcile with the people that they had hurt. Did those people have hearts? ... If people had seen you do something with their own eyes, you should not be denying it.

M13: I was hoping that they were going to ask me to forgive them but it did not happen.

One interviewee (M5) highlighted the particular lack of responsibility shown by perpetrators of sexual violence:

In all the trials that I have followed, no one has ever confessed to raping someone. Many people have come forward to confess that they have killed someone but no one has ever said that they raped someone and they were sorry for it.

Two interviewees (M9, M10) highlighted *gacaca's* limitations in terms of facilitating perpetrator responsibility in their own cases. M9 had hoped for a more restorative process than what *gacaca* had offered, noting that *gacaca* had not helped her to receive an apology and offer forgiveness in return. M10, when asked if she thought *gacaca* had assisted in making her perpetrators ask for forgiveness, responded: 'I did not mention anything about that. They were punished but there was nothing done about asking for forgiveness.'

Some interviewees noted how disappointing and hurtful it was for them that their perpetrator(s) did not take responsibility.¹⁵⁷⁵ When asked about what stood out as a difficult experience at *gacaca*, M19 explained that 'the difficult part of the trial was that he refused to confess and beg me for forgiveness'. M22 explained that she 'did not like the fact that all the defendants denied the charges against them'.

¹⁵⁷⁴ M1, M2, M4, M5, M6, M7, M8, M10, M11, M13, M14, M16, M18, M19, M21, M22, M23.

¹⁵⁷⁵ Including M1, M8, M9, M19, M22.

Several interviewees indicated that they were prepared to forgive but they thought a request for forgiveness should come first.¹⁵⁷⁶

M1: I was ready to forgive him if he was ever going to ask me for forgiveness. What hurt me was that he never even tried to apologise to me.

M8: To this day, none of them has come to me and asked for forgiveness. I still wonder how I was going to forgive people who did not ask me for forgiveness.

According to Clark, 'much of the [Rwandan] population' shares this idea that the process of forgiveness entails firstly a request for forgiveness from perpetrators, and secondly an acceptance or rejection of this request by survivors, followed by their granting or refusal of forgiveness.¹⁵⁷⁷ One interviewee (M9), who also thought that a request for forgiveness should come first, said that in her view, the perpetrators' unwillingness to ask for forgiveness was hindering reconciliation:

[F]or the sake of unity and reconciliation, I do not think that I could reconcile with someone if I haven't forgiven them first. I think that forgiveness should come before reconciliation.

Nevertheless, 10 interviewees noted that at least one of their perpetrators accepted some degree of responsibility at *gacaca*.¹⁵⁷⁸ Several interviewees explained that their perpetrators asked them for forgiveness outside of *gacaca*, including before and after *gacaca*.¹⁵⁷⁹

The most common forms of perpetrators taking responsibility at *gacaca* included confessions¹⁵⁸⁰ and requests for forgiveness.¹⁵⁸¹ At least two interviewees (M13, M20) challenged their perpetrators to take responsibility by asking them to explain why they had committed the crimes and targeted the interviewees. M13 had submitted her case against a group of men 'so that she could ask them why they did what they did to [her].'

¹⁵⁷⁶ Including M1, M8, M9.

¹⁵⁷⁷ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 284-5.

¹⁵⁷⁸ M6, M10, M11, M12, M13, M14, M16, M17, M18, M20. As outlined in Table 7.2, four perpetrators first denied and then confessed / apologised after witness statements proved them guilty or after they had been sentenced; one perpetrator 'accidentally' confessed.

¹⁵⁷⁹ For example, M3, M9, M22 noted that they received a genuine request for forgiveness before or after *gacaca*. These three examples are discussed in the next section (9.3.3). M6 and M19 also spoke about having received an apology before *gacaca*, but neither interviewee considered these as genuine, but a strategy to prevent the interviewees from pursuing their case.

¹⁵⁸⁰ M10, M11 (first denied, then confessed after witnesses had confirmed him guilty), M12, M14 (first denied, then confessed after witnesses had confirmed him guilty), M16 (one of her perpetrators 'accidentally' confessed'), M18 (perpetrator confessed after he was first sentenced).

¹⁵⁸¹ M6, M13, M17, M20.

M13: I asked them that question ... and they would just tell me that it was Satan who pushed them to do it. They said that Satan used the government that was in place at the time and the government ordered them to do what they did.

R: How did you take such a response?

M13: That response was not satisfactory to me because as a human, I know that a human being is capable of differentiating what is good from what is bad.

Blaming a greater power (Satan and the government at the time) for their actions lacked individual responsibility of her perpetrators, which appeared to be important for M13 to witness. Nevertheless, one of her perpetrators had demonstrated individual responsibility by helping her to make a list of all other perpetrators involved in the sexual violence against her (as well as confessing and asking for forgiveness at *gacaca*). Similarly, the perpetrators of M20, when she asked why she had been targeted, explained that ‘they were disappointed in their behaviour’ and ‘humbly begged [her] ... for forgiveness’, reflecting individual responsibility.

The interviewees reported diverse reactions to their perpetrators’ demonstration of responsibility. Three interviewees whose perpetrators confessed expressed relief about these confessions.¹⁵⁸² When asked how she felt about her perpetrator’s confession at *gacaca*, M14 responded: ‘I felt relieved in my heart. I felt like times had changed.’ In contrast, M12 reported that she was traumatised when hearing her perpetrator’s confession.

Two of the four interviewees who were asked for forgiveness highlighted it as a positive experience during *gacaca* and explained that they offered forgiveness in return.¹⁵⁸³

M13: He asked me and the Rwandan society at large for forgiveness. Even though it was hard to see him in a positive light, it was refreshing to see. ... I personally have forgiven him.

M20: Sometimes people cry because of happiness. ... We all cried and then I told them (the perpetrators) that I had forgiven them. ... I forgave them and refused to receive any of the reparations that they had been ordered to pay me.¹⁵⁸⁴ I truly forgave them and that was the most important thing to do.

¹⁵⁸² M10, M11, M14.

¹⁵⁸³ See Table 7.2 for details about which interviewees witnessed confessions and/or requests for forgiveness.

¹⁵⁸⁴ The interview is not clear in terms of what crimes exactly these reparations were meant to address. As noted in Chapter 4 and discussed in Section 9.6 in this chapter, *gacaca* did not facilitate reparation for bodily injury, including sexual violence, but only for destruction of property.

M20 also spoke about the positive impact on her personal recovery when her perpetrators genuinely assumed responsibility, including that it helped her to overcome her feelings of revenge and forgive her perpetrators:

[T]hey humbly begged me for forgiveness and that made me feel happy ... I was very inspired by being asked for forgiveness. That created something new in me. ... I wanted to kill them all before they asked me for forgiveness. ... I have forgiven them. Before forgiving them, I wanted them to be killed and have their wives get raped like I did.

Another interviewee (M17) was asked for forgiveness during *gacaca* and accepted her perpetrator's request at the time but did not seem to feel positively about it:

M17: He asked for forgiveness when we got to court and I forgave him because God has also spared me. I did not know that I was going to be alive to that day, so I forgave him and asked God to forgive him.

R: How did you feel about the fact that he only apologised when he was taken to court?

M17: It hurt me but there was nothing I could do about it.

M17 continued to explain that she did not agree with the reduced sentence that her perpetrator received because of his confession and apology and that she had 'wanted him to go to prison for life' instead. This response indicates that she may not have fully accepted his request for forgiveness and it did not appear to have a positive impact on her personal recovery.

Two interviewees (M6, M18) did not accept their perpetrator's apologies and/or confessions given at *gacaca* at all, because they did not consider them as genuine but rather as a strategy to reduce their prison sentence:

M18: He started getting agitated when they read the sentence and the security guard came to calm him down. He then came back and tried to confess in order to get his sentence cut.

M6: He then kneeled down in court and started apologising. I asked them (the *Inyangamugayo*) to consider all the years that had gone by from 1994 to 2008 and he was only asking for forgiveness because we were in court. They asked him why he decided to rape me and what he wanted to get out of it, and all he said was that he was sorry and he understood that he had committed a big crime and that he wanted me to forgive him.

These two examples support earlier criticism of *gacaca*, which noted that some suspects confessed at *gacaca* to have their sentence reduced but not to assume genuine perpetrator responsibility.

9.3.3 Perpetrator responsibility outside of *gacaca*

While only a few interviewees reported that they experienced a genuine demonstration of responsibility at *gacaca*, some interviewees spoke about their perpetrators (or their perpetrators' families) taking responsibility outside of *gacaca*.¹⁵⁸⁵ M3 explained that one of her perpetrators apologised to her right after raping her and 'begged (her) ... to forgive him'. M3 explained that the same perpetrator continued to take responsibility for his actions in various ways:

[H]e is always humble towards me and he always comes to see me when I am sick. If my children have a problem, he comes to comfort me however he can. He always tells me that he cannot forget the things that happened during the genocide because they hurt him so much. He is disappointed in himself for hurting someone who had come to him for help.

M3 explained that she forgave that perpetrator and did not raise a case against him at *gacaca*. M9 reported that her perpetrator came to apologise to her in person before his *gacaca* trial (but after he had been reported by the interviewee's community):

M9: The one who got me pregnant ... came to see me and ... told me that everyone was telling him that he had hurt me and that he was there to ask me for forgiveness.

In response, M9 decided to forgive her perpetrator and not raise any claims against him:

At that time, people did not have the spirit of forgiveness yet and the victims were asking for a lot of money from the perpetrators. I looked at him and noticed that he was poor and had so many children but I wanted to ask him for a lot of things because he had really hurt me, which he didn't have. I thought that the best option for me was to forgive him and let only God be my provider. I did not want his children to be caught up in that drama when they had done nothing wrong. ... I did not want his children to be miserable because he was supposed to sell his land and pay me reparations.¹⁵⁸⁶

In contrast to M3 and M9, two other interviewees (M6, M19) explained that even though their perpetrators made attempts to ask for forgiveness prior to their trial, the interviewees did not accept these attempts:

M6: [B]efore the trial started, he had sent someone to me to ask me what I wanted. He wanted to buy my silence with money. ... I told him that he had had so much time where he could have asked me to forgive him and he only sent someone to me after hearing that there was a letter [of accusation]. He did not come to me on his own will.

¹⁵⁸⁵ M3, M9, M12.

¹⁵⁸⁶ As noted in Chapter 4 (4.2.3) and earlier in this chapter, *gacaca* did not facilitate reparation for bodily injury, including sexual violence, but only for destruction of property. Therefore, it appears unlikely that the perpetrator of M9 would have been sentenced to providing reparation for raping her.

M19: My aggressor ... sent some members of his church to beg me to forgive him and keep quiet and I refused.

It appears that the timing (prior to their trial) and the private forum of their perpetrators' requests for forgiveness were not acceptable to the interviewees. The interviewees did not perceive these requests as genuine but viewed them as a strategy to prevent the truth from coming out and to avoid a *gacaca* trial. In contrast, M22 explained that she was asked for forgiveness outside of *gacaca* but in front of other people and after her perpetrator had been convicted, which she considered an appropriate forum for a demonstration of responsibility:

The one who asked me for forgiveness did it from prison ... It was not easy for me to go there but I finally got the courage to do it. I went there and he asked me for forgiveness in front of many people. He did it in front of the people who had come to visit and other prisoners. His wife was also there. That gave me more strength and made me feel relieved ... I sincerely forgave him ... He had not mentioned [what he had done] during *gacaca* but he publicly confessed to everything there and then.

Two interviewees (M3, M12) explained that their perpetrators' parents asked them for forgiveness after their sons had been sentenced by *gacaca*:

M12: I remember that his mother came to my house and told me that her son was in prison for hurting not just me but many others and she wanted to know if I could forgive him. I told her that I was forgiving him.

M3: His family talked to me after the trial and they asked for forgiveness. He has fled the country but the members of his family are never going to forget what he did. ... His mother was the one who asked me for forgiveness ... They had been afraid to say anything in front of *gacaca*. ... [T]hey told me that we were neighbours in the first place and that they were sorry for everything.

Some of those interviewees who had not witnessed any perpetrator responsibility indicated their willingness to forgive if their perpetrator took responsibility in the future.¹⁵⁸⁷ M12 noted: 'I am a Christian, so I tried to overlook the pain I was living with and decided that if they came to me to ask for forgiveness, I would forgive them.' As another example, when asked 'what would happen if he apologised to [her] today', M1 explained: 'I would forgive him. If he apologised to me in public, I would forgive him.' This comment highlights once again the importance of requests for forgiveness to occur in a public forum to be acceptable to some of the interviewees. Having said that, at least two interviewees (M8, M9) decided to forgive even though they were not asked for forgiveness, neither in public nor in private. While these

¹⁵⁸⁷ M1, M8, M9, M10, M12.

interviewees forgave their perpetrators without being asked for forgiveness, they still indicated the wish to relay their decision to their perpetrators:

M8: I went to church and we learned about forgiveness and I decided to forgive him. Because I could not see him at that time, I thought that the time was going to come and that he was going to ask me for forgiveness and I was going to forgive him but he never did. I could not go to the prison to tell him that I had forgiven him but I had told God that I have personally forgiven him. If he is willing to come and ask me for forgiveness in public, I am going to forgive him. If he does not come to me, I am not going to go to him. I might go to the prison to tell him that I have forgiven him and be met with a tragedy. He might say that he left some money behind for me and that it was the reason why I came to visit him.

M9: He has not yet received his final sentence but I sent a message to him saying that my heart was telling me to forgive him.

At least one interviewee (M13) said that she wished for her perpetrators to demonstrate responsibility in front of God:

I personally have forgiven him but I think that the most important thing, which would make me happy, would be that he asks for forgiveness from God. I would like to see him face-to-face when he gets out of prison and see someone who works for God.

This comment relates to what Clark terms ‘a divine form’ of forgiveness, which explains ‘concerns the rebuilding of a fractured relationship [of the perpetrator] with God ...’.¹⁵⁸⁸

The interviewees had diverse views on the relationship between perpetrator responsibility and punishment. Some interviewees seemed to value a combination of punishment and perpetrator responsibility.¹⁵⁸⁹ One interviewee (M3) explained that while an apology would positively influence her personal attitude towards the perpetrators, it would not replace the need for formal punishment in respect of the rule of law:

The thing is that if he came to me and apologised, I would also forgive him because I have already forgiven his family. You forgive him but he still has to go to prison and pay for his crime ... because you might forgive someone but would not ask the government to not do what they are supposed to do.

¹⁵⁸⁸ Clark notes that in his research with *gacaca* participants, this idea of a divine form of forgiveness was discussed by ‘a small group of detainees’ who thought that forgiveness from God was more likely and more important than forgiveness from survivors, Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 289-4.

¹⁵⁸⁹ M3, M13, M20.

Similarly, M13 suggested that a voluntary demonstration of responsibility should positively affect the perpetrator's standing in the community and future options, but some form of censorship was still necessary:

I think that if someone voluntarily confesses to their crime, they should be corrected and be given an opportunity to come back to the society as a better Rwandan citizen who is ready to make better choices.

The need for formal punishment albeit the granting of personal forgiveness by the interviewees aligns with views of Rwandan genocide survivors discussed by Clark.¹⁵⁹⁰ Some interviewees extensively discussed the importance of punishment but indicated at some point during their interview that they may have preferred to witness perpetrator responsibility. M1, who spoke at length about her appreciation of her perpetrator's imprisonment, explained later in her interview:

I was not happy that he was sent to prison. If he had confessed and begged for forgiveness, I would have forgiven him. He denied all charges and tried to humiliate me again, so I guess he chose to go to prison instead.¹⁵⁹¹

M8 explained:

I wanted them to take him out of my sight and imprison him but I thought that if he had come and asked me for forgiveness, I would have forgiven him. He did not ask me for forgiveness and it was a shame because I could have forgiven him if he had asked me to.

Since these interviewees had also commented extensively on the benefits of their perpetrators' punishment and imprisonment, it is questionable whether they thought that a request for forgiveness would have entirely replaced the need for punishment, or whether they desired both the punishment of their perpetrators and an apology/request for forgiveness at the same time. At least two interviewees commented that in their view a genuine request for forgiveness could warrant the replacement of their perpetrators' prison sentence:

M12: I feel like if he was willing to come and ask me for forgiveness, I would ask them to release him [from prison].

M10: I took their sentences as their punishment and if they had asked me for forgiveness, I would have forgiven them because they have already received their punishment.

¹⁵⁹⁰ Clark notes that 'forgiveness at *gacaca* will not nullify all attempts at punishment against perpetrators but only direct, personal forms of punishment', Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 282.

¹⁵⁹¹ As discussed earlier in this Chapter, M1 noted that she was still prepared to forgive her perpetrator in the future 'if he apologised to [her] in public'.

R: They were sentenced to 30 years and 27 years in prison respectively. If you had the power and they asked you for forgiveness, what would you do?

M10: I would forgive them.

R: And get them out of prison?

M10: Yes, I would get them out.

9.3.4 Discussion

Perpetrator responsibility was an important justice need of the interviewees. Many interviewees spoke about wanting to hear a request for forgiveness, or, at a minimum, see their perpetrators confess to their crimes. For many interviewees, the circumstances were important, including when, where and how their perpetrator assumed responsibility. These circumstances included whether perpetrators took responsibility before, during or after they had been reported and/or sentenced at *gacaca* and whether other people were present or not. For most interviewees, it appeared important that their perpetrators assumed responsibility in public so that the simultaneous exposure of the perpetrators and their crimes was still guaranteed. Interviewees appeared sensitive to whether they perceived a demonstration of responsibility as sincere, or as a strategy for perpetrators to avoid being reported and/or to reduce their sentence.

The vast majority of perpetrators neither confessed nor apologised at their trial, which is why *gacaca*'s contribution to facilitating perpetrator responsibility was limited. Having said that, 10 interviewees experienced at least some of their perpetrators confessing, asking for forgiveness and/or explaining their actions during *gacaca*, showing that *gacaca* did make at least some contribution to perpetrator responsibility. Five of these interviewees mentioned that witnessing perpetrator responsibility had a positive impact on them, including that they felt relief, and that it helped them to overcome feelings of anger and revenge. In contrast, those interviewees who did not see any perpetrator responsibility appeared to suffer additional hardship, including because it denied those interviewees who would have liked to forgive, the opportunity to do so.

The interviewees had diverse opinions on whether perpetrator responsibility or punishment was more important and whether one of them could replace the other. While most interviewees endorsed the formal punishment of their perpetrator, a confession and/or request for forgiveness still appeared important to meet the interviewees' range of justice needs. This point is supported by de Brouwer and Ruwebana who found in their study with

Rwandan genocide survivors that survivors were more satisfied with the punishment of their perpetrators when the latter had also 'confessed to their crimes and had genuinely asked for forgiveness'.¹⁵⁹² While some interviewees seemed to prefer a combination of both punishment and perpetrator responsibility, others indicated a preference for perpetrator responsibility and implied that a sincere request for forgiveness could replace their need for punishment. Overall, the willingness of many interviewees to forgive their perpetrators, even without having received an apology, is noteworthy, especially in light of all the harm that these women experienced. This point is also highlighted by de Brouwer and Ka Hon Chu, who explain that they were 'struck' by the 'ability to forgive' of Rwandan victim-survivors.¹⁵⁹³

Several factors are likely to have contributed to the interviewees' attitudes towards forgiveness, including the importance of religion in the Rwandan culture.¹⁵⁹⁴ Several interviewees noted they were encouraged/urged to forgive at their churches:¹⁵⁹⁵

M13: As Rwandans, we are always taught to forgive others, and in our churches we are told to forgive those who did us wrong. Even though that person is the reason why you are going to die, you should forgive them if they ask you for forgiveness because you have also committed some offences in the eyes of God and He is going to forgive you.

M8: I went to church and followed a sermon on forgiveness and how we should forgive those who have wronged us.

M12: There are some new churches of 'Born again Christians' that have been introduced, and I went to pray there with my friends. When I got there, they taught us about forgiveness ...

The post-genocide rhetoric and initiatives of the government and various organisations encouraged or urged forgiveness and reconciliation, as discussed by some interviewees:

M3: There is an initiative that was started nationwide where they ask us to forgive each other, and whoever embraced it was healed from their wounds.

M12: The one thing I remember about [counselling training that I joined] is that they urged us to forgive the people who have hurt us and I have already forgiven them.

While M12 had learned about forgiveness during counselling training and at her church, she also noted: '[T]he real reason I wanted to forgive these men was because I thought that maybe God was also going to forgive me and cure me of HIV.'

¹⁵⁹² De Brouwer and Ruvebana (n 40) 951.

¹⁵⁹³ De Brouwer and Ka Hon Chu, 'Survivors' Views on *Gacaca*' (n 99).

¹⁵⁹⁴ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31) 285-7. Clark notes in particular the importance of 'Christian principles of mercy, grace, redemption and atonement': at 257.

¹⁵⁹⁵ Including M8, M12, M13.

9.4 Safety

The need for the interviewees' safety during their participation in *gacaca* was discussed earlier as part of the process need 'enabling environment'. Chapter 5 highlighted that the need for safety is not limited to a victim-survivor's participation in a justice activity, but that it also constitutes an outcome-related justice need. In the latter sense, safety relates to the prevention of future harm of self and other potential victims.

9.4.1 Relevance of safety to the interviewees

Many interviewees discussed concerns of re-victimisation or other future encounters with their perpetrator(s).¹⁵⁹⁶ At least two interviewees (M10, M19) had raised their case specifically because of this concern. Therefore, safety constitutes an important outcome-related justice need for the interviewees. The interviewees had different ideas on how their safety could be supported. One interviewee (M1) had hoped to achieve a sense of safety by having her perpetrator '[sent] ... away for life'. Furthermore, some interviewees thought that their safety could be achieved through the exposure of perpetrators, including M10:

I wanted to raise my case and make the information public because I thought it would help me with my fear of that man so I went and raised my case. ... I wanted everybody to know what they had done because I would always feel uncomfortable whenever I would meet him on the street.

When asked why it was important that the truth was exposed, M7 noted: 'It was useful because you have to expose the witch before she kills all your children.' It appears that these interviewees thought that they were safer if their communities were aware of what the perpetrators had done, possibly because they hoped that their communities would ensure their safety. Some interviewees indicated that a demonstration of responsibility could provide them with a sense of safety. Some interviewees explained that a genuine request for forgiveness could warrant, in their view, a suspension of the perpetrator's prison sentence.¹⁵⁹⁷ M10, who had mentioned being scared of her perpetrators and who appreciated her perpetrators' imprisonment to provide for safety, explained that she 'would get them out [of prison]' if they asked her for forgiveness. This comment suggests that being

¹⁵⁹⁶ Including M1, M8, M10, M16, M17, M19, M20, M21.

¹⁵⁹⁷ M1, M10,

asked for forgiveness might make future encounters with her perpetrator less threatening, so that imprisonment as a means to guarantee safety may no longer be perceived as necessary.

9.4.2 Safety through *gacaca*

Many interviewees highlighted *gacaca*'s contribution to their sense of safety.¹⁵⁹⁸ When asked which benefits she saw in *gacaca*, M20 responded:

I was happy because some criminals who were hiding got caught. I also used to hide and feel frightened right after the genocide. ... When the *gacaca* courts were introduced, they all came out of hiding because everything had already been revealed. ... I am peaceful now. I used to receive some tracts from the aggressors saying that they would rather die instead of being taken to court. I thought they were going to kill me but I am very grateful to *gacaca* because I feel safe today. I am not worried about anything.

It appears that the interviewees' fear of re-victimisation was predominantly alleviated by the prison sentences reached at *gacaca*, supported by this comment by M8:

Gacaca has put him away and I was relieved because every time I saw him, I thought that he was probably going to hurt me again. ... We all had different things that we appreciated about the process but what I personally liked was the fact that I used to feel scared of meeting him on the street, while I would be walking with my husband, but I no longer have to worry about that because of *gacaca*. It has lifted a weight off my shoulder. There was no other way for me to have some peace of mind, except maybe if I had fled and went somewhere far away. *Gacaca* was important to me because it has brought a sense of security and I can go and live anywhere without fearing for my life.

Other examples are:

M19: I felt relieved (after he was sentenced) because I would see him on the street and feel scared.

M14: I used to always be on edge that he would come after me. His sentence reassured me that he would never come back.

Some interviewees seemed to be predominantly concerned about having to see their perpetrator, rather than being harmed again,¹⁵⁹⁹ and they appreciated the imprisonment of their perpetrators because it provided psychological safety:

¹⁵⁹⁸ Including M1, M8, M10, M14, M18, M20, M21, M23.

¹⁵⁹⁹ M1, M18, M21, M23

M1: I am doing well today because of *gacaca*. I used to think that I was going to go completely insane if I ever crossed the man who raped me on the street. The *Inyangamugayo* ... sentenced him to life in prison in solitary confinement because he had been found guilty of rape. They took him to prison and that gave me some peace of mind. ... When they found him guilty, I felt relieved. I always dreaded the moment I was going to see him again and they took him away from me. That was refreshing.

M21: What made me happy was that they sent them to prison. They were punished. When they are not in prison, you meet them on the street and they give you nasty looks.

M23: When you see someone who has hurt you in front of you, all you see is what they did to you. I am so glad I don't have to see him anymore.

Even the punishment *in absentia* to time in prison seemed to provide one interviewee (M15) with a sense of safety, since she believed the sentence ensured that her perpetrators would not return:

The good thing about it is that even though I did not get to see those perpetrators, they are always going to be afraid of coming back and they will remain in the bushes.

Some interviewees valued *gacaca's* achievement in re-establishing the rule of law and contributing to future deterrence through punishment, suggesting an interest in the future safety of both self and others. Nevertheless, most interviewees who discussed the topic of safety focused on personal safety. One exception, M23, who had a child as a result of the rape, also appreciated safety for her child, which was achieved by her perpetrator's imprisonment:

In my opinion, if had kept quiet, he [my perpetrator] would be stopping my child every time, which could have severely traumatised him to the point of becoming unable to study. He would have become crazy which I could not tolerate. Even though the result of the trial did not do anything to support me or my child, I at least have peace because nobody disturbs me today.

At least two interviewees indicated that feeling safe after their perpetrators' imprisonment supported their psychological recovery.¹⁶⁰⁰ M8, who had previously spoken about her fear of meeting her perpetrator in the street, explained:

Gacaca came and sent them all to prison and that helped me so much and it gave me peace of mind. That was the reason why I started thinking clearly and realised that I have to forgive.

M1, who had expressed her appreciation of *gacaca* for enabling her safety by sending her perpetrator to prison, stated:

¹⁶⁰⁰ M1, M8.

When *gacaca* ended, I started to focus on how to make an income for my family. I started doing some farming and I was in the right mind to make a budget for my family and stick to it. I could not do any of that before *gacaca*.

The comment by M1 demonstrates that a sense of safety also supported her empowerment, linking the two justice needs of safety and empowerment.

It is possible that the sentence of life imprisonment as opposed to shorter prison sentences contributed to the sense of safety of most interviewees. In contrast, the reduced prison sentence of a perpetrator did not fully alleviate the safety concerns of at least one interviewee, which may explain why she had hoped for a life sentence instead. M17 mentioned during her interview that she was scared that her perpetrator would return home and murder her, noting: ‘When it comes to the law, if it is their time to get out of jail, they will have to go home and there is nothing I can do about that.’

9.4.3 Discussion

Personal safety was a dominant concern for many interviewees, especially those who lived in close proximity to their perpetrators and feared encounters during their daily lives. The interviewees discussed several ways of how a sense of safety could be supported, including through punishment in the form of imprisonment, exposure of perpetrators to their communities and perpetrators demonstrating responsibility.

Gacaca achieved safety for the interviewees predominantly by punishing perpetrators with prison sentences, in many cases to life imprisonment. This contribution of *gacaca* was also highlighted by Emilienne, who noted that victim-survivors who had participated in *gacaca* would frequently highlight feeling safe because their perpetrators were in prison as the main (and sometimes only) change to their life after *gacaca*.¹⁶⁰¹ Several interviewees also indicated that they experienced a sense of safety after exposing their perpetrator(s) and after receiving an apology or request for forgiveness, linking safety to truth-telling and perpetrator responsibility. *Gacaca*’s contributions to exposure were predominantly appreciated by the interviewees. *Gacaca*’s role in facilitating perpetrator responsibility, however, was valued by only very few interviewees, thereby also limiting *gacaca*’s achievements of safety through

¹⁶⁰¹ Emilienne explained that she had discussed the question of what difference *gacaca* had made in the lives of victim-survivors during sessions of her therapy groups. While Emilienne reported that many group participants – including both victim-survivors who had participated in *gacaca* and who had not participated – believed that the imprisonment of their perpetrators did not make up for what they had suffered, those victim-survivors who did participate explained that at least they were feeling safe because their perpetrators were in prison.

perpetrator responsibility. Having said this, safety through perpetrator responsibility was perhaps not as important in light of the prison sentences handed down to most perpetrators. Those interviewees who experienced safety through one of the measures outlined earlier indicated that feeling safe formed the basis for their individual recovery. The experience of a sense of safety allowed some interviewees to 'start thinking clearly again' and to gain energy to resume work. This point is consistent with the stages of trauma recovery outlined by Herman. Herman explains that safety is the first step in the individual recovery of a person affected by trauma and constitutes a precondition before the traumatised person can make any further progress.¹⁶⁰²

9.5 Validation and Vindication

Validation involves an acknowledgment of 'the basic facts of the crime' and its impact on the victim-survivor. Such acknowledgment can be declared by the perpetrator (for example by way of a confession), official authorities (for example a court), or the victim-survivor's community. Validation may also include an assurance that the victim-survivor is neither blamed for the sexual violence nor 'thought to be deserving of what happened'.¹⁶⁰³

Vindication refers to the condemnation of an act as unlawful and immoral. Victim-survivors may prefer to hear such condemnation from an official authority and/or by members of their community. Vindication may also be expressed by formal state punishment or by alternative consequences such as reparation, as well as by an apology from the perpetrator or alternative demonstrations of perpetrator responsibility.¹⁶⁰⁴

9.5.1 Relevance of validation and vindication to the interviewees

The need for validation and vindication can firstly be deduced from the trauma and other psychological consequences experienced by the interviewees. The interviewees suffered from feelings of shame, embarrassment, guilt and humiliation as well as from disempowerment and disconnection from others due to the nature of the crimes

¹⁶⁰² Herman, *Trauma and Recovery* (n 342) 155.

¹⁶⁰³ Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388.

¹⁶⁰⁴ While vindication and validation were introduced as distinct justice needs in Chapter 5, they are also interwoven in several ways. Furthermore, the interview material indicated various overlaps of how the interviewees experienced validation and vindication during *gacaca*. Therefore, the two justice needs are discussed in the same section in this chapter. Where possible and appropriate, distinctions between validation and vindication are made during the discussion.

experienced. These sufferings are likely to result in a heightened need for validation and vindication. Interviewees bemoaned that people around them did not consider them as victims of a serious crime but trivialised the crimes and the harm caused by referring to rape as ‘just sleeping with the Hutus’.¹⁶⁰⁵ Several interviewees felt ridiculed and blamed for having experienced sexual violence, noting that they were called ‘prostitutes’ and ‘sluts who would have sex with men during the genocide’.¹⁶⁰⁶ In addition, several interviewees explained that others around them, particularly the perpetrators’ families, tried to make them feel guilty for reporting the crime and being responsible that their perpetrators were imprisoned, such as M11: ‘[His mother] was saying that we wanted her son to die in prison.’ These experiences of blame, harm minimisation and ridicule further underline the interviewees’ need for validation and vindication. One interviewee (M16) specified that she participated in *gacaca* because she thought ‘it would be [her] opportunity to get rid of the stigma [she] was experiencing from everyone around [her]’.

9.5.2 Validation and vindication at *gacaca*

Rape and sexual torture were classified as Category 1 crimes. Despite various issues associated with this classification,¹⁶⁰⁷ categorising rape and sexual torture as some of the most serious genocide crimes is likely to have provided victim-survivors with at least some degree of validation and vindication. Firstly, the explicit inclusion of the terms ‘sexual torture’ and ‘rape’ acknowledged, at least to some degree, the range of experiences of victim-survivors.¹⁶⁰⁸ This categorisation acknowledged rape and sexual torture as some of the most horrible crimes committed during the genocide (validation), and highlighted the wrongfulness of such acts by labelling them as grave genocide crimes and showing that these crimes were seriously condemned by the Rwandan Government (vindication). Rape and sexual torture were classified as genocide crimes and were tried as such, firstly by Rwanda’s national court (as well as by the ICTR) and, from 2008, by *gacaca*.

It may be argued that the transfer of sexual violence cases to *gacaca*, where they were tried by lay judges who were not formally trained and qualified, devalued the seriousness of the crime. This concern is confirmed by research undertaken by HRW with Rwandan victim-

¹⁶⁰⁵ Quote by M23. Similar experiences were reported by M1, M6, M10 and M15.

¹⁶⁰⁶ M1, M15, M23.

¹⁶⁰⁷ Discussed in detail in Chapter 4 (4.2.2).

¹⁶⁰⁸ Kaitesi (n 29) 192-4.

survivors, of which 'two women felt that having their cases tried in *gacaca* minimised the seriousness of rape'.¹⁶⁰⁹ On the other hand, the allocation to *gacaca* also meant that these cases were not left to the comparatively slow-moving formal justice system, suggesting that the Rwandan Government was committed to trying sexual violence. It is likely that having these cases handled by *gacaca* increased public attention on the fact that sexual violence was prosecuted (and sentenced) as a genocide crime.

It appears that the interviewees experienced validation and vindication by having their cases tried by *gacaca*.¹⁶¹⁰ One interviewee (M23), felt motivated that '(her) case was taken into consideration'. M6 commented that '[g]oing through the trial alone relieved (her)'. Some interviewees experienced validation by having been given a platform to talk about their experiences and being listened to by the *Inyangamugayo*. These experiences appeared to affirm to the interviewees that they were victims of genocide crimes who deserved to talk and be heard at *gacaca*, linking truth-telling and validation. Several interviewees noted that being asked to give their version of the events reassured them that it was all right to talk about sexual violence, which may have alleviated some feelings of shame and guilt and contributed to a sense of validation and vindication. At the same time, several victim-survivors highlighted that they had not been permitted to talk about sexual violence in public (as determined in *gacaca* law in 2004), even if they wanted to do so, which may have reinforced a feeling of shame in some interviewees.

The predominantly supportive treatment by their *Inyangamugayo* appears to have validated the interviewees' experiences in various ways. Several interviewees noted that they felt believed by their *Inyangamugayo*, which aligns with one component of validation. Several interviewees felt that their *Inyangamugayo* treated them with sensitivity and care, suggesting that the *Inyangamugayo* acknowledged some of the impact of the crimes experienced by the interviewees, covering another component of validation. Having said that, most interviewees' testimonies were limited to the facts of the crimes experienced, while very few interviewees appear to have talked about the impact of the crime. Therefore, the interviewees would have predominantly received acknowledgment of 'the basic facts of the crime', but much less of its impact. Many interviewees explained that sharing their full stories outside *gacaca*, especially

¹⁶⁰⁹ Haskell (n 96) 115.

¹⁶¹⁰ M6, M18, M23.

with other victim-survivors, assisted them with their personal recovery. While these experiences suggest that the interviewees also needed the impact of the crime recognised, *gacaca* may not have been valued as the right forum to seek validation beyond an acknowledgment of the basic facts of the crime.

Gacaca tried sexual violence cases and convicted and penalised all but one of the perpetrators who had been reported by the interviewees. The sentencing and punishment of sexual violence at *gacaca* appears to have helped many interviewees to experience at least some sense of validation and vindication,¹⁶¹¹ including:

M15: One day, the *gacaca* courts were introduced. I still did not feel human yet at that point. People later understood that rape is a crime that cannot be forgiven. Before that, they would ridicule me and make me feel like it was my fault. ... People finally got to realise that rape was a serious crime and that it was punishable by law.

M1: I had had enough with people whispering about me because I had been raped. People took it as if I was a prostitute ... I am happy that he was punished. People were accusing us of being sluts who would have sex with men during the genocide.

M13: There were two positive things that happened during *gacaca* even though they are not that positive. Seeing the person who has hurt you being punished is one and the fact that the people understood that whoever commits a crime is going to be punished is the second one. During the genocide, they were saying that it was the end for the Tutsi, and for a while we thought that there was never going to be anyone to vindicate us or follow up on what happened to us.

These interviewees appeared to believe that the punishment of their perpetrator would prove to their communities that the interviewees had been victims of a crime, relieving them from 'being blamed or thought to be deserving of what happened',¹⁶¹² which were noted earlier as important components of validation. Similarly, Nowrojee had found in her interviewees with Rwandan victim-survivors who testified at the ICTR that they wanted the ICTR to condemn the violence committed against them and to acknowledge that 'as rape survivors ... [the women] did not collaborate willingly with *genocidaires* who kept them alive to rape'.¹⁶¹³

Nevertheless, one interviewee (M1) commented that at the time of the interview, she 'still live[d] with shame' and that it was 'hard being a rape victim', suggesting that the

¹⁶¹¹ Including M1, M2, M6, M7, M13, M14, M15, M18.

¹⁶¹² Daly, 'Reconceptualizing Sexual Vicimization and Justice' (n 12) 388.

¹⁶¹³ Nowrojee, "'Your Justice Is Too Slow' Will the International Criminal Tribunal for Rwanda Fail Rwanda's Rape Victims?' (n 15) 111.

condemnation of rape and sexual torture did not have the desired effect of changing community attitudes.

Even though not all prison sentences imposed by *gacaca* could be executed since many perpetrators had fled Rwanda,¹⁶¹⁴ the sentencing *in absentia* appeared to validate and vindicate at least some interviewees. M3 commented on the sentencing of her perpetrator *in absentia*:

I was happy to hear it. He has committed the crime and even though he was not present, I was happy to hear that he was being sentenced. I was relieved from a burden that I was carrying.

M3's reaction to the verdict in her case shows that to experience validation and vindication, the condemnation of the violence, expressed by the guilty verdict and life sentence, might be more important than, or just as important as, the actual execution of the punishment.

It appears that the maximum penalty that many of the interviewees' perpetrators had received contributed significantly to the interviewees' sense of validation and vindication, since this penalty showed that the crimes committed against them were regarded as the most serious crimes possible. M21 noted:

I was happy with [the sentence of life imprisonment] because that is the biggest sentence you can get in Rwanda. They have abolished the death penalty, so I had to be okay with that sentence.

In contrast, those two interviewees who were not satisfied with the length of their perpetrators prison sentence (discussed in Section 9.2.2) may not have felt that the reduced sentences validated their experiences in the way they had hoped.

While most interviewees appreciated life imprisonment as suitable to validate their experiences, one interviewee (M20) commented that even the highest possible penalty was inadequate to capture the harm that she had experienced:

I feel like they were given a serious sentence [life in prison] even though it does not match the fact that they killed my family and did horrible things to me. There is not a sentence big enough to match what they did to me.

The interviewee whose perpetrator was first convicted but then acquitted in an appeals process (M4) spoke about how devastating the second trial and its outcome was for her:

¹⁶¹⁴ See Table 7.1.

When I went back to trial, they did not believe what I was saying. They made me feel like I was crazy ... I was not happy with the court's second verdict. They concluded that the man was not guilty ...

The acquittal of her perpetrator (and the behaviour of her Inyangamugayo) signalled to M4 that she was not believed. She did not experience any of the validation (and vindication) that she had hoped to receive at *gacaca*.

Six interviewees witnessed confessions by their perpetrators at *gacaca*, and another four were asked for forgiveness by their perpetrators during their trial. Confessions and/or apologies can constitute an 'acknowledgment of the basic facts of the crime' (an element of validation) and are thus likely to have contributed to at least some sense of validation. The confessions and apologies would have confirmed that the interviewees' accusations were believed, which is another component of validation. Apologies may also serve as a means to vindicate victims. The requests for forgiveness, as witnessed by four interviewees, may have also contributed to their vindication. M20 reported that her perpetrators' requests for forgiveness and their comments that 'they were disappointed in their behaviour' confirmed to her the wrongfulness of the acts committed, which is a component of vindication. Nevertheless, since only four interviewees received a request for forgiveness at *gacaca*, the majority of interviewees did not experience validation and vindication through perpetrator responsibility at *gacaca*.

Some interviewees participated in a *gacaca* trial together with other victim-survivors because they had been raped by the same perpetrators. By allowing these victim-survivors to participate in their trial as 'a team of women', *gacaca* may have allowed some interviewees to receive validation from their co-plaintiffs. Some interviewees explained that *gacaca* helped them to become aware that other women had experienced similar violence to them,¹⁶¹⁵ which appears to have validated their experiences and helped them to manage their feelings of shame and self-blame:

¹⁶¹⁵ M7, M11, M13, M19, M20. Emilienne explained that some trauma counsellors would sometimes meet with a whole group of victim-survivors in preparation for their trial. It is possible that during these meetings, victim-survivors formed relationships beyond this preparation. Other interviewees explained how they were summoned to participate in a trial together with other victim-survivors, which may again have provided an opportunity for victim-survivors to meet and connect.

M7: I used to think that I was the only one who experienced rape but I later found out that it happened to almost all the women. I used to feel ashamed whenever I would be with other people.

M13: The other thing that helped me was that *gacaca* helped me know more people who were in the same situation as me. I used to think that I was the only one that this happened to. I used to feel like it was my fault that it happened to me but when *gacaca* started, I understood that it was a tragedy that happened to all Rwandans. That is the reason why we started our support group called XXX where we have women who share the same struggle. We got together after *gacaca* and we talked.

The last comment also shows that learning about other victim-survivors assisted the interviewees to reconnect with other victim-survivors who shared their experiences and suffering.¹⁶¹⁶

9.5.3 Discussion

Validation and vindication were important for alleviating some of the psychological and social consequences suffered by the interviewees, including shame, self-blame and stigma. Their accounts suggest that validation and vindication are particularly pressing in settings where victim-survivors are likely to suffer stigma and community ostracism.

The interviewees experienced validation and vindication at *gacaca* in various ways, including through the punishment of their perpetrators, supportive treatment by the *Inyangamugayo*, having been given a platform to share their stories, witnessing perpetrator responsibility and meeting and learning about other victim-survivors. Relatively mild sentences for sexual violence may be perceived as a minimisation of a victim-survivor's suffering, as reported by Henry about victim-survivors testifying at the ICTY.¹⁶¹⁷ However, *gacaca* punished most perpetrators involved in the cases of the interviewees with the maximum penalty, which is why validation and vindication through punishment stands out as a particular achievement of *gacaca*.

Both the formal punishment of the majority of perpetrators at *gacaca* and the supportive treatment of the *Inyangamugayo* suggest that many interviewees experienced validation and vindication by official authorities. However, interviewees had also sought validation and vindication from their communities, which is evidenced by the hope that participating in *gacaca* would help to 'get rid of the stigma [the interviewees were] experiencing', as noted

¹⁶¹⁶ More fully discussed in Chapter 10 (10.3).

¹⁶¹⁷ Henry (n 5) 131.

by M16. Several interviewees reported having received support and empathy from their communities during *gacaca*, and reportedly lived in peace with their communities, some even with their perpetrators' families.¹⁶¹⁸ However, the interview material also revealed that for many interviewees, their families' and broader communities' attitudes towards victim-survivors did not change after *gacaca*. Some interviewees explained that they continued to live with shame after *gacaca* and that their communities did not seem to care about their sufferings.

These comments suggest that for some interviewees, participating in *gacaca* did not result in a transfer of 'the burden of disgrace' from the interviewee to the perpetrator and that their communities did not automatically show solidarity with the interviewees, which had been noted as important elements of validation and vindication.¹⁶¹⁹ The lack of change of community attitudes towards victim-survivors after *gacaca* has also been highlighted as an ongoing issue by Emilienne.¹⁶²⁰ During her psychosocial work with victim-survivors after *gacaca*, she reportedly witnessed many victim-survivors discuss how they felt after *gacaca*, stating that she 'heard [the following] words over and over again from many women':

They had the impression that nothing had changed. ... They had the impression that they had been stripped naked. That's what they said: 'I have the impression that I am naked'. They did not feel appeased.

The diversity of reactions and attitudes of community members to the sexual violence as described by the interviewees is noteworthy, especially since most interviewees lived in the same area (albeit in different cells).¹⁶²¹ The interview data does not provide conclusive evidence about why community attitudes differ so greatly and further research would be needed to investigate this question.

¹⁶¹⁸ For example M3 and M20.

¹⁶¹⁹ As discussed in Chapter 5 (5.1.2), Herman notes that victim-survivors sought condemnation of sexual violence by their community to 'transfer the burden of disgrace from victim to offender', Herman, 'Justice from the Victim's Perspective' (n 9) 585.

¹⁶²⁰ Emilienne furthermore noted that it was still common in certain regions of Rwanda to marry a woman who has been raped to her rapist to prevent any social repercussions resulting from the rape.

¹⁶²¹ As outlined in Chapter 2, the interviewees had participated in different *gacaca* courts that took place in at least 14 different cells (two women did not want to name their cell), which again formed part of nine different sectors and four different districts.

9.6 Reparation

Reparation can take several forms, of which compensation, satisfaction and rehabilitation appear to be the most relevant in the context of sexual violence.¹⁶²² Reparation fulfils several purposes, such as assisting victim-survivors with the material harm of sexual violence.¹⁶²³ Furthermore, reparation may serve as a symbolic punishment and/or a measure of perpetrator responsibility.

9.6.1 Relevance of reparation to the interviewees

The topic of reparation was discussed less directly and by fewer interviewees in the context of their *gacaca* experiences than most other justice needs. Nevertheless, the need for assistance with the interviewees' material harm of the sexual violence emerged as one of the most pressing and continuing issues in the lives of the interviewees.¹⁶²⁴ While the interviewees' psychological sufferings seem to have improved by the time of this research, most physical sufferings and economic and financial issues were still persisting. Furthermore, several interviewees explicitly discussed the topic of reparation, explaining that they had hoped to receive reparation or other material and/or financial assistance through *gacaca*,¹⁶²⁵ including M11: 'What we were expecting from *gacaca* was that ... we would receive reparation for our loss.' M4 spoke about her hope of receiving assistance by raising her case at *gacaca*, highlighting that for her such assistance constituted justice:

I was hoping that we were going to finally have some justice, because what we had gone through was unfair. ... I was hoping that they were going to help us, especially the ones like myself who are not healthy. I am not able to work so I was hoping that they were going to give me some support. I thought they were going to give me some food and a nice place to stay but I haven't received any of that to this date.

These interviewees requested material and/or financial support to help them deal with the consequences of the sexual violence (and other genocide-related crimes), suggesting that reparation was understood as compensation.¹⁶²⁶ Since many interviewees required medical and psychological support, rehabilitation may have also constituted a suitable form of

¹⁶²² As outlined in Chapter 5 (5.1.2), compensation comprises the financial compensation for the economically assessed value of the harm caused. Satisfaction includes predominantly symbolic reparation, including disclosure of the truth, acknowledgment of the crime, apologies and sanctions against perpetrators. Rehabilitation comprises free access to medical and psychological care.

¹⁶²³ See Chapter 3 (3.1) for a definition of material harm of rape.

¹⁶²⁴ Discussed more fully in Chapter 10 (10.1).

¹⁶²⁵ M1, M2, M4, M11, M21, M23.

¹⁶²⁶ See Chapter 5 (5.1.2) for an outline of the various forms of reparation.

reparation for them. The interviewees did not seem to consider reparation as ‘symbolic punishment’ (satisfaction), and for most interviewees it did not appear to be important that reparation was paid by their perpetrators, but more that reparation was provided to the interviewees at all. Only one interviewee (M23) highlighted that financial and/or material assistance should come from her perpetrator:

I thought that making my case public was going to make the court force him to help my son as it is his responsibility. To this day, my son has never gotten anything from him. It is difficult for him to get some clothes.

The comment of M23 suggests that she viewed contributions to the living costs of her child both as a consequence that should be imposed on her perpetrator (symbolic punishment or satisfaction) and as assistance for her to raise her child (compensation).

9.6.2 Reparation at *gacaca*

Gacaca did not facilitate or provide material damages for sexual violence. Some interviewees spoke about receiving reparation provided by perpetrators for crimes other than sexual violence, which were presumably for damage of property.¹⁶²⁷ The only form of reparation that *gacaca* supported for victim-survivors was ‘symbolic reparation’ (satisfaction), such as truth recovery, the recognition of harm and apologies.¹⁶²⁸ Since most of the interviewees who spoke about reparation sought compensation, it does not come as a surprise that nearly all these interviewees criticised the lack of reparation provided or facilitated by *gacaca*. Several interviewees highlighted that their financial and material (including medical) needs associated with the sexual violence persisted after *gacaca*:

M19: My problems did not stop when he went to jail. ...

R: What problems are you talking about?

M19: Being raped has left me handicapped ...

M11: *Gacaca* happened and the criminals were sent to jail but nothing else happened ... We did not have the right to claim any reparations at that time. They would just tell us that we have had our case and that was it. We did not have anyone to represent us and claim that for us. Whenever the trial would be over, that would be the end of it. They would bring the criminal to prison and we would go back home.

¹⁶²⁷ M3, M20.

¹⁶²⁸ Bornkamm (n 76) 156-7.

M21: The *Inyangamugayo* did all they could but not everything was perfect because there was no reparation. ... *Gacaca* is over and the court in Arusha has been closed but nothing was done about our reparations. We have lost our families and even though we survived, we are still struggling because of what happened to us.

The comments highlight that while many interviewees appreciated the formal punishment of the perpetrators achieved by *gacaca*, they had hoped for assistance with their medical needs and material harm that resulted from the sexual violence.

While *gacaca* did not enable reparation by way of compensation, various other services provided or otherwise supported by the Rwandan Government – and received by at least some interviewees during or after *gacaca* – would qualify as rehabilitation and are thus briefly discussed here. For example, many interviewees mentioned that they were accompanied by trauma counsellors during their *gacaca* trials,¹⁶²⁹ who were provided through Rwandan NGOs such as IBUKA and AVEGA. The Rwandan Government Department of Health provided further services to deal with trauma at *gacaca*. Half of the interviewees became members of a therapy group after their participation in *gacaca*, run by Emilienne and financed by a Rwandan NGO, and several interviewees mentioned having received trauma training or other educational sessions dealing with the psychological consequences of the genocide.

Finally, the survivor support fund FARG,¹⁶³⁰ which had been created outside of *gacaca*, qualifies as rehabilitation. One interviewee (M21) mentioned receiving financial and medical assistance through FARG, as well as from AVEGA. Several other interviewees mentioned having free access to health care, which may have originated from FARG or other assistance measures.¹⁶³¹ Three interviewees, however, bemoaned that FARG did not cover their children's school fees.¹⁶³²

9.6.3 Discussion

While only a few interviewees discussed the topic of reparation, the need for support addressing the material harm of sexual violence emerged as one of the most pressing and persisting issue for all interviewees. It is possible that many interviewees were aware that *gacaca* was not meant to enable compensation for crimes of sexual violence, and therefore

¹⁶²⁹ Ibid 144.

¹⁶³⁰ FARG was introduced in Chapter 4 (4.2.3).

¹⁶³¹ Including M1, M3, M22.

¹⁶³² M6, M11, M23.

did not mention compensation (or more generally, reparation) as something that they expected or hoped to achieve by participating in *gacaca*.

The fact that *gacaca* neither facilitated nor provided compensation constitutes the most obvious and critical limitation of the courts in terms of meeting the interviewees' justice needs. It appears that satisfaction was the only form of reparation supported by *gacaca* including through truth recovery, acknowledgment of the crimes and apologies. Having said that, some interviewees benefited from reparation in the form of rehabilitation including during and beyond *gacaca*. Many interviewees received support from trauma counsellors during *gacaca*, and some reported having access to medical care, counselling and trauma training, including during and after *gacaca*. Nevertheless, since the interviewees seemed to understand reparation only as compensation, it is unlikely that the satisfaction and rehabilitation measures were perceived as reparation efforts. Therefore, from the point of view of the interviewees, *gacaca* did not assist with reparation and the need for compensation remains an unaddressed issue. Other research with victim-survivors who participated at *gacaca* confirmed the importance of compensation and showed that victim-survivors perceived the lack of compensation as a major shortcoming of *gacaca*.¹⁶³³

9.7 Empowerment

Empowerment relates to opportunities for victim-survivors to overcome feelings of shame and humiliation and experience power and control instead. A justice initiative may empower a victim-survivor by restoring the power balance between the victim-survivor and her perpetrator, which is likely to have been destroyed by the sexual violence. The victim-survivor's perceptions of power and control may be supported through various procedures, such as opportunities for participation, and through specific outcomes, including the punishment of perpetrators.

9.7.1 Relevance of empowerment to the interviewees

The need for empowerment was not directly discussed by the interviewees but can be deduced from the interviewees' psychological state at the time of their *gacaca* trial. Empowerment constitutes the first principle of an individual's recovery from trauma.¹⁶³⁴ Since

¹⁶³³ Morris, Meghan Brenna (n 100) 69-73.

¹⁶³⁴ Herman, *Trauma and Recovery* (n 14) 133. See also n 1226.

many interviewees suffered severe trauma during the genocide and were at high risk of re-traumatisation during *gacaca*, empowerment was a particularly important justice need for the interviewees in the context of their *gacaca* participation. The interviewees were seriously affected by feelings of fear, shame, worthlessness, degradation and humiliation as a result of the sexual violence, highlighting their need for power and control, two key experiences of empowerment.

Emilienne noted that many victim-survivors who she accompanied at *gacaca* had decided to testify against their perpetrators because they wanted to 'return responsibility to those who were responsible' and show 'that these men were not the dominators of their [the victim-survivors] lives', which also fits the concept of empowerment.

9.7.2 Empowerment at *gacaca*

Gacaca contributed to the interviewees' empowerment in several ways, including through its process and some of its outcomes. One fundamental principle of empowerment is the experience of power and control. *Gacaca* provided opportunities of empowerment by allowing victim-survivors to participate in their trial, including by asking questions about their victimisation and by relaying messages to their perpetrator(s).¹⁶³⁵ Emilienne confirmed that in her view, some of the victim-survivors she had accompanied as a trauma counsellor at *gacaca* gained strength from communicating with their perpetrators during their trial.¹⁶³⁶

The decision to raise a case, which was left to victim-survivors, constitutes another important opportunity for empowerment. The interviewees were unanimous that raising a case of sexual violence and speaking about such experiences at *gacaca* was incredibly difficult. However, precisely because it was so difficult, many interviewees appeared to experience raising their case and giving testimony at *gacaca* as an act of strength and bravery, linking truth-telling and empowerment:¹⁶³⁷

¹⁶³⁵ As outlined in Chapter 5 (5.1.2), receiving answers to the questions 'Why' and 'Why me?' can assist victim-survivors to 'reconstruct a sense of meaning' and develop a more holistic understanding of their trauma story.

¹⁶³⁶ Emilienne had accompanied a girl during her *gacaca* trial, recounting that the girl had participated in *gacaca* specifically because she wanted to ask her perpetrators questions and relay a message to him. Emilienne noted that she had asked the girl what she had gained from participating in her trial. The girl explained that participating in the trial had been important for her because '[she] had to hear what had happened to [her] and it gave [her] the strength to show the people that that man will not rule [her] life'. She furthermore noted that she felt that she had 'disposed of a burden that had been weighing heavily on [her]'.

¹⁶³⁷ M3, M10, M15, M16, M18, M19. For some more specific examples, see 9.1.1 above.

M18: It was so hard to stand alone and accuse them. I was brave enough to do it and the people in my village nickname me 'the Beast' because they wouldn't have had the courage to do what I did.

M16: What really made me so happy even till today is the fact that I confidently stood up on the hill and spoke out about what had taken place.

M3: I remember that after those rich people heard the verdict that they had won, the people told them: 'You have not won. You have lost. The winner here is (M3) who had the courage to stand in front of you and not die from all the pain you have caused her.'

Some interviewees acknowledged other victim-survivors who had raised their case at *gacaca* as particularly brave:

M21: There were some women who were brave and they would start talking about it but they would not finish the story because it would be too emotional.

M18: It was very brave of my daughter to [recount her story at *gacaca*] ... but she had asked me to be there for support.

These resemble the experiences of Sharratt's informants, who had also gained strength from having testified at the ICTY and who also cherished other victim-survivors for having the courage to speak out about sexual violence.¹⁶³⁸ Emilienne explained that victim-survivors who had participated in *gacaca* noted during therapy group sessions that they felt positive about having raised their case to at least try to improve their personal situation.

One interviewee (M16), who had raised her case on behalf of 30 women and their children who died in the house where she was kept during the genocide,¹⁶³⁹ appeared to feel empowered by the 'moral duty to testify' on behalf of the dead:

What matters is to show people the truth of what took place in that neighbourhood, and no one else could do it except me. ... Many people I knew who had been violated died then. This also empowered me more because it reminded me to think why I kept surviving all the tragedies that were taking place. Basically this made me not to give up but it raised my initiative of working on what God had kept me alive for. I should, in any case, pass away after revealing the truth to everyone ...

Another interviewee (M22) felt that Rwandan society was empowered as a whole through *gacaca*, since it provided Rwandan people with the opportunity to solve their own problems:

Gacaca was really good. We liked the fact that the people themselves had the power to make a decision and serve justice. The criminals were punished and we did all that among ourselves as civilians.

¹⁶³⁸ Sharratt, *Gender, Shame and Sexual Violence* (n 15) 116.

¹⁶³⁹ Discussed in Section 9.1.1.

Several interviewees described moments of empowerment based on the restoration of their power relative to their perpetrator.¹⁶⁴⁰ An increase of power relative to their perpetrator(s) was for example supported through the experience of ‘winning’ the case against their perpetrators, and through witnessing consequences for their perpetrators, including the exposure and punishment of perpetrators. M2 reiterated that she ‘defeated’ her perpetrators. Other examples are:

M16: I felt like I had at least achieved something important. ... I didn’t care if I died in that moment because I had won. I felt satisfied ... I became stronger thereafter to the extent that I started to heal trauma. I was happy and [the punishment] assured me that my life was able to keep moving on ... I am happy for the Rwandan Government for putting them into prison. They provided us with strength to be able to work. ... I am happy for the *gacaca* courts that helped to reveal to everyone the truth and now we are more confident.¹⁶⁴¹

M3: The one thing that made me happy was that before *gacaca* happened, I would never approach those people. When we went to *gacaca*, they were stripped naked and the secrets were revealed. Even those who were hiding from me were exposed and they knew that I was aware of what they did. So, we would meet and they would say hi to me. They would expect me to be rude to them but it would never happen.

The positive impact of her perpetrators’ apology on the personal recovery of M20, including that she ‘was very inspired by being asked for forgiveness’ and that it ‘created something new in [her] ...’, suggests that witnessing genuine perpetrator responsibility can also support victim-survivors to feel empowered. Several interviewees felt empowered by the support they had received during *gacaca*, including from their trauma counsellors, family, community members and other victim-survivors.¹⁶⁴²

I would stand strong and feel confident enough without any fear. I felt strong and confident when I was defending myself because I had someone to back me up.

Several interviewees participated in their trials together with other victim-survivors who had also experienced sexual violence by the same perpetrator. Going through her trial together with others provided another opportunity for empowerment for M11:

The one thing that made me stronger during *gacaca* was that we were many women who were accusing the same man of the same crime. You would expect to be all alone but it was somehow comforting to have some other people in the same situation as me. We met there as a group and we all accused him.

¹⁶⁴⁰ Including M2, M3, M7, M16, M18.

¹⁶⁴¹ M16 had worked as an *Inyangamugayo* herself and assisted other survivors or sexual violence to report their cases. Furthermore, she was involved in creating a support group for genocide survivors.

¹⁶⁴² Discussed more fully in Chapter 8 (8.3.3).

Several interviewees described moments of empowerment beyond the *gacaca* trial, including through helping other victim-survivors during and beyond *gacaca*, as well as by taking their story to a broader audience.¹⁶⁴³

M20: I now understand that there are some people who think that I was brave to keep struggling for two years and choose to live instead of regretting why I had survived the genocide. ... I have given my testimony at the stadium [during the commemoration], at the French Cultural Centre, and in my home village. The leaders of my village now know my story and they sometimes invite me to give my testimony.

M3: [I]f you call me to talk like this, where I know that I might impact some people, I will do it. I also have a few things that I do in order to support other people.

M16: I became a good *Inyangamugayo* who could not tolerate injustice. I always made sure to speak up for others. ... Some leaders did not understand how I came to lead the sector at the same time as dealing with *gacaca* cases, though everyone wanted my court as they felt welcomed by me due to the fact that I had talked to them before. That is the biggest thing I learned from *gacaca*. It made me feel more confident and empowered me as well as others. ... Today, I am the survivors' and widows' representative. I represent them as their advocate in everything that takes place.

These interviewees seem to have found what Herman terms a 'survivor mission', which involves survivors '[recognising] a political or religious dimension in their misfortune and ... [transforming] the meaning of their personal tragedy by making it the basis for social interaction'.¹⁶⁴⁴ According to Herman, such social interaction is an opportunity for the empowerment of the victim-survivor since it 'offers the survivor a source of power that draws upon her own initiative, energy, and resourcefulness ...'.¹⁶⁴⁵

¹⁶⁴³ For example M3, M16 and M20.

¹⁶⁴⁴ Herman, *Trauma and Recovery* (n 14) 207.

¹⁶⁴⁵ *Ibid.*

9.7.3 Discussion

While empowerment was not explicitly discussed as something that the interviewees had hoped or expected to achieve by participating in *gacaca*, ongoing trauma and persisting feelings of shame, degradation and humiliation at the time of *gacaca* implied the need for empowerment. *Gacaca* supported the empowerment of the interviewees in several ways, including through the restoration of the power balance between them and their perpetrators. This restoration of power was supported by the exposure, sentencing and punishment of perpetrators at *gacaca*, but also through genuine perpetrator responsibility.

Many interviewees experienced empowerment merely by having made the decision to raise their cases and by actively participating in their trials,¹⁶⁴⁶ especially since speaking about sexual violence was perceived as something extremely difficult. These experiences align with Herman's argument that power and control lie at the heart of the empowerment process.¹⁶⁴⁷ Many interviewees felt empowered through the support received from people around them during *gacaca*. It appears that the importance of support from others for the empowerment of victim-survivors has not received much attention in other studies on justice needs and is a point that this research adds to the discussion.

These moments of empowerment highlight the close connection between empowerment and other justice needs, including participation, support, punishment, truth recovery and safety, and show that empowerment of victim-survivors can be supported both through the process and the outcomes of a justice initiative. Several interviewees experienced empowerment beyond *gacaca* by finding a 'survivor mission', including by becoming a public speaker about their genocide story and by helping other victim-survivors. It appears that some of these survivor missions were grounded in the empowerment that interviewees experienced during their participation in *gacaca*.

¹⁶⁴⁶ These experiences are supported by at least one participant in research by Morris, who also felt empowered by receiving support from their communities and having the opportunity to stand up for her own rights, Morris, Meghan Brenna (n 100) 71.

¹⁶⁴⁷ Herman, *Trauma and Recovery* (n 342) 159.

9.8 Conclusion

This chapter has analysed the interviewees' outcome-related justice needs and assessed how these were supported during *gacaca*. In doing so, the chapter addressed primary research questions 1 and 2. The justice needs of truth recovery (predominantly truth-telling), consequences (predominantly by way of punishment but also through exposure of perpetrators), safety and perpetrator responsibility dominated the interviewees' discussions and were explicitly cited as the interviewees' hopes and expectations for participating in *gacaca*. While the justice needs of validation, vindication, reparations and empowerment were discussed less frequently and less directly, analysis of the interviews confirmed that they were also important for the interviewees. In many instances, calls for consequences, perpetrator responsibility and truth recovery appeared to be underpinned by a deeper need for validation, vindication, safety and empowerment, highlighting the interconnectedness of many of the justice needs. The need for reparation was explicitly discussed only by a few interviewees in the context of *gacaca*, which may have been because the interviewees were aware that *gacaca* did not enable or provide for reparation. However, redress for the material harm of sexual violence emerged as one of the most pressing and persisting needs of the interviewees, highlighting the relevance of reparation or other forms of financial and material support for victim-survivors.

Gacaca contributed to all seven justice needs in various ways. *Gacaca's* main strength lay in the punishment of perpetrators. All but one perpetrator involved in the interviewees' cases were found guilty and sentenced to substantive time in prison. Many received the maximum penalty of life imprisonment. This punishment of perpetrators appears to have addressed other justice needs of the interviewees, in particular safety but also validation, vindication and empowerment, while also satisfying their calls for retribution. *Gacaca* also made a noteworthy contribution to the interviewees' justice needs through truth recovery, including by providing a platform for the interviewees to tell their truth and be heard in a significant forum. In particular, truth-telling at *gacaca*, as described by the interviewees, also contributed to their experience of validation, safety and empowerment, as well as to their individual recovery overall.

Gacaca was less valued for its role in facilitating perpetrator responsibility. The analysis has shown that only a few interviewees witnessed confessions and/or apologies at *gacaca*, and

even fewer perceived these confessions/apologies as genuine. Nevertheless, at least some interviewees highlighted the witnessing of perpetrator responsibility as one of the most important and positive experiences during *gacaca*. Furthermore, several interviewees had received requests for forgiveness outside *gacaca*, including from their perpetrators and/or their perpetrators' families, both before and after courts were held. While these requests for forgiveness were not provided at *gacaca*, the fact that the perpetrators were tried (or were meant to be tried) and sentenced at *gacaca* may have contributed to the willingness of the perpetrators and/or their families to apologise to the interviewees. *Gacaca*'s main limitation in meeting the interviewees' outcome-related justice needs lay in the lack of compensation provided and/or facilitated for sexual violence. The repercussions of this limitation were evidenced by the physical and economic sufferings that still dominated the interviewees' lives at the time of the interview, a point that is discussed in more detail in the next chapter.

10 CHAPTER 10: LIFE AFTER GACACA

This chapter analyses the development of the interviewees' justice needs after their participation in *gacaca* and considers some needs that are not directly covered by the set of justice needs outlined in Chapter 5. This chapter assesses which consequences of the sexual violence and resulting needs continued after *gacaca* and which became less pressing. Furthermore, the chapter investigates whether the interviewees' participation in *gacaca* exacerbated any pre-existing needs and whether any new needs emerged after *gacaca*, thereby, addressing research question 2.1. Finally, it assesses which initiatives beyond *gacaca* addressed the interviewees' persisting needs to support their individual recovery. Throughout the chapter, the interviewees' accounts are compared with aspects of trauma recovery identified by Herman.¹⁶⁴⁸

The chapter serves several purposes. Firstly, the analysis of the interviewees' needs several years after their *gacaca* participation assists in drawing some conclusions about the long-term impact of *gacaca*,¹⁶⁴⁹ supporting the overall assessment of how *gacaca* met the justice needs of victim-survivors. Secondly, analysing the impact of additional initiatives on the recovery process of the interviewees helps to contextualise the experiences of the interviewees with *gacaca* and the development of their needs over time, discussed in more detail in the concluding chapter of this thesis. Considering the impact of additional activities beyond *gacaca* assists in determining how the interviewees, as well as other victim-survivors in Rwanda and in other settings, could be supported in the future, which is also discussed in the concluding chapter.

10.1 Ongoing Challenges

Chapter 6 outlined the consequences that the interviewees experienced as a result of the sexual violence suffered during the genocide, and subsequent chapters considered how these consequences developed until the interviewees' participation in *gacaca*. At the time of the research, the interviewees continued to suffer from health concerns, as well as social and

¹⁶⁴⁸ Ibid.

¹⁶⁴⁹ As noted in Chapter 4 (4.3.3), sexual violence cases were predominantly tried between 2008 and 2009. However, as outlined in Chapter 7, several women went through an appeal, which may have taken place any time between 2008 and 2012 when the *gacaca* courts were formally closed. Since the interviews were conducted between December 2015 and January 2016, approximately three to seven years would have passed between the interviewees' *gacaca* trial and the interviews.

economic challenges. This section looks at three related and ongoing issues that were broached in previous chapters but not discussed in detail. These issues include poverty, stigma and strained relationships between the interviewees' and their own families, as well as ongoing hostility from their perpetrators' families.

Most interviewees cited poverty as the dominant challenge in their lives at the time of the interview.¹⁶⁵⁰

M19: The one thing that is making my life difficult is poverty.

R: Please elaborate on what you mean by poverty.

M19: I live in a house that barely has a roof. I do not have enough land to do my farming. I have given the land that my husband left me to my children. I do not have enough to do my farming.

M4: I was hit by extreme poverty that I spent an entire year without having any clothes to wear. Whenever I would need to go somewhere, I would ask someone to lend me some clothes ... To this date, the donors are the ones giving me clothes.

M1: I am poor and I struggle to make a living. ... It is very hard for me to find some food to eat or some clothes to wear. I am getting older so I sometimes rely on my young son to do some part-time jobs with the neighbours from time to time and then take care of me.

The dire economic situation that the interviewees described was due at least to some degree to the sexual violence and other crimes experienced during the genocide. In particular the physical sufferings resulting from the violence hindered – partly or entirely – the interviewees' ability to engage in physical labour.¹⁶⁵¹ One compounding factor is that many interviewees lost family members, including their husband and children during the genocide, which is why some interviewees have had no or only limited family support to generate an income.¹⁶⁵²

M17: I am not able to do any farming. I am old and I don't have any children left to help me. Others were left with their children but I wasn't. I am not sure what my future looks like.

M15: What is difficult about my life is that I am an older woman and I do not have anyone to help me. Life is hard.

The economic impact that resulted from the loss of family has also been flagged by Eftekhari, noting that 'many female genocide survivors ... have been deprived of family upon whom they and their children depended for economic survival'.¹⁶⁵³ The previous chapter outlined that

¹⁶⁵⁰ Including M1, M2, M4, M9, M10, M13, M14, M17, M19, M21, M23.

¹⁶⁵¹ As discussed in Chapter 6, 22 interviewees did not have a fixed income, but relied on farming as their main source of income.

¹⁶⁵² Also discussed in Chapter 6 (6.3).

¹⁶⁵³ Eftekhari (n 469) 10.

gacaca did not provide or facilitate compensation, which is why many of the material harm of sexual violence experienced by the interviewees appear to remain unaddressed.¹⁶⁵⁴ Ka Hon Chu, de Brouwer and Roemkens caution that '[s]urvivors' physical, emotional and psychological healing will be difficult, if not impossible, to realize without financial security'.¹⁶⁵⁵ This concern was shared by one interviewee (M8) who explained that in her eyes, poverty constituted a barrier for individuals to make progress in their psychological recovery:

[W]hen you are able to make a living, it helps you not to be stuck in the past and get depressed. When you are broke, you always go back to what happened in the past and you think about your experience and the sorrow comes back. You cannot be happy when you're broke.

As a particular issue of poverty, several interviewees discussed their struggles to afford their children's school fees:¹⁶⁵⁶

M9: [P]overty affects the children so much regarding their education. There was a time when I was sick because I suffer from gastric ulcers and I spent three years being sick and my children had to drop out of school. They still wanted to be in school and it hurt them. They must have thought that if their mother had the means, they could still be in school. They asked me to pay for them to learn some trades like sewing and the person who was supposed to teach them told me that I had to buy them a sewing machine and I did not have the money to buy one at that time so we never did that and they were pretty upset about it.

M13: The biggest challenge for me is to find school fees for my children. I am not able to provide for them as a parent. I always think that if I had been able to pay for my children's school fees, they could have gone to school and they would become leaders of this country someday.

M23: I cannot find anything positive about my life because I am unable to pay for my son's school fees and I can barely feed my children.

Another persisting issue discussed by several interviewees was the stigma they suffered as victim-survivors. Several interviewees reported that they felt stigmatised and ostracised as victim-survivors by their communities and families, including their own children and husbands.¹⁶⁵⁷ Chapter 9 (9.5) highlighted *gacaca's* limitations in terms of reducing stigma and derogatory community attitudes towards victim-survivors. Emilienne confirmed that in her

¹⁶⁵⁴ As explained in Chapter 4 (4.2.3) and discussed in Chapter 9 (9.6), the Rwandan government provided some financial relief through FARG or other programs, enabling free access to medical care for at least some of the interviewees.

¹⁶⁵⁵ Ka Hon Chu, de Brouwer and Roemkens (n 123) 542.

¹⁶⁵⁶ M3, M9, M10, M13, M21, M23.

¹⁶⁵⁷ M1, M2, M4, M6, M7, M23.

view, community attitudes towards victim-survivors did not change after *gacaca* and highlighted persisting stigma as a major issue for victim-survivors:

When they are in the group, the women always say that they are really going very well, but it's not the same when they return to their hill and their families. Because in their families, they carry the stigma of a dishonourable woman, the shame of society, that's it.

Due to *gacaca*'s limitations in terms of protecting the privacy of some interviewees, information about the sexual violence became publicly known during their *gacaca* trial.¹⁶⁵⁸ As a result, several interviewees experienced an exacerbation of stigma and community ostracism after participating in *gacaca*.¹⁶⁵⁹ Emilienne noted as an additional issue that some victim-survivors were blamed and ostracised by their own families when raising their cases at *gacaca*, since raising their cases risked that a victim-survivor's experiences were exposed to the broader community.¹⁶⁶⁰ Emilienne recalled a specific example of a victim-survivor who was accused by her daughter for bringing shame to the family by reporting her (the mother's) case at *gacaca*. Emilienne reported that from her experience, only a few victim-survivors received support from their families during *gacaca*, and that many families preferred that the experiences of the victim-survivor remain unknown.

Several interviewees experienced hostility from their perpetrators' families and communities during and after *gacaca*. Some interviewees spoke about how these animosities were still ongoing at the time of the interview, causing additional hardship for the affected interviewees. M2 explained that her perpetrator's wife kept 'disturbing [her]', and M18 noted that her perpetrator's family 'still hated [her]'. When asked about the biggest challenge in her life at the time of the interview, M5 responded:

There are so many things that challenge me but the biggest challenge of them all is having the family of the people I sent to prison harass me when they are the ones who committed a crime against me. That is what upsets me.

The harassment by her perpetrator's family is likely to have had particular impact on the life of M5 because they were her neighbours.

¹⁶⁵⁸ For example, Chapter 9 quoted Emilienne who recalled victim-survivors explaining 'they had the impression that they had been stripped naked' at *gacaca*, including because intimate details about their experiences had been revealed.

¹⁶⁵⁹ Discussed in Chapters 8 and 9.

¹⁶⁶⁰ Discussed in Chapter 8 (8.1).

The interviewees' comments suggest that they suffered these hostilities particularly because they had raised their cases at *gacaca*. When asked how people reacted to the information exposed during her *gacaca* trial, M5 responded:

There were some people who took it well, but there are some others who think that we should not live. They have their people in jail and they would not like me to live. They do not wish me well whatsoever. My children are poisoned every now and then. ... They did not want what they did to get out and they were not happy to see it in unveiled for all to see.

Other examples include:

M11: I was relieved to see him plead guilty ... but it also brought some animosity from his family. His family tormented ours.

M1: The people from that neighbourhood hate me. They had no sympathy for the people who were murdered or raped in their neighbourhood. They were just mad because their people were in prison. ... There were some other women who had been raped but they were given some money and they would come and change their stories. ... Those of us who refused to be bribed were hated by many people.

Emilienne confirmed these animosities as a significant and persistent issue in the lives of many victim-survivors, explaining that certain victim-survivors 'cannot walk on this particular side, they can't take this particular path, because they are scared of running into their perpetrators' families'. It appears that *gacaca* did not help to improve the relationships between some victim-survivors and their perpetrators' families. The decision of some victim-survivors to participate in *gacaca* seems to have created new animosities or exacerbated existing ones, leading to additional social and psychological hardship for affected victim-survivors.

10.2 Positive Changes

Many interviewees indicated that their mental health had improved by the time of the interview.¹⁶⁶¹ Several interviewees expressed positive feelings about still being alive,¹⁶⁶² such as M10:

What makes me happy is that I am still alive. Other people have died but I am still alive, so I am thankful ...

Some of them said that improved physical health helped them to feel more positive overall:

¹⁶⁶¹ Including M1, M3, M4, M6, M7, M8, M12, M19, M20.

¹⁶⁶² M1, M6, M7, M10, M16, M19, M20, M22.

M6: What makes me happy is the fact that I am alive today and I can meet people and talk to them. I did not become an invalid and stuck inside my house. I am able to go out and do some work and I like that I am able to work and make a living for myself.

M20: I feel better emotionally physically and the doctors at the hospital have confirmed it. I used to need people to carry me in order to move around but I can now walk on my own.

Others discussed how they thought their psychological health had improved over the years:

M7: I have accepted everything that happens in my life because I do not see any ending to this world. I have tried to cope with it and I meet with other women who have gone through it and we sit down and talk about it. I am now rebuilding myself. I sometimes face some things that stress me out but I believe that with the help of the trainings that we receive, I am on the right path.

M1: I used to be afraid to walk at night because I would always think that a gang was going to come and rape me. I always had that feeling and I would always be afraid. All those fears are now gone. ... I still have to take some medications but I have hope for the future. I went to get tested for HIV and found that I was negative.

M19: I was mentally broken after the trial but I am doing better now. ... I no longer have trauma episodes. I am thankful that I no longer feel lonely and sad all the time.

Even the interviewee (M4) whose perpetrator had been acquitted during *gacaca* and who '[could] not find anything good to say about *gacaca*', indicated that her psychological state had slightly improved:

I used to feel like someone who was always down ... I still have not gone back to normal yet but I am thankful for having some faith. Faith has helped me to be able to talk to other people about this. I used to just break down and cry whenever I saw those people.¹⁶⁶³

Herman explains that as victim-survivors progress through their recovery, their story moves from 'a recitation of facts' to a more holistic narrative including 'the survivor's response [to a traumatic event] and the responses of important people in her life' as well as 'what she felt' at the time.¹⁶⁶⁴ During their interviews, many discussed how they felt when they experienced sexual violence and what impact the violence had had on their lives, which may indicate an improvement of their mental health since *gacaca*.

¹⁶⁶³ The author's field notes taken at the time of the interview indicate that the body language, mimic and vocal tone of M4 did not suggest any positive vibes from M4. On the contrary, M4 came across as the most entrapped and isolated interviewee. This impression was shared by Emilienne, who tried to include M4 as a member of her therapy groups after the interview, but indicated that it was very difficult to support M4.

¹⁶⁶⁴ Herman, *Trauma and Recovery* (n 342) 177.

Several interviewees felt that they compared positively with other victim-survivors who were worse off than themselves, including those who had not contracted HIV or lost their whole families as others had:¹⁶⁶⁵

M15: When I gave an HIV test, I was lucky to find that I was negative. That was the thing that made me feel empowered to rebuild my life. There are some people who are living with HIV and they are still working hard to live.

M13: I was lucky not to get HIV because there are some other women who were raped and were left with HIV.

M18: There are some other women who were left with no children, so I am grateful for my kids.

Overall, many interviewees expressed hope and positive feelings when talking about family members who were still alive, especially their children:¹⁶⁶⁶

M12: I am happy to be alive. I am happy to be able to see my children alive. What I ask from God is to look after their future. My son has just graduated from university and he still hasn't found a job. I also have a daughter who is at university. The other one is in his 4th year of secondary and my last born is in her first year of secondary school. That is the one thing that makes me happy after the tragedy I have lived.

M8: I am happy to still be with my husband and children. Happiness starts with having a good family.

M7: My son got married and he became a man and he started being humble and things are going well. The fact that I lost my other children is all right with me. I am happy with living just like this because when my son has some children, they are going to be my grandchildren.

Many interviewees had worried about their safety prior to *gacaca*.¹⁶⁶⁷ *Gacaca* significantly alleviated some of these safety concerns by imprisoning most of the interviewees' perpetrators. At the time of the interviews, several highlighted feeling safe as a significant positive change in their lives after *gacaca*:¹⁶⁶⁸

M7: We had to fight a difficult battle during *gacaca* because we worried about who was going to talk about us and we also worried about our security but security around us is tight nowadays. We are not worried.

M20: I simply love the fact that we can now feel safe in our own country.

¹⁶⁶⁵ M1, M13, M15, M5.

¹⁶⁶⁶ M8, M12, M13, M15, M16, M18, M21, M22.

¹⁶⁶⁷ Including M1, M8, M10, M14, M16, M17, M19, M20, M21.

¹⁶⁶⁸ Including M1, M7, M8, M14, M20, M23.

Herman explains that an individual's recovery is evidenced by 'a gradual shift from unpredictable danger to reliable safety'.¹⁶⁶⁹ Therefore, these comments about feeling safe (or at least safer) at the time of the interview suggest that at least some of the interviewees have made progress in their psychological recovery.

Only two interviewees (M17, M23) appeared to struggle to identify anything positive in their lives apart from still being alive and feeling safer because of their perpetrators' imprisonment. When asked what was positive in her current life, M23 responded: 'Nothing. The only good thing is that we are still alive.'¹⁶⁷⁰

Several interviewees reported having received support from their families and communities during *gacaca*. Some interviewees mentioned good relationships with their neighbours at the time of the interview,¹⁶⁷¹ suggesting that no major relational issues with their communities arose for these interviewees after their participation in *gacaca*:

M14: My situation happened in my home town. I do not have any issues in the place where I live now. I have a good relationship with my neighbours.

R: How do your neighbours and other people in your community take you? What is your relationship with them like?

M10: I have a good relationship with my neighbours because I got married in the same area I was born. ... We live well together. We share some things and have a good relationship in general.

Some interviewees explained that they had a good relationship even with their perpetrators and/or perpetrators' families.¹⁶⁷² These relationships appeared to have been supported by requests for forgiveness by either the perpetrators or their families, including during and outside of *gacaca*:

M20: When they told me that they were disappointed by their own behaviour, it helped get on better terms with them and their families to this day. Some of their relatives showed me their support when my daughter got married. I see no more hatred from their families and I also respect them.

M22: [T]here is one of the defendants who confessed and begged me for forgiveness. He also confessed to his family and we live well together.

¹⁶⁶⁹ Herman, *Trauma and Recovery* (n 342) 155.

¹⁶⁷⁰ However, as discussed in Chapter 9 (9.4), M23 also reported that she appreciated feeling safe after her perpetrator's imprisonment and that she was 'so glad [she didn't] ... have to see him anymore'.

¹⁶⁷¹ Including M3, M10, M14, M20.

¹⁶⁷² M3, M20, M22.

M3 explained that after she was asked by her perpetrator's family outside of *gacaca* for forgiveness: 'That was the end of the animosity and we now live as neighbours and have no issues among us.' These comments indicate that these interviewees were able to reconcile with their perpetrators and their families as a result of having been asked for forgiveness.

These positive changes to the interviewees' lives were supported by *gacaca* in several ways. Analysis of the interviewees' experiences with *gacaca* demonstrates that *gacaca* played a significant role in creating a sense of safety for the interviewees (predominantly by sentencing perpetrators to time in prison). The experience of safety was a critical step in the recovery of victim-survivors. Other crucial steps in the recovery from trauma were the restoration of power and receiving validation.¹⁶⁷³ Therefore, *gacaca* is likely to have assisted the mental recovery of the interviewees by providing opportunities for them to tell their stories and experience some validation and vindication, as well as empowerment. Finally, at least some perpetrators took some responsibility for their actions during *gacaca*, which appears to have laid the foundation for reconciliation of some victim-survivors with their perpetrator(s) and their families. While another few perpetrators or their families took responsibility only outside *gacaca*, it appears that these actions were encouraged through the reporting of the case and/or sentencing of the perpetrators at *gacaca*.

10.3 Initiatives Supporting the Interviewees' Recovery Process beyond *Gacaca*

Despite *gacaca*'s contributions, it is unlikely that the improvement of the psychological health that many interviewees indicated was achieved by *gacaca* alone. The interview material suggests that their mental recovery process was also supported by other initiatives, including religious groups, trauma training, individual counselling and therapy, as well as group therapy and support groups. These initiatives, as well as faith more generally, seem to have played an important role in their lives. Highlighting these initiatives and their impact on the interviewees is important for two reasons. Firstly, since these initiatives are independent of the interviewees' participation in *gacaca*, they highlight the role of cultural and social factors in the development of the interviewees' needs outside of *gacaca*. These factors have to be acknowledged when assessing *gacaca* in terms of how well it addressed the interviewees' needs. By considering the impact of these initiatives, some conclusions can be drawn about

¹⁶⁷³ See also Herman, *Trauma and Recovery* (n 342) 178-9.

how the interviewees may be supported beyond *gacaca*, and how other victim-survivors in other settings may be supported after participating in a justice process.

10.3.1 Trauma training, therapy, counselling and group membership

Out of the 23 interviewees, 13 were members in one of three regular therapy groups for victim-survivors lead by Emilienne,¹⁶⁷⁴ one (M19) was a member of a group for victim-survivors organised by AVEGA, one (M8) was part of a different type of therapy group,¹⁶⁷⁵ and eight were reportedly not part of any group.¹⁶⁷⁶ Several interviewees explained that they had participated in individual therapy, counselling sessions, trauma training or similar initiatives.¹⁶⁷⁷ M1 noted that she had participated in trauma training:

People who used to have signs of trauma were trained on how to deal with it and these trainings would happen at the district office.

R: When was the last time you participated in training about trauma?

M1: It has been like six months since my last training.

R: Do those trainings happen on a regular basis?

M1: Yes. They like to have people who have been raped to come for some training but also to get us to come together and share our stories so that we do not get lonely and depressed.

Many interviewees flagged the importance of trauma training and therapy groups for their individual recovery.¹⁶⁷⁸ M2 explained: 'If I hadn't done such trainings I wouldn't have this body today.' Counselling and/or therapy sessions, as well as being a member of a group of victim-survivors, were particularly appreciated for providing a platform for the interviewees to safely and confidentially share their stories and be listened to:

M12: I do not usually tell people about what happened to me but it did happen to me. I was happy about [attending a counselling session organised by a local organisation] ... When you have someone willing to listen to you, you talk to them and you cry and it makes you feel good. We do not like to share our stories with anyone because some people go outside and repeat it to everyone, so we appreciate being able to share our stories without worrying about crying or confidentiality.

M20: It's because of attending church and being a member of this support group where we get the opportunity to talk to other people about our situations.

¹⁶⁷⁴ M1, M2, M3, M5, M7, M10, M11, M13, M15, M16, M17, M18, M20.

¹⁶⁷⁵ M8 was part of a therapy group for women who had a different ethnic background to their husbands.

¹⁶⁷⁶ M4, M6, M8, M9, M12, M14, M21, M22, M23.

¹⁶⁷⁷ Including M1, M2, M12, M15, M16, M19, M20.

¹⁶⁷⁸ Including M1, M2, M5, M7, M10, M12, M13, M15, M19, M20.

Herman explains that ‘survivor groups have a special place in the recovery process, since such groups can provide survivors with a sense of belongingness, support and understanding better than any other person or initiative’.¹⁶⁷⁹ She further notes that the desire to connect with others who share similar experiences is common among survivors who ‘feel ... alienated by shameful secrets’ (including sexual violence), since these encounters can ‘dissolve feelings of isolation, shame and stigma’.¹⁶⁸⁰ Many interviewees highlighted the value and importance of being part of a group of women who had all experienced sexual violence (compared with other genocide-related crimes).¹⁶⁸¹ When asked how she felt about being part of a therapy group with other victim-survivors, M19 responded: ‘I was happy to have some people who have the same situation as me and with whom I can sit and talk.’ Other examples are:

M1: The good thing about my current life is that I have a support group made of people who have gone through the same experience as me. ... [A] group of people who can relate to my experience.

M12: I was happy the first day I came here to participate in a support group because I could talk to people who could relate to my situation. It is a good thing to find someone you can talk to without worrying about the confidentiality of what you are saying.

Being part of a group and sharing their stories appears to have helped several interviewees to overcome feelings of loneliness and hopelessness, as well as to reconnect with other victim-survivors:

M15: Being part of [the group] has restored our desire to live. We got to hear some testimonies from other people which were similar to ours and it always helps to know that you are not the only one.

M13: That is the reason why we started our support group called XXX where we have women who share the same struggle.¹⁶⁸² We got together after *gacaca* and we talked. ... Each one of us would share what happened to her, we would cry, whoever needed to cry would cry, those who can be strong would listen to her and try to comfort her. We have to accept it and move on with our lives.

¹⁶⁷⁹ Herman, *Trauma and Recovery* (n 342) 215.

¹⁶⁸⁰ *Ibid.*

¹⁶⁸¹ M1, M12, M13, M15, M19,

¹⁶⁸² This group was also run by Emilienne.

M20: This is my fourth year in the group and I started feeling better after two years. I am now able to tell my story. I did not talk or laugh before that. I would simply keep quiet. Whenever they would ask me to talk, I would get traumatised and run towards the streets like a crazy person. I can now contain myself and talk. ... Talking to me has brought some peace in my heart. I have met people whom we share similar problems and have realised that there are people who care about us.

These examples suggest that talking about their experiences and being listened to within the forum of a therapy group provided opportunities for personal catharsis and supported the interviewees' overall recovery. While the therapy groups were predominantly valued as a forum for the interviewees to talk, the groups also provided opportunities to jointly undertake economic activities:

M13: [Emilienne] helps us emotionally and there are some sponsors who come to see us. We have done some manual work and we were able to employ some people in our fields. The most important objective is that we meet and talk though.

M17: I am a member of a support group We have a subcategory of older women who cannot work. The others meet and go to work and then they call us when they are done working so that we can get together and they advise us.

Several interviewees highlighted the positive impact that Emilienne as their group leader and trauma counsellor had on their lives, including by comforting them, caring for them and supporting their sense of self and self-worth:¹⁶⁸³

M7: The one thing that has made me happy is this lady [Emilienne] who has made me sit here today. She has helped me take care of myself. I started cleaning myself up and I was able to buy some new clothes. I started meeting with other women in a group and I started believing in myself again. I wanted to complain to whoever I would meet before that.

M2: [W]e thank God for bringing [Emilienne] to us. We all met being devastated and full of problems in our hearts, but she has always been like a parent to us and treats us like our own biological mama. ... I am so happy to see how she helps people like us, the victims of sexual violence. Before, we were not known by anyone but because of God who works through her, she found us and brought us here where we can cry freely. We can meet here, we cry and dry off our tears, and we go back home. Those are tears we could not cry over the deaths of our children, husbands and parents. She gathered us together and she comforted us

¹⁶⁸³ According to Emilienne, she supported several interviewees not only as a member of her therapy groups, but also with individual counselling sessions.

M20: I used to think that a traumatised person who is HIV positive had no value in society. But [Emilienne] really cares about us and the people she brings to us also care enough to listen to us. I now understand that there are some people who think that I was brave to keep struggling for two years and choose to live instead of regretting why I had survived the genocide. I see how much [Emilienne] cares and I appreciate all the foreigners that she brings here to talk to us. I feel peace and happiness in my heart and it motivates me to want to achieve something in my life. Before, I didn't like sharing my story with people from outside. I would run away whenever they would start talking about it. I now feel free to talk about it and it is a great feeling of release.

As this last comment indicates, several interviewees valued not only talking to other victim-survivors, but also indicated that they appreciated sharing their stories with outsiders. This point was evidenced by the interviewees' positive comments about having talked about their experiences to the researcher of this thesis.¹⁶⁸⁴ The interviewees appeared to value talking to the researcher for several reasons. Firstly, they appeared to appreciate the interview as an opportunity to tell their story and be listened to, aligning with the concept of personal catharsis:

M12: Thank you for comforting me. Talking about these things is a first for me. I usually only share this with my doctor. I never talk about this with anyone. ... I am just happy to have had this time to chat with you. It really made me happy. Ever since the genocide was over, I have never been this happy.¹⁶⁸⁵

M17: just thank God for sending you my way so that I have someone to share my story with. I usually don't have anyone to talk about it with so it stays inside me. I sometimes wish I had a child left so that I could tell them about my problems.

M15: She [the researcher] is still a young woman and ... it is refreshing to see that she thought about us and what happened to us and decided to give us a platform to talk about it.

Furthermore, talking to the researcher appeared to provide some opportunities for empowerment. One interviewee (M13) appeared empowered after speaking to the researcher since she felt that she contributed important information to research that she thought may result in greater good:

You [addressing the interpreter] have told me that this young lady is conducting some research and we are happy to contribute to her research by giving her some information. We hope that God is going to help her do something great.

¹⁶⁸⁴ M2, M3, M7, M14, M15, M16, M17, M20.

¹⁶⁸⁵ M12 was not a member of a support group at the time of the interview.

Others seemed to feel empowered by the thought that others cared about what had happened to them, as well as through the opportunity to connect to someone outside their usual environment:¹⁶⁸⁶

M16: I really thank [the researcher] because it is obvious that there are still people who love us. ... [I]t gives us more strength when we see someone like this who comes all the way from another country to listen to us and is shocked by what took place, we feel that we are loved and more hopeful. ... [W]hen I speak to someone about what is inside me I feel like I am passing it on to them. Therefore, if you get someone who accepts to share painful periods with you, that person becomes more to you than just a friend. ... Therefore, talking to her like this, as if I already knew her, I was feeling like I was talking to my own daughter because all my children are girls.

M3: When I meet people that I don't know like you have come here today, I feel like I have gained some friends. I have lost all the members of my family, so when I am able to talk to people like right now, it makes me very happy.

Herman explains that reconnecting and forming relationships with others is the last step in the process of recovery from trauma.¹⁶⁸⁷ Seeing that the interviewees above were willing and/or 'happy' to connect with the researcher may be another indication that at least some of the interviewees had made progress in their psychological recovery.

10.3.2 God and religion

God, religion, faith and being a member of a specific denomination and church were cited by all interviewees as one of the main contributors to their recovery progress.¹⁶⁸⁸ Several interviewees believed that it was only because of God that they managed to survive the genocide and get through their *gacaca* trial:

M19: God has been there for me through the entire process. ... God was my only resort. He saved me from a pool of people who died and He continued to make me stronger afterwards. ... I feel good after praying to God.

M10: [During *gacaca*] I would pray to God to give me the strength to be strong and not crumble. ... I would ask God to give me the strength but one thing about me is that I am a strong person and nothing shakes me up easily. I would go and people would make fun of me but God was on my side.

M1: I needed a lot of strength to go through that trial but I prayed to God to give me the strength I needed.

¹⁶⁸⁶ M3, M15, M16, M20.

¹⁶⁸⁷ Herman, *Trauma and Recovery* (n 342) 196.

¹⁶⁸⁸ See Chapter 6 (6.1) and Appendix 2 for more detail about the interviewees' religious affiliations.

Others highlighted the positive impact that their faith had on their recovery process:

M3: Because of all those difficult times that I have had, I wondered what to do in order to solve my problems and decided to leave them all to God. God helped me and I finally started living again.

M9: The one thing that makes me happy is that I have a lot of respect for God because he is my protector.

These comments suggest that their faith in God provided the interviewees with a sense of safety, stability and empowerment. Several interviewees explained that their church had taught them about forgiveness. Some interviewees indicated that engaging with their religion and learning about forgiveness helped them to come to terms with their past, as well as to overcome feelings of revenge, therefore also contributing to the individual recovery of some interviewees:

M3: I have read something in the Bible and it has made me stronger. It has made me believe that the people who hurt me have also experienced hard times. They were never happy in their lives afterwards. ... [W]hen I reach out to them and tell them that God has done wonders for me and that I consider them as my family, the feeling of animosity is gone. ... I have noticed trauma on both sides. One is traumatised because they killed someone and didn't gain anything from it like they had been promised. The victim is also upset because they have lost their people and they develop feelings of hate from it.

Several interviewees made more references to God, their religion and their church throughout the interview, and how this was important in their lives.¹⁶⁸⁹ While not directly relevant to this research, it appears that the interviewees' faith, religion and affiliation with a specific church contributed to meeting at least some of the interviewees' needs since *gacaca*.

10.4 Conclusion

This chapter analysed the development of the interviewees' justice needs after their participation in *gacaca* until the time of the interview, as well as the role of *gacaca* and other initiatives in meeting these needs. In doing so, this chapter addressed research question 2.1, which asked about the emergence of new needs during and after the interviewees' participation at *gacaca* and the development of these needs over time. One persisting challenge in the lives of the interviewees was poor health, limiting their ability to engage in physical labour and thus exacerbating their financial and economic situation. As a result, many

¹⁶⁸⁹ Including M3, M12, M13, M14.

interviewees struggled to afford basic living needs, including food, shelter and clothes for themselves and their children, as well as their children's education.

Besides health issues and poverty, several interviewees continued to suffer from stigma and strained relationships with their own families and communities. In some cases, shame and stigma increased for some interviewees after *gacaca* because their identities and experiences of sexual violence were revealed to others during *gacaca*. Furthermore, following *gacaca*, some interviewees reported increased hostility from their perpetrators' families because the interviewees were blamed for their perpetrators' imprisonment. Finally, while this was not specifically discussed by the interviewees, it is possible that those who were ostracised by their own families because of the sexual violence experienced further alienation from their children and husbands because they were thought to have brought additional shame to the family by discussing sexual violence at *gacaca*.

The ongoing physical, social and material issues show that *gacaca* was not able to address the whole range of needs of the interviewees. Since *gacaca* did not provide or facilitate compensation, it did not assist with the material harm of the sexual violence experienced. Furthermore, *gacaca's* role in reducing stigma and the related socioeconomic repercussions for the interviewees was limited. *Gacaca's* limitations in ensuring the privacy of the trial of some interviewees, as well as negative reactions from some of the interviewees' and perpetrators' families to the interviewees' decision to raise their case, resulted in additional social and psychological consequences. These consequences have led to new needs that may be addressed through future initiatives, as discussed in the next chapter.

Besides these challenges, nearly all interviewees expressed an improvement of their mental health since their *gacaca* trial, and most were able to identify something positive in their lives, including that they had hope for the future, faith and enjoyed seeing their children grow up. The interviewees' recovery was supported by *gacaca* in several ways, including by enabling safety (predominantly through punishment of perpetrators), but also through the experiences of truth recovery and perpetrator responsibility, as well as empowerment, validation and vindication. Besides *gacaca*, the recovery process of many interviewees was supported by other initiatives, including counselling, therapy, trauma training, therapeutic and other support groups, church membership as well as by religion and faith more generally. Therapeutic and support groups were particularly valued as a forum for truth-telling for

personal catharsis and reconnecting with other victim-survivors, while religion and faith appeared to provide the interviewees with a sense of stability and safety, as well as with opportunities to reconnect with members of their church. The analysis of the impact of these initiatives forms the basis for recommendations made in the next chapter about how the interviewees and other victim-survivors may be supported beyond *gacaca*. The impact of these initiatives emphasises that contextual factors need to be considered when assessing the interviewees' experiences with *gacaca*. The next and final chapter of this thesis discusses how contextual factors may have influenced the interviewees' needs and experiences with *gacaca*.

11 CHAPTER 11: CONCLUSION

This concluding chapter brings together the main findings of the thesis, which respond to the research questions that guided the research. The analysis of the primary data, relevant literature and applicable *gacaca* law provided answers for all the research questions, at least to some degree. This chapter outlines directly and extensively the responses to the two primary research questions. Section 11.1 summarises the analysis of victim-survivors' justice needs, thereby addressing research question 1.1. Question 1.2 is addressed in Section 11.3, discussing *gacaca*'s achievements and limitations in meeting the needs of victim-survivors. The secondary research questions are addressed throughout this chapter.

To enable a meaningful comparison with other research, this chapter considers several contextual factors that were introduced in earlier chapters. These contextual factors include particularities of the Genocide against the Tutsi, the political situation in post-genocide Rwanda, and cultural, social and religious influences. The interviewees' experiences with *gacaca* are further contextualised by considering *gacaca*'s official goals that the Rwandan Government had articulated when establishing the community courts. Besides these official goals, this chapter also considers *gacaca*'s profound goals, which align with some of the key concepts of transitional justice and the overarching justice framework of *gacaca*.

One purpose of this chapter is to further develop the set of victim-survivors' justice needs. Through the systematic assessment of *gacaca* against the interviewees' justice needs, this chapter adds evidence to the discussion about the strength and limitations of justice mechanisms dealing with sexual violence more generally from the perspective of victim-survivors. The chapter considers other research with victim-survivors in Rwanda as well as in other settings to highlight commonalities and differences and to flag persisting questions for further research. Finally, the main research findings are used to discuss implications for the design of both future justice processes dealing with conflict-related sexual violence in settings other than Rwanda and for initiatives to support Rwandan victim-survivors beyond *gacaca*.

11.1 Victim-survivors' Justice Needs

A key objective of this thesis was to understand the justice needs of victim-survivors who suffered sexual violence during the Genocide against the Tutsi and who had their case(s) of sexual violence tried by *gacaca* (research question 1.1). The analysis of justice needs as

discussed by the interviewees builds on the comprehensive set of justice needs developed in Chapter 5. In doing so, this research adds nuances and examples to the definition of each justice need and also provides new insights regarding the relationships between these different needs.

The analysis of the interview responses in Chapters 8 and 9 confirmed the relevance of all justice needs outlined in Chapter 5 for the interviewees. Thereby, this research shows some consistency with the findings of other studies with victim-survivors in different contexts. Overall, the interviewees discussed process-related justice less directly than outcome-related justice needs. Nevertheless, the importance of most process-related justice needs (identified in Chapter 5 as) 1) enabling environment, 2) participation and 3) information and support, as well as their various components was reinforced by the responses of the interviewees. Most interviewees referred to their fragile psychological state and re-traumatisation at the time of their *gacaca* trial, and several interviewees discussed their experiences of social repercussions resulting from the sexual violence. In the context of post-genocide Rwanda and *gacaca*, respectful and sensitive treatment of the interviewees by those involved in the *gacaca* process, as well as privacy and safety, were particularly pressing components of an enabling environment. The private nature of reporting and trying sexual violence cases at *gacaca* has frequently been criticised for limiting the choices of Rwandan victim-survivors. However, most interviewees indicated that they could not have participated in their trial if it had been held in a more public forum, because this would have compromised their need for privacy and safety.

Participation, while directly discussed by only a few interviewees, appeared to be another important process-related justice need, especially in view of the feelings of low self-worth and powerlessness that many of the interviewees suffered as a result of the sexual violence. Participation is closely related to the outcome-related justice needs of truth-telling and truth-seeking, which were important for many interviewees during their *gacaca* trial. While the need for information was only mentioned by a few interviewees, support, in particular psychological support from a trauma counsellor, as well as emotional support from their family and community, was highlighted as a particularly pressing need in the context of the interviewees' *gacaca* experience.

The outcome-related justice needs that were most frequently discussed in the interviews comprise truth recovery, consequences – predominantly through punishment by way of imprisonment, but also through exposure – as well as safety and perpetrator responsibility. The interviewees’ emphasis on punishment appeared to be underpinned by several other needs, including personal safety, validation and vindication. Many interviewees discussed retribution as a justification for the punishment of their perpetrators. Overall, the relatively high number of interviewees who valued punishment and retribution is noteworthy and may be a question for future research, because it differs from other studies, including Nowrojee’s research with Rwandan victim-survivors who had testified at the ICTR.¹⁶⁹⁰ Many interviewees appreciated punishment by means of imprisonment, because this imprisonment was thought to enable long-term physical and psychological safety, which was a key concern of several interviewees. Imprisonment was considered appropriate to satisfy the interviewees’ demands for retribution.

Truth-telling was particularly important for interviewees to expose perpetrators to their communities, presumably because they hoped this exposure would lead to psychological and social consequences for their perpetrators, flagging the close connection between the justice needs of truth-telling and consequences. Furthermore, it appears that some interviewees thought the exposure of their perpetrators would provide a sense of safety, similar to punishment. Truth-telling for personal catharsis was also an important topic overall but appeared less relevant to the interviewees in the context of *gacaca*. While truth-seeking was discussed by only a few interviewees, it was noted as one of the main reasons for why these interviewees had decided to participate in *gacaca*.

Perpetrator responsibility by way of confession and/or a request for forgiveness was also one of the dominant outcome-related justice needs that was discussed by many interviewees, albeit less frequently than punishment. Many interviewees mentioned that they had hoped to witness a confession, or even better, a request for forgiveness at *gacaca*. Those few interviewees who reported witnessing genuine perpetrator responsibility highlighted the positive impact of this experience. If provided in public, some interviewees appeared to

¹⁶⁹⁰ As discussed in Chapter 5 (5.1.2 and 9 (9.2), Nowrojee notes that Rwandan victim-survivors who had testified at the ICTR did not prioritise punishment, see Nowrojee, “Your Justice Is Too Slow” Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?’ (n 15) 111.

consider perpetrator responsibility as an alternative to punishment, since it also seemed to provide the interviewees with a sense of safety, as well as validation and vindication. Some interviewees mentioned specifically that they would have preferred perpetrator responsibility to punishment and indicated that they would endorse a suspension of their perpetrators' punishment should their perpetrator(s) apologise to them in the future in an appropriate forum and manner. This finding suggests that (genuine) perpetrator responsibility may serve as a substitute to punishment in the eyes of some interviewees. Other interviewees sought both punishment and perpetrator responsibility, indicating that for these interviewees, the two needs were not substitutes but rather complemented each other as desirable outcomes.

The outcome-related justice needs of validation, vindication, reparation and empowerment were mentioned less frequently and less directly than the other outcome-related justice needs. Nevertheless, these justice needs still appeared important to most of the interviewees. Validation, vindication and empowerment appeared particularly relevant in light of the persisting feelings of shame and dishonour of some interviewees, as well as their experiences of ongoing derogatory attitudes of some family and community members towards victim-survivors. The need for reparation, in particular compensation, was rooted in the significant material harm that the interviewees suffered because of their experiences of extraordinary sexual violence. Some researchers distinguish between justice needs and survival needs, which include economic issues, as well as physical and mental health. Koss notes that survival needs are 'generally unrelated to the offender or anything he/she can do' and can usually not be addressed by the criminal justice system.¹⁶⁹¹ However, this research found that the interviewees' poor health and dire economic situation were, at least to some extent, consequences of the sexual violence and could have been addressed through compensation, suggesting that a distinction between survival needs and justice needs is not always feasible and appropriate, depending on the context of victimisation.

The analysis of the interviewees' justice needs and their experiences with *gacaca* highlights several noteworthy paradoxes. Nearly all interviewees confirmed that giving oral testimony about sexual violence at *gacaca* was extremely difficult. At the same time, many interviewees

¹⁶⁹¹ Koss, 'Restoring Rape Survivors' (n 9) 209.

appeared to have benefited from talking about the violence experienced, supporting their personal catharsis, empowerment and individual recovery overall. Similarly, de Brouwer and Ka Hon Chu explain about their research with Rwandan survivors that ‘participation and testifying in *gacaca* was traumatizing, healing and empowering at the same time’.¹⁶⁹² Besides giving testimony, many interviewees perceived meeting their perpetrator in the courtroom as one of the most difficult experiences during *gacaca*. Those interviewees who witnessed confessions and/or apologies from their perpetrators, or asked questions and received answers, seemed to benefit from the personal encounter. It appears that several justice needs were met through this encounter, including perpetrator responsibility, validation, vindication and empowerment. Another paradox was that many interviewees appreciated the privacy of their *gacaca* trial, while at the same time they sought public exposure of their perpetrators to their communities. Future research could investigate how the privacy and identity of victim-survivors can adequately be secured, while still achieving exposure of perpetrators to an audience beyond the participants in a justice process and inclusion of the crimes in a public record.

The findings of this research strongly support previous research with victim-survivors, suggesting that victim-survivors’ justice needs are diverse, depending on not only contextual factors but also on individual preferences. While all justice needs were relevant to the group of interviewees, different interviewees prioritised different needs. They appeared to have differing preferences regarding the need of participation. Many did not want to face their perpetrator during the trial and avoided any interaction. In contrast, some participated in *gacaca* specifically to meet their perpetrator(s) so that they could ask questions and relay messages. Even though most interviewees requested the punishment of their perpetrator, some preferred to see perpetrator responsibility.

This research also demonstrates that all justice needs identified in Chapter 5 are interlinked and that one need is frequently underpinned by another. Calls for punishment appeared to be driven in many cases by the need for safety, validation, vindication and empowerment. While most justice needs appeared non-substitutable, some interviewees seemed to view perpetrator responsibility as an acceptable, even a desired, substitute for punishment. This

¹⁶⁹² De Brouwer and Ka Hon Chu, ‘Survivors’ Views on *Gacaca*’ (n 99).

research also suggests that some needs might increase or even newly emerge after a victim-survivor's participation in a justice process (research question 2.1). Some interviewees reported that they experienced harassment and threats of physical harm because they had decided to testify against their perpetrators, requiring additional protective measures. It was only because of their participation in *gacaca* that the experiences of sexual violence of some interviewees were exposed to their communities, which again led to additional stigma and related social consequences. Several reported having been shunned and harassed by their perpetrators' families because the interviewees were held responsible for the imprisonment of their perpetrators. Finally, some experienced strained relationships with their own families because of the shame and stigma resulting from the sexual violence. These strained relationships may have been further exacerbated when the interviewees raised their case at *gacaca*, since this may have been thought to bring additional shame to the family. These experiences resulting from the interviewees' participation in *gacaca* caused additional social and economic consequences and increased some existing justice needs, including safety, validation and vindication.

11.2 Contextualising the Interviewees' Justice Needs

The interviewees' justice needs were shaped and influenced by several contextual factors, which should be considered when interpreting the research findings and comparing them with other research on victim-survivors. These contextual factors relate to both the initial experiences of the sexual violence and to the experiences with *gacaca*. The interviewees experienced 'extraordinary sexual violence', including extreme levels of brutality and exposure to violence intensely concentrated over 100 days, which sets this research apart from research with victim-survivors of 'ordinary sexual violence'. They suffered sexual violence, torture and other forms of physical violence, witnessed the killing of children and other family members, were expelled from their homes and lived under constant fear for their lives for the duration of the genocide. The prolonged and repeated exposure to traumatic events is likely to lead to an increased intensity of trauma. Subsequent psychological sufferings are likely to persist for many years, or may even destroy the traumatised individual's sense of self irrevocably.¹⁶⁹³ The experiences of trauma of Rwandan victim-survivors are likely to have been further compounded by the fact that during the genocide,

¹⁶⁹³ Herman, *Trauma and Recovery* (n 342) 87.

Tutsi women were 'doubly targeted' for the essence of who they were: their gender and their ethnicity. The psychological consequences following the interviewees' genocide experiences were particularly intense and persistent, requiring special attention and measures that may not apply in other contexts of conflict-related sexual violence.

Chapter 3 highlighted the mass participation of Hutu civilians as a distinct characteristic of the genocide. As part of this mass participation, many victim-survivors, including half the interviewees, suffered sexual violence and other atrocities from people known to them. Many continued to live close to their perpetrators after the genocide officially ended (unless their perpetrators were imprisoned) and were thus likely to meet them frequently during their daily lives. The pre-existing relationships between perpetrators and victim-survivors prior to the genocide (including as neighbours, school mates, relatives, etc.), as well as the risk of frequent encounters after the genocide, are likely to have shaped the interviewees' expectations of *gacaca* and their experiences with the courts. Future safety was a particular concern for those Rwandan victim-survivors who were violated by members of their own community and who they continued to see after the genocide.

The cultural, social and historical context is also likely to have affected the specific needs of victim-survivors in this research, including an increased need for privacy and safety. Derogatory attitudes towards victim-survivors have been shaped by long-existing cultural norms in Rwanda. These attitudes exacerbated the social and socioeconomic consequences for the interviewees, thereby influencing their justice needs both in terms of process (e.g. need for privacy) and outcome (need for validation, vindication and reparation). Several interviewees experienced harassment, threats and reprisal attacks from their perpetrators, the perpetrators' families and other involved community members, including before, during and after their *gacaca* participation, indicating that additional safety measures were needed in the context of *gacaca*.

The interviewees' hopes and expectations for their participation in *gacaca* also are likely to have been influenced by some of the the official goals articulated for *gacaca*, including:

1. Reveal the truth;
2. Eradicate the culture of impunity;
3. Reconcile Rwandans and reinforce their unity.

Gacaca was introduced to the Rwandan population through 'sensitisation' campaigns. It is highly likely that the interviewees were exposed to these campaigns and were therefore aware of the official goals of *gacaca*, shaping their expectations of the punishment of their perpetrators, as well as the emphasis on truth and perpetrator responsibility. The high importance of punishment and retribution is also likely to have been supported by the political context in which *gacaca* was established. The Rwandan Government, when it came to power in 1994, had vouched to fight impunity and hold everyone involved in the genocide accountable for their actions (reflected in the goal 'eradicate the culture of impunity'). The categorisation of rape and sexual violence as Category 1 crimes and *gacaca's* sentencing scheme may have shaped the interviewees' expectations for the imprisonment of their perpetrators.

The interviewees' desire to see their perpetrators punished appeared to be driven, at least to some extent, by the interviewees' awareness of their personal hardship and suffering that resulted from the extraordinary sexual violence they had experienced, in particular when comparing their personal situation after the genocide with that of their perpetrators. Some of the interviewees' perpetrators reportedly continued to live at large after the genocide (until the interviewees raised their cases) and pretended that they had done nothing wrong. The perceived lack of impact of the genocide on the perpetrators' lives appears to have reinforced the interviewees' feeling of unfairness, and therefore increased their desire to have their perpetrators exposed and punished. Finally, the preference of some interviewees for punishment by way of imprisonment was driven by the need for safety, in particular for those who lived in the same communities as their perpetrators.

The interviewees' emphasis on perpetrator responsibility, in particular the desire to receive a request for forgiveness (as well as the interviewees' willingness to forgive), is likely to have been influenced by several contextual factors. One of the goals of *gacaca* was to 'reconcile Rwandans and reinforce their unity'. To promote reconciliation, *gacaca* had incorporated the guilty plea provision that was meant to encourage confessions and apologies by offering reduced sentences in return. At least some interviewees were aware of *gacaca's* guilty plea rules and may therefore have expected their perpetrators to confess and apologise as their contribution to reconciliation. The Rwandan Government established the NURC prior to *gacaca*, in 1999. The responsibilities of the NURC included the preparation and coordination

of national programs and mechanisms aimed at ‘promoting, ... restoring and strengthening the Unity and Reconciliation of Rwanda’ as well as ‘[t]o educate, sensitize and mobilize the population in areas of national unity and reconciliation’.¹⁶⁹⁴ The interviewees are likely to have been exposed to campaigns promoting the need for reconciliation after the genocide. Several interviewees spoke about having been taught about the importance of forgiveness at their churches, in workshops and other programs. The willingness of some interviewees to forgive their perpetrators and the potential for reconciliation in the future have previously been highlighted as remarkable and are discussed later. The importance of religion in the Rwandan culture and for the interviewees was discussed earlier. Encouraged or urged by their churches and other Rwandan initiatives, some interviewees may have felt compelled to forgive.

11.3 Assessment of how *Gacaca* Met Victim-survivors’ Justice Needs

In addition to analysing the justice needs of victim-survivors, this study considered how well *gacaca* contributed to meeting these needs (research question 2). Chapter 8 discussed in detail how *gacaca* supported the interviewees’ process-related justice. This discussion was predominantly based on the functioning of *gacaca* as reported by the interviewees (and Emilienne) and considered the trial procedures as specified in *gacaca* law and regulations, as well as other relevant research (research question 2.4).

In terms of creating an enabling environment, one of *gacaca*’s strongest points was the behaviour of the *Inyangamugayo*, which most interviewees described as respectful, sensitive and fair. This finding confirms that treatment by authorities and the perception of fairness during a justice initiative can contribute significantly to the overall experience of victim-survivors. Sensitising *Inyangamugayo* to the particular needs of victim-survivors and training them to deal with traumatised victim-survivors in the courtroom had been a priority of the Rwandan Government. The experiences of the interviewees confirm that the training of the *Inyangamugayo* was an important investment in an enabling environment at *gacaca*. However, while most interviewees reported a positive experience with the *Inyangamugayo* in their final trial, many also raised issues of corruption and bias during earlier trials, confirming similar criticism discussed in other research. Appealing a verdict or requesting

¹⁶⁹⁴ Republic of Rwanda (n 574).

alternative *Inyangamugayo* to hear their cases were some of the strategies that were possible at *gacaca* and that were utilised by the interviewees to respond to issues of corruption and bias and thus to attend to their process-related justice needs.

Privacy was another important aspect of creating an enabling environment raised by the interviewees. *Gacaca*'s contribution to an enabling environment through privacy is seen as twofold. The need for privacy was considered by *gacaca* law and regulations, including by holding trials *in camera* and prescribing confidentiality of the process. In this sense, *gacaca* law took an important step in meeting the interviewees' need for privacy. Nevertheless, these procedures appeared impracticable in the settings of Rwandan communities and were not observed in all trials. It therefore appears that *gacaca* was (in practice) limited in creating an enabling environment by way of privacy.

One of *gacaca*'s strongest points in terms of meeting victim-survivors' process-related justice needs lay in the various opportunities for participation of victim-survivors in their trials. These opportunities distinguish *gacaca* from other justice initiatives, particularly the criminal justice system, which has frequently been criticised for marginalising the role of victim-survivors. *Gacaca* allowed, in most cases, for the interviewees to decide if they wanted their cases to be tried. This decision-making power, albeit flagged as questionable by other researchers, sets *gacaca* apart from the criminal justice system, where the state, not the victim-survivor, decides whether a case is pursued. *Gacaca* was particularly strong in giving each interviewee a voice by way of an oral and/or written statement and opportunities to ask questions during the trial. Allowing some victim-survivors to provide a written statement in lieu of a verbal account reflected a well-intended, sensitive process feature. However, this option was reportedly not supported across all *gacaca* courts in which the interviewees participated. One limitation in terms of participation lay in the rigidity of outcomes prescribed by *gacaca* law, which did not allow victim-survivors to contribute to the final outcome in their cases. Some interviewees indicated that they would have preferred a different outcome to what the *Inyangamugayo* determined at the end of their trials.

The lack of information available to interviewees prior to and during their trials appears to be one of the main limitations of *gacaca* in terms of process-related justice needs, even though the interviewees did not explicitly flag this lack of information as a shortcoming of *gacaca*. It appears that the trauma counsellors who accompanied at least half of the interviewees during

their trials compensated for the lack of information provided by *gacaca* at least for some interviewees. The counsellors assisted with psychological support, gave information on the processes, and acted in some cases as advocates. The provision in *gacaca* law that permitted trauma counsellors to accompany victim-survivors during their trial, and the collaboration with NGOs to provide these trauma counsellors, were important contributions of *gacaca* towards meeting the interviewees' justice need of information and support. Many interviewees who were accompanied by a trauma counsellor highlighted that this support facilitated their participation in *gacaca*. At the same time, several interviewees discussed the need for more support, including more advocacy support and emotional support from family members, as a recommendation of how *gacaca* could have been improved.

In terms of outcome-related justice needs, the interviewees valued *gacaca* particularly for its role in punishing perpetrators. All but one of the 100 perpetrators who were included in the cases raised by the interviewees were found guilty and sentenced to imprisonment by *gacaca*, predominantly to the maximum sentence of life imprisonment (with special provisions). *Gacaca's* achievements in terms of prosecuting and sentencing perpetrators of sexual violence sets it apart from conventional criminal justice processes, which have been criticised for failing to prosecute or for handing down lenient sentences. Therefore, this research does not support concerns that sentences for crimes of sexual violence reached at *gacaca* would be too lenient.

The punishment of perpetrators appears to have met several other justice needs, at least to some degree, including safety, validation, vindication and empowerment. Enabling safety was overall highlighted by several interviewees as *gacaca's* strongest point and was achieved predominantly by the imprisonment of perpetrators and their exposure and perpetrator responsibility. Feelings of validation and vindication were mainly supported through the guilty verdicts of perpetrators at *gacaca* and, in most cases, their punishment with the maximum penalty of life imprisonment. Those interviewees whose perpetrators received a lesser sentence than life imprisonment were less satisfied by the justice meted out by *gacaca*. These interviewees continue to worry about their safety in the future and still seem to long for validation and vindication. Besides guilty verdicts and substantive prison sentences, validation and vindication were supported through sensitive and supportive behaviour of the *Inyangamugayo*, as well as by confessions and apologies that were given by some

perpetrators at *gacaca*. Having said that, it appears that for many interviewees, experiences of validation and vindication were limited to their *gacaca* trial and did not translate into their lives beyond *gacaca*.

Empowerment was supported at *gacaca* through the punishment of perpetrators, as well as through the *gacaca* process itself. Many interviewees discussed both their decision to raise their cases and their active participation in the trial as catalysts for empowerment, highlighting the close connection between the process-related justice needs of participation and empowerment. Many appeared to feel empowered by the sensitivity and care demonstrated by their *Inyangamugayo*, as well as by the support they received from people around them, including their trauma counsellors, family and community members as well as other victim-survivors who participated in *gacaca*. In contrast, those who did not have access to such support during *gacaca* commented that the lack of support aggravated their feelings of powerlessness during *gacaca* and made their participation in the process more difficult.

The research found that *gacaca's* contribution to truth recovery had several dimensions. One of *gacaca's* strongest points lay in giving the interviewees a voice during their trials, setting *gacaca* apart from conventional criminal-justice processes, which are frequently criticised for allowing only very limited speaking for victim-survivors. Having a voice at *gacaca* included that the interviewees could share their testimony (truth-telling) in their own words and ask questions (truth-seeking). Truth-telling was particularly valued for the purpose of exposing the truth about perpetrators and their crimes, and many interviewees highlighted truth exposure as *gacaca's* main achievement. Having said that, truth exposure concerning sexual violence cases at *gacaca* was restricted, including through the prohibition on raising cases publicly, the *in-camera* regulation and the fact that no information about *gacaca's* handling of sexual violence cases, not even in a de-identified manner, was publicly available at the time of writing of this thesis. It appears that the truth as told by most interviewees was exposed to only a limited audience, although most did not raise this as a shortcoming of *gacaca*.

Gacaca's role in facilitating perpetrator responsibility was limited. While *gacaca* law was meant to encourage guilty pleas through its sentencing structure, this study found that most perpetrators denied all allegations raised against them and more than half the interviewees did not witness any perpetrator responsibility at *gacaca*. Some perpetrators who confessed and/or apologised only did so after the testimonies of the interviewees and witnesses had

strongly supported their guilt. Consequently, several interviewees did not perceive their perpetrators' confessions and/or apologies as genuine, but as a strategy to have their sentences reduced. The refusal of perpetrators to take responsibility appeared to aggravate the individual recovery of affected interviewees. Many interviewees commented on how difficult it was for them that their perpetrators denied everything and how they had wished to hear a confession and request for forgiveness. This experience is consistent with that of victim-survivors in other research, as noted by Clark, explaining that the 'continued denial' of perpetrators can exacerbate the victim-survivors' emotional wellbeing by further traumatising the victim-survivor during the justice process.¹⁶⁹⁵ While 10 interviewees witnessed some perpetrator responsibility, only five considered the confessions and/or apologies of their perpetrators to be genuine. However, these interviewees highlighted witnessing perpetrator responsibility at *gacaca* as a positive experience. Several interviewees reported receiving requests for forgiveness from their perpetrators and/or perpetrators' families outside of *gacaca*, which was an outcome that may have been encouraged by *gacaca* as well as other Rwandan Government reconciliation initiatives.

Gacaca's main limitation concerning outcome-related justice needs lay in the lack of compensation provided and/or it facilitated. While compensation for bodily injury was not part of *gacaca's* mandate, the interviewees' responses discussed in Chapters 6-10 suggest that the remedy for the material harm associated with the sexual violence constituted, besides safety, one of the most pressing needs of the interviewees during and after *gacaca*. This finding is supported by several researchers, who have flagged the issue of 'persistent poverty and ill-health' of victim-survivors.¹⁶⁹⁶ Even though *gacaca* did not facilitate or provide material reparation by way of compensation, it did support some level of symbolic reparation (satisfaction). The Rwandan Government made rehabilitation efforts outside of *gacaca*, including by establishing the assistance fund FARG, which appeared to benefit several interviewees through free access to medical assistance.

While participating in *gacaca* was described as a very difficult experience and did not meet all the interviewees' expectations and justice needs, this research has found that most

¹⁶⁹⁵ Clark refers to studies by several researchers, see Clark, 'A Fair Way to Go: Criminal Justice for Victim/Survivors of Sexual Assault' (n 51) 100.

¹⁶⁹⁶ See, for example, Anne-Marie De Brouwer and Sandra Ka Hon Chu, 'Tragedy and Triumph: Rwandan Women's Resilience in the Face of Sexual Violence' (2011) 3(2) *Amsterdam Law Forum* 203, 204.

interviewees evaluated *gacaca* as positive overall. This overall positive evaluation distinguishes the courts positively from conventional criminal justice processes, which have frequently been criticised by victim-survivors for not meeting their expectations and justice needs. Positive experiences of victim-survivors with *gacaca* were also noted in other research, including in interviews with victim-survivors by De Brouwer and Ka Hon Chu who explain that '[i]n 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'.¹⁶⁹⁷ Kaitesi explains that participating in *gacaca* 'relieved [some of her informants] of shame and burden they had carried from their rape and sexual torture experience'.¹⁶⁹⁸

The positive experiences of the interviewees and other victim-survivors who participated in an *in-camera* trial differ from the numerous accounts of negative experiences of victim-survivors with public *gacaca*.¹⁶⁹⁹ These public *gacaca* hearings constituted the focus of *gacaca* research and dominated earlier discussions of *gacaca*'s handling of sexual violence. By distinguishing victim-survivors' experiences with the *in-camera* trials from those at public *gacaca* hearings, this thesis contributes to a more nuanced assessment of *gacaca*'s handling of sexual violence cases. The analysis of the interviewees' experiences with the *in-camera* trials also confirms some of the criticism that was raised when sexual violence cases were transferred to *gacaca* in 2008. This research verifies criticism that the privacy provisions regarding the lodging and trying of sexual violence cases outlined in *gacaca* law were not always practicable. It reinforces concerns that even after *gacaca*, crimes of sexual violence were not generally considered wrong and serious and that victim-survivors may continue to live with shame and stigma. It also confirms that individual stories of victim-survivors are unlikely to have been included in a public record because of *gacaca*'s privacy provisions concerning sexual violence. Having said that, this research also showed that the interviewees predominantly felt that *gacaca* assisted in exposing the truth and no interviewee commented that they thought their experiences were minimised or hidden from the public record by being tried at *gacaca*.

¹⁶⁹⁷ De Brouwer and Ka Hon Chu, 'Survivors' Views on *Gacaca*' (n 99).

¹⁶⁹⁸ Kaitesi (n 29) 234.

¹⁶⁹⁹ Brounéus, 'Truth-Telling as Talking Cure? 'Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts' (n 90); Brounéus, 'The Trauma of Truth Telling: Effects of Witnessing in the Rwandan *Gacaca* Courts on Psychological Health' (n 57); Wells (n 32); Eftekhari (n 469).

Criticism outlined in Chapter 4 also included that the *in-camera* regulation jeopardised the fairness of a trial and thus *gacaca*'s legitimacy overall, because the lack of community participation raised 'grave risks of miscarriages of justice'.¹⁷⁰⁰ Many interviewees reported issues of bias, bribery and corruption which are likely to have been particularly challenging because of the private nature of the *in-camera* trials. Having said that, *gacaca* law permitted the lodging of appeals or reviews of a judgement, which constituted the interviewees' main strategy for handling issues of bias and corruption. Some interviewees appealed several times, which assisted them in ultimately seeing their perpetrators convicted. Since defendants were also permitted to appeal a judgement, it appears that the option to submit an appeal protected the rights of all participants in *gacaca* to at least some degree. One interviewee saw her perpetrator acquitted by *Inyangamugayo* who she explained had been bribed. Since her perpetrator fled after being released from prison, the interviewee decided not to appeal. Therefore, for this one interviewee, the private nature of her *gacaca* trial appears to have contributed to that 'miscarriage of justice' in her case.

Overall, the results of this research do not generally support the concerns raised by scholars and NGOs working with Rwandan victim-survivors when sexual violence cases were transferred to *gacaca*. These concerns included that sentences handed down by *gacaca* would be too lenient, that victim-survivors would have been better served by the ordinary courts, and that *gacaca* denied victim-survivors justice altogether. The vast majority of perpetrators who were included in the cases raised by the interviewees were punished by *gacaca*, most of them with the maximum penalty. Several interviewees also appreciated explicitly that their cases were tried by *gacaca* instead of by Rwanda's conventional justice system. The research found that *gacaca* met many components of the interviewees' justice needs and that victim-survivors overall believed that *gacaca* provided them with a sense of justice, instead of denying them justice. Having said this, Chapter 1 outlined the limitations of this research, flagging that the experiences of the interviewees cannot be transferred to the whole group of Rwandan victim-survivors for various reasons including regional differences of the genocide and *gacaca*. Therefore, more research would be needed with other samples of victim-survivors including in other regions of Rwanda to be able to draw some more robust

¹⁷⁰⁰ Haskell (n 96) 115.

conclusions when comparing the previously noted criticism and concerns of researchers with the experiences of Rwandan victim-survivors.

11.4 Considering *Gacaca's* Objectives

Justice initiatives are (ideally) designed with several overarching purposes in mind. However, meeting the justice needs of victim-survivors may not constitute a primary objective of a given justice process. Any evaluation of a justice initiative dealing with sexual violence should not be limited to an assessment of how well the initiative met victim-survivors' justice needs. It should also consider the main purpose and objectives of the justice initiative itself. While this thesis was not concerned with evaluating *gacaca* per se, this section considers the interviewees' experiences compared with *gacaca's* purpose and objectives.

Sexual violence was initially not meant to be tried by *gacaca* but by Rwanda's ordinary courts. *Gacaca's* objectives had originally been articulated for the public *gacaca* proceedings that heard and tried genocide-related cases other than sexual violence. When sexual violence cases were transferred to *gacaca*, substantive modifications were made to the functioning of the courts, which is why the *gacaca* courts that tried sexual violence differed in many ways from the public *gacaca* proceedings. Nevertheless, it is assumed that the purpose and objectives that had originally been determined for *gacaca* still applied to the courts that tried sexual violence.

The five official goals that the government introduced for *gacaca* included truth, acceleration of genocide trials, ending impunity, reunification of Rwandans and demonstrating that Rwanda can solve its own problems. These were explained in Chapter 4 along with the 'profound' objectives of *gacaca* as outlined by Clark,¹⁷⁰¹ of which justice, reconciliation, truth, forgiveness and healing found particular application in this thesis. The profound goals of *gacaca* align with five key concepts of transitional justice, which again constitutes the theoretical framework and overarching justice approach as part of which *gacaca* was established. Therefore, by considering *gacaca's* profound objectives, this section also briefly assesses how the interviewees' experiences relate to some key concepts of transitional justice. Since some of the official and profound goals of *gacaca* overlap, they are discussed concurrently below where applicable.

¹⁷⁰¹ Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (n 31).

Some of the official goals of *gacaca* are likely to have influenced the interviewees' emphasis on certain justice needs and components thereof, including punishment, truth exposure and perpetrator responsibility. At the same time, it could also be argued that the goals articulated for *gacaca*, as well as its profound objectives, happened to align with some of the interviewees' justice needs and that *gacaca* was thus conducive to creating an overall positive experience for the interviewees with *gacaca*. *Gacaca*'s official goal 'reveal the truth', which overlaps with the profound objective of truth, relates to the interviewees' need for truth recovery. Many interviewees highlighted truth exposure as one of *gacaca*'s strongest points

The ordinary court system appeared to have dealt with approximately 100 cases during its 12 years of operation, while *gacaca* reportedly tried between 6000 and 8000 cases in one year. Several interviewees commented that the *gacaca* courts operated at a much faster pace than the ordinary courts. Both the official figures of cases tried by *gacaca*, as well as some of the interviewees' comments, suggest that *gacaca* was successful in supporting the goal to 'accelerate genocide trials' concerning sexual violence cases and that *gacaca* '[proved] the Rwandans' capacity to resolve their own problems'. The ICTR was the only non-Rwandan justice initiative that dealt with genocide-related crimes. While the ICTR raised awareness of conflict-related sexual violence and set ground-breaking precedents, its achievements are thought to have had only limited practical impact on individual Rwandan victim-survivors (other than perhaps those who had participated in the trials). The ICTR's achievements of prosecuting and sentencing crimes of sexual violence, as well as the handling of these cases in the courtroom, have frequently been described as disappointing. When compared with the ICTR, the volume of sexual violence cases tried by *gacaca* as well as the overall positive experiences of victim-survivors with the courts suggest that *gacaca* demonstrated 'Rwandans' capacity to solve their own problems'. One interviewee (M22) specifically acknowledged *gacaca* for its contribution to empowering Rwandan society to deal with genocide-related crimes.

The assessment of the goal 'reconcile Rwandans and reinforce their unity', which overlaps with *gacaca*'s profound objective of reconciliation, is complex, since reconciliation is a multifaceted concept with several connotations. Chapter 4 introduced reconciliation as the process of rebuilding relationships to enable positive future engagement between former conflict parties. Another conceptualisation of reconciliation introduced in Chapter 4 required

a genuine apology by the perpetrator and forgiveness by the person harmed. Forgiveness was also highlighted as a distinct key concept relating to transitional justice and a profound objective of *gacaca*, and therefore also overlaps with the official goal of reconciling Rwandans. Several interviewees endorsed the idea that reconciliation required both an apology of their perpetrator as a first step and the interviewee's forgiveness in return. Chapter 9 highlighted the limitation of *gacaca* in terms of enabling reconciliation by facilitating apologies and forgiveness, because the majority of perpetrators reportedly denied any wrongdoing. Nevertheless, the few interviewees who witnessed what they considered to be a sincere demonstration of responsibility and who offered forgiveness in return reported having good relationships with their perpetrators or at least the perpetrators' families. In these few cases, *gacaca* appears to have significantly contributed to reconciliation.

Chapter 9 also noted that those interviewees who witnessed confessions and apologies that they considered as a strategy of the perpetrators to reduce their sentence, were not willing to offer forgiveness in return and reportedly did not reconcile with their perpetrators. On the contrary, the fact that confessions and apologies that the interviewees perceived as insincere still led to reduced sentences appeared to have increased negative feelings of some interviewees towards their perpetrators and may thus make future reconciliation even more unlikely. Overall, most interviewees commented on a lack of responsibility of perpetrators being facilitated during *gacaca* and mentioned that in their view, *gacaca* did very little to support reconciliation. Therefore, if reconciliation is defined as a process that requires an apology and forgiveness, then *gacaca* was limited in promoting reconciliation. However, Chapter 4 also discussed that punishment of perpetrators may in itself foster reconciliation, or may even be necessary to enable reconciliation. One interviewee indicated that in her view, punishment of perpetrators led to their rehabilitation and also to peaceful coexistence between perpetrators and victims. Such a role for peaceful coexistence was introduced as a potential first stage of reconciliation in Chapter 4. Therefore, by punishing perpetrators of sexual violence, *gacaca* created some conditions that may support reconciliation in the future, as indicated by the willingness of some interviewees to forgive their perpetrators.

Interviewees thought that *gacaca* was particularly strong in punishing perpetrators. All but one of the perpetrators involved in the interviewees' cases were found guilty and punished with considerably severe penalties. By punishing the majority of those accused of sexual

violence, *gacaca* made a significant contribution to its official goal ‘eradicate the culture of impunity’ for the crime of sexual violence. The goal overlaps, at least to some extent, with *gacaca*’s profound objective of justice. Chapter 4 introduced different forms of justice, of which retributive and restorative justice were particularly relevant in the context of *gacaca*. The same chapter outlined that retributive justice focuses on the punishment of perpetrators, while restorative justice is predominantly concerned with restoring the damaged relationships between parties affected by a crime. By ending impunity through the punishment of perpetrators of sexual violence, *gacaca* was particularly strong in relation to retributive justice. In contrast, only very few perpetrators assumed responsibility during their trial in a way that helped to foster reconciliation between the interviewees and their perpetrators. Therefore, only very few interviewees appear to have experienced restorative justice by way of repaired relationships with their perpetrators at *gacaca*.

Gacaca was also meant to pursue restorative justice through its process, including through negotiation and collaboration involving the community affected by the crimes. However, since sexual violence cases were tried *in camera*, the community was largely excluded from the process, even though some community members would have been affected by the crimes, such as family members of the victim-survivors and perpetrators. While the *in-camera* regulation was an important measure to provide for victim-survivors’ privacy and safety, the exclusion of community members affected by sexual violence did not give victim-survivors the opportunity to experience the restorative justice that the involvement of the community had meant to achieve. Ongoing ostracism from their own families and communities, as well as hostility from their perpetrators’ families, suggest that some interviewees may indeed still benefit from restorative justice processes beyond *gacaca* to help repair these damaged relationships.

Healing is the last of the five profound objectives to be considered in this assessment of *gacaca*. The experience of justice, reconciliation and truth are important components in the process of healing of an individual affected by violent conflict. For most interviewees, *gacaca* contributed notably to truth recovery and predominantly retributive justice, while only few experienced restorative justice and reconciliation. More specifically, the healing of most interviewees appears to have been supported through the experience of safety, validation, vindication and empowerment after the punishment of most perpetrators. Nevertheless,

while only few interviewees witnessed genuine perpetrator responsibility at *gacaca*, those who did indicated that this experience had a significant impact on their personal recovery.

One component of truth recovery that is particularly relevant in the context of healing and that deserves special mentioning here is truth-telling as personal catharsis. Several interviewees experienced personal catharsis at *gacaca* because they were given a platform to share their stories and felt listened to by their *Inyangamugayo*. Finally, *gacaca* also contributed to healing by providing opportunities for empowerment, including through its process (in particular participation) and its outcomes.

Chapter 4 flagged the need for individual and group therapy to support both individual and societal healing beyond the participation in a justice process. Chapter 10 discussed the value of trauma training, individual counselling and therapy, as well as membership in therapy groups to foster the process of healing for many interviewees, thereby confirming some of the theories of how healing can be supported. It was also noted that trauma may originate from the direct and indirect consequences of violent conflict, including material deprivation, highlighting the need for socioeconomic justice to assist victim-survivors with their individual recovery.

11.5 Potential Implications of this Research

The findings of this thesis in relation to the interviewees' justice needs and their experiences with *gacaca* have implications for future justice initiatives dealing with sexual violence in other conflict or post-conflict settings. The research has provided insights into ongoing needs of Rwandan victim-survivors, allowing some proposals for how Rwandan victim-survivors may be supported beyond *gacaca*.

11.5.1 Future justice initiatives

The interviewees' experiences with *gacaca* allow the identification of several procedures of justice initiatives that may also support victim-survivors in their quest for justice in other settings. While the context of the Genocide against the Tutsi has been acknowledged as unique, victim-survivors of conflict-related sexual violence in other settings also suffer physical, psychological and social consequences, as well as resulting material harm, some of which may be similar to those experienced by the interviewees. Victim-survivors of conflict-related sexual violence in any context are likely to have experienced repeated acts of sexual

violence over an extended period and witnessed other atrocities, such as torture or death of family members and friends. Derogatory attitudes towards victim-survivors are not unique to Rwanda but are likely to be present in other conflict and post-conflict settings. The need for an enabling environment, including respectful treatment and supportive process procedures such as privacy and safety, as well as opportunities for participation and support, are likely to be important for victim-survivors of conflict-related sexual violence as part of a justice process in any setting.

The diversity of preferences of procedures that emerged during the interviews calls for flexibility in the design of a justice initiative and for the provision of choices where possible. Many interviewees explained that being in the same room as their perpetrator(s) was one of the most difficult experiences during *gacaca*. The research findings thus suggest that particularly in the context of a retributive justice process, the direct encounter between a victim-survivor and her perpetrator should ideally be a choice and not a requirement. If possible, victim-survivors may be allowed to testify remotely, as was for example noted as an option at the ICTY.¹⁷⁰² If procedures require both the victim-survivor and perpetrator to be present at the same time, it could be helpful to allow victim-survivors to testify behind a closed curtain or to have a similar arrangement in place to prevent victim-survivors from having to see their perpetrator throughout the whole process.

Several interviewees suffered re-traumatisation when listening to the details about the acts committed against them provided as part of witnesses' testimonies and perpetrators' statements. The *gacaca* process was unique in the sense that victim-survivors were the plaintiffs in their cases and were present during the statements of the perpetrator and victims. Another distinct characteristic of *gacaca* was that perpetrators had no legal representation and therefore spoke for themselves. Should any future justice process adopt a similar approach to dealing with sexual violence cases, it may be helpful to give victim-survivors the choice to leave the room while perpetrators and other witnesses provide their detailed statements, in order to prevent this risk of re-traumatisation. The risk of re-traumatisation when meeting their perpetrator also highlights the need for psychological support from trauma counsellors.

¹⁷⁰² United Nations, 'Witnesses - FAQs' (n 561).

The interviewees' experiences with *gacaca* evidence how important the quality of treatment of victim-survivors is by authorities involved in a justice initiative. The selection and training of the *Inyangamugayo* to handle sexual violence cases appeared to have been worthy initiatives to improve the justice experience for the interviewees. Many interviewees experienced validation and empowerment through the respectful and sensitive treatment of the *Inyangamugayo* and felt supported to share their story. Learning from this experience, it is recommended to provide targeted training to authorities that are likely to be interacting with victim-survivors during a justice initiative to support an enabling environment.

The need for privacy and safety when participating in a justice process is another point of consideration for future justice processes (and has also found application in past transitional justice processes). The decision to hold the *gacaca* trials dealing with sexual crimes *in camera* appears to have been appreciated by the interviewees and thus could be appropriate to replicate in future justice processes. A high level of privacy may compromise the extent to which 'the truth' about a perpetrator and crime is revealed to the victim-survivor's immediate and broader community, which may be of importance to affected victim-survivors. Victim-survivors could be provided with choices, so that they can decide whether privacy or truth exposure is more important to them. Further research in various contexts could also investigate how information about perpetrators and their crimes could be made known to the public without compromising the need for privacy of the actual justice process. In terms of safety, future justice processes should pay ample attention to supporting safety not only during a justice process, but also prior to and afterwards. A specific person or service could be established for victim-survivors to contact should they receive any threats to their safety or experience harassment before, during or after a justice process.

All interviewees flagged the importance of support during *gacaca*. The interviewees discussed the need for emotional support from family members. While family support may not be valued in the same manner in other sociocultural contexts, in settings where it appears appropriate, family members could be allowed and encouraged to accompany victim-survivors during a justice process, should the victim-survivor desire such support. Sensitisation campaigns such as those that prepared the Rwandan communities for *gacaca* could include information about the value of family support for victim-survivors.

Besides family support, many interviewees reported how important it was to have a trauma counsellor by their side for psychological support during their trials. Learning from these experiences, future justice processes could include the role of an independent trauma counsellor and ensure that such a position is sufficiently funded, so that every victim-survivor participating in a given process can receive such support. Ideally, psychological support for victim-survivors is not only available during a justice activity but also before to help victim-survivors to prepare for their participation in a justice process. The need for better preparation of the victim-survivor was also flagged by Emilienne as her main recommendation for how *gacaca* could have been improved. She explained that she would have wished for victim-survivors to 'be prepared for what was going to happen at *gacaca*, what they would need to endure, what they might get out of it and what they might lose'. Such preparation should be given well in advance of a justice activity to give victim-survivors sufficient time to decide whether they wanted to proceed to participate or not.

The preparation of victim-survivors could also focus on giving testimony. Many interviewees experienced giving oral testimony at *gacaca* as one of the most difficult moments during their *gacaca* trial. Allowing victim-survivors to provide a written statement in lieu or in support of giving an oral account was a well-received option for several interviewees. Similar provisions could be put into place for future justice processes dealing with sexual violence. Prior to participating in a justice process, individual counselling/therapy, as well as membership of a therapy group could provide victim-survivors with opportunities to verbalise their experiences before they are required to do so as part of testimony in a justice process. This idea aligns with Herman's explanation that even the reconstruction of the most basic facts of a crime is a complex and difficult endeavour that requires time and effort,¹⁷⁰³ and that should ideally be accompanied by a therapist. Herman also notes that 'a well organised group provides a powerful stimulant for reconstruction of the survivor's story'.¹⁷⁰⁴ At the same time, individual counselling/therapy and/or therapy groups that run concurrent to a justice process could also help victim-survivors to develop a more holistic narrative beyond the testimony and thereby improve the therapeutic impact of truth-telling during a justice process and thus

¹⁷⁰³ Herman, *Trauma and Recovery* (n 342) 177.

¹⁷⁰⁴ Ibid 221. Similarly, Morris' research suggests that 'telling a story of rape to an all-women's audience appears to have a critical relationship to deciding to tell one's story of rape' during a justice initiative, Morris, Meghan Brenna (n 100)97.

support a victim-survivor's recovery overall. A justice process involving the victim-survivors' detailed testimony should not take place 'too precipitately' after the traumatic event to reduce the risk of damaging re-traumatisation that may result from the reconstruction of a traumatic event.¹⁷⁰⁵ What exactly 'too precipitately' means in the context of conflict-related sexual violence is a question for further investigation.

Several interviewees reported that hearing an apology or receiving answers to questions about their victimisation was a powerful experience and positively influenced their recovery. At the same time, the interviews also showed that witnessing perpetrators' denial of wrongdoing, as well as malicious behaviour intended to threaten or further humiliate a victim-survivor, can have detrimental effects. Direct interactions, if desired by a victim-survivor, should ideally be assessed in terms of risk of re-traumatisation of the victim-survivor and should be carefully prepared and monitored.¹⁷⁰⁶ The willingness of perpetrators to confess, answer questions about the crimes committed and apologise, preferably freely and sincerely, may need to be ascertained, where possible, before any direct interaction is encouraged, as is for example common practice in restorative justice processes.¹⁷⁰⁷ Attitudes of the perpetrator could be assessed to avoid situations where a confession is used as an opportunity to further humiliate and traumatise the victim.

In any case, victim-survivors should be prepared for direct interactions with their perpetrators, for example by helping them to consider different possible responses of the perpetrator, which again highlights the need for psychological support prior to a justice process. Psychological support is also needed in the aftermath of a justice process to help victim-survivors process their experiences with the justice initiative, including the final outcome and to support them to manage any incidents of re-traumatisation. Counselling support in the aftermath of a justice activity may not only be needed for victim-survivors but

¹⁷⁰⁵ Herman, *Trauma and Recovery* (n 342) 176.

¹⁷⁰⁶ See for example Miller, Susanne (n 996); Jülich et al. (n 1126) 34-8; Clare McGlynn, Nicole Westmarland and Nikki Godden, 'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice' (Pt Wiley) (2012) 39(2) *Journal of Law and Society* 213-240, 220-1.

¹⁷⁰⁷ Daly notes that one of the 'core elements' of restorative justice practices is that 'a person has admitted responsibility for offending, either explicitly or implicitly', Kathleen Daly, 'Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases' (2006) 46(2) *British Journal of Criminology* 334-356, 335. For examples of how specific restorative justice programs involve and assess perpetrators' willingness to accept responsibility, see Miller, Susanne (n 996); Jülich et al. (n 1126) 34-8.

also include perpetrators' families and the *Inyangamugayo* (or other staff of a justice initiative) to deal with the information heard during a process.

The interviewees' experiences with *gacaca* also allow for the formulation of some more general suggestions regarding approaches to justice that may be considered in future justice processes. This research found that punishment of perpetrators rated highly for many interviewees, but so did perpetrator responsibility (in several cases combined with forgiveness offered by the interviewees). It appears that most interviewees neither endorsed a purely retributive nor purely restorative approach to justice, which is consistent with research with victim-survivors in other settings.¹⁷⁰⁸ *Gacaca* combined elements of retributive and restorative justice in one and the same process. However, the relatively small number of perpetrators who confessed to their crimes suggests that the restorative idea behind *gacaca* did not work for most cases. Instead, denial was reportedly the dominant response of perpetrators involved in the interviewees' trials. Research with other victim-survivors across Rwanda could assess whether these experiences are reflective of the broader group of Rwandan victim-survivors who participated in *gacaca* or whether they are specific to the interviewees.

The assessment of *gacaca* in this research highlights the challenges of any one single process achieving both: a penalty that victim-survivors consider as adequate to meet their needs for safety, validation and vindication on the one hand, and perpetrator responsibility – expressed for example through confession, explaining their actions and a genuine apology – on the other hand. It is uncertain whether any of those perpetrators (and their families) who did confess and/or apologise at *gacaca* (and afterwards) would have assumed any responsibility if they had not been tried and found guilty by *gacaca* first. Future research with Rwandan perpetrators who were found guilty and punished at *gacaca* could investigate whether they are more willing to assume responsibility and apologise to their victims after having served some or most of their sentence.

Gacaca was not able to address the material harm that Rwandan victim-survivors suffered, because it did not facilitate/provide for compensation. Socioeconomic justice was introduced

¹⁷⁰⁸ Herman, 'Justice from the Victim's Perspective' (n 9) 597; McGlynn, Downes and Westmarland (n 12) 180; Jülich, 'Views of Justice among Survivors of Historical Child Sexual Abuse: Implications for Restorative Justice in New Zealand' (n 10) 133.

in Chapter 4 as a combination of ‘various elements of justice that relate to financial or other material compensation, restitution or reparation for past violations or crimes and ... (for) socioeconomic justice in the future’.¹⁷⁰⁹ Based on this definition and supported by this study, as well as by other research,¹⁷¹⁰ socioeconomic justice constitutes an important approach to address some of the most fundamental needs of victim-survivors in conflict/post-conflict settings, and should therefore be incorporated into future justice initiatives dealing with conflict-related sexual violence.

Finally, justice processes that are established to deal with the legacies of armed conflict are unlikely to focus solely – if at all – on helping affected victims to receive justice, but are most likely also meant to fulfil other overarching goals in the interest of the broader community affected by conflict, including reconciliation. This research highlights that the punishment of perpetrators alone is unlikely to lead to reconciliation between victim-survivors and perpetrators, but that genuine perpetrator responsibility constitutes an essential step towards reconciliation. Even if a given society prioritises formal state punishment to deal with violent conflict, to support reconciliation it is important to also establish some additional, more restorative justice measures, which focus on supporting perpetrators to take responsibility.

11.5.2 Future support for Rwandan victim-survivors

The analysis of the interviewees’ needs and experiences with *gacaca* flags the need to support Rwandan victim-survivors beyond *gacaca*. The interviewees were unanimous in identifying poverty as one of their most pressing issues at the time of the interviews. While several interviewees appear to have received some support through FARG and other organisations, more material and/or financial support appears necessary for victim-survivors who live in poverty, including most of the interviewees.¹⁷¹¹ Those interviewees who reportedly could not afford the medical assistance that they needed to deal with their conditions would benefit from additional support through existing programs, such as FARG or through additional rehabilitation efforts. More government programs, such as the ‘One Cow per Poor Family’

¹⁷⁰⁹ Lambourne, 'Transitional Justice after Mass Violence: Reconciling Retributive and Restorative Justice' (n 73) 41.

¹⁷¹⁰ The need for socioeconomic justice has also been raised in research by De Brouwer and Ka Hon Chu, 'Tragedy and Triumph: Rwandan Women's Resilience in the Face of Sexual Violence' (n 1696) 204; de Brouwer and Ruvebana (n 40) 975-6.

¹⁷¹¹ See also de Brouwer and Ruvebana (n 40) 975-6. Bornkamm (n 76) 156-7.

(GIRINKA) program that the Rwandan Government established in 2006,¹⁷¹² and NGO initiatives that are aimed at providing material and medical assistance to victim-survivors,¹⁷¹³ are needed to support those victim-survivors who continue to live in extreme poverty. While support through NGOs and FARG is extremely important to help at least the most vulnerable victim-survivors with their most pressing issues,¹⁷¹⁴ such support does not reflect reparation in a legal sense, therefore 'failing to recognise that repairing the injuries suffered [directly via the perpetrators] is integral to justice'.¹⁷¹⁵ The interviewees' poverty appeared to be, at least to some degree, a consequence of the sexual violence experienced during the genocide. Therefore, additional reparation efforts appear to reflect the most suitable approach to address material harm and serve justice at the same time, as also noted and requested by other research.¹⁷¹⁶

Secondly, to support the psychological recovery of the interviewees, ongoing individual and group therapy is needed for all victim-survivors.¹⁷¹⁷ Approximately half the interviewees were members of a therapy group at the time of the interview. Considering the value of being part of a group as described by the interviewees, it is advisable to make membership in a therapy group or similar support group available to all victim-survivors if they so desire. Shortly after conducting the interviews in this research, the funding for the groups that Emilienne ran with the support of a Rwandan NGO was discontinued and Emilienne has only been able to continue meeting her group members on a private and self-funded basis. She also confirmed that she has a long waiting list of victim-survivors wanting to become a member of one of her groups, suggesting the need for more funding for such groups.

¹⁷¹² Republic of Rwanda, 'Home Grown Approaches', *National Unity and Reconciliation Commission*, <<https://nurc.gov.rw/index.php?id=81>>; UNICEF, 'Equity Case Study: Rwanda - One Cow per Poor Family', *Equity Case Studies* (Web Page 10 July 2012) <https://www.unicef.org/equity/archive/index_65274.html>.

¹⁷¹³ For example, M19 reported that she had been given a cow by AVEGA. De Brouwer and Ka Hon Chu explain that Ministry Solace also provided material, psychological and socio-economic support in various forms to victim-survivors, Anne-Marie De Brouwer and Sandra Ka Hon Chu, 'As End of *Gacaca* Nears, Looking to More Attention to Post-Genocide Trauma from Sexual Violence', *IntLawGrrls - voices on international law, policy, practice* (Blog Post) <<http://www.intlawgrrls.com/2012/04/as-end-of-gacaca-nears-looking-toward.html>>.

¹⁷¹⁴ As previously noted, FARG only benefits a small minority of genocide survivors – in particular youth/orphans, widows and people with disabilities, because of limited funding, see De Brouwer and Ruvebana (n 40) 969; Bornkamm (n 76).

¹⁷¹⁵ 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* (online, 5 July 2012).

¹⁷¹⁶ De Brouwer and Ruvebana (n 40) 969-70; IBUKA, *Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi*, (Discussion Paper, October 2012); Bornkamm (n 76) 157; Russell and Schurr (n 1715).

¹⁷¹⁷ De Brouwer and Ruvebana (n 40).

Thirdly, the interview material highlighted persisting stigma and community ostracism as an important ongoing issue for Rwandan victim-survivors. This research confirms that the dishonour and shame element associated with sexual violence is still deeply rooted in the Rwandan culture, and *gacaca* appears to have had only very little impact, if any at all, on changing that. Emilienne shares this issue, suggesting that victim-survivors 'have to be supported to re-integrate into their families and into the Rwandan society. The communities need to know that these women are not responsible'. Therefore, a holistic, long-term approach to tackling community attitudes towards victim-survivors is needed, for example through education campaigns promoting women's rights, as has also been suggested by other researchers.¹⁷¹⁸

While detailing such an approach would go well beyond this thesis, several small-scale interventions can be proposed, based on interview material. Firstly, several interviewees were shunned by their own families and reported not having any contact with their own children. These victim-survivors suffer doubly, since they not only experience broader community ostracism, but shunning from those who had once been closest to them. Victim-survivors and their estranged children, if willing, could be included in joint counselling sessions to help these disrupted families to share their stories. This process may assist in breaking down barriers and reconciling affected victim-survivors with their families. Emilienne recounted facilitating a therapy session between a victim-survivor and her daughter, who had blamed her mother for many years for having brought shame to the family. Emilienne explained that sharing information about the mother's victimisation positively affected the relationship between the mother and her daughter.¹⁷¹⁹

The interview material also flagged ongoing animosities from their perpetrators' families as a major challenge in the lives of the interviewees at the time of the interview. These strained, sometimes even toxic, relationships between the victim-survivors and their perpetrators' families require special and additional reconciliation efforts, as has been addressed, to some extent, in programs by NURC.¹⁷²⁰ Before such efforts are undertaken, it may be necessary to establish some therapeutic programs focusing on the perpetrators' families, especially their

¹⁷¹⁸ Ka Hon Chu, de Brouwer and Roemkens (n 123) 542.

¹⁷¹⁹ Voice Message from Emilienne MUKANSORO to Judith Rafferty, 27 May 2020.

¹⁷²⁰ 'Best Practices of Reconciliation in Rwanda: A Short Documentary Film', NURC.

wives. According to some interviewees, their perpetrators' families were at least in some cases not aware of what their husbands/fathers/children had done during the genocide, and may have found out only well after the fact, a point that was also confirmed by Emilienne. Emilienne also noted that 'today you notice this feeling of anger, an insupportable rage coming from the perpetrators' families', highlighting the need for therapeutic interventions for these families.

Finally, some interviewees shared their thoughts on how they believe they would respond to genuine expressions of responsibility by their perpetrators, including that they would forgive and even try to have their perpetrators pardoned. These comments suggest that at least some Rwandan victim-survivors might contemplate reconciliation with their perpetrators if the latter assumed responsibility in a forum and manner that the victim-survivors considered appropriate. This potential for reconciliation suggests a focus in existing programs and initiatives to support perpetrators to demonstrate responsibility to their victim-survivors. One interviewee (M9) had specifically asked for mediation as a potential process to allow direct communication between the perpetrators and the victim-survivors. Additional reconciliation efforts become particularly relevant at the time of finalising this thesis (26 years after the genocide), since many perpetrators will have served their sentence at this point, or will do so over the next few years, and will return to their communities where they are likely to meet their victims. Future research could assist in the development of more initiatives and could accompany and monitor applicable processes and their outcomes.

11.6 Final Thoughts

This research emphasised the challenges and complexities of justice for victim-survivors of conflict-related sexual violence. Achieving justice for victim-survivors in any setting is difficult, since multiple long-term physical, psychological and social consequences, as well as material harm, are likely to result from sexual violence. Achieving justice for victim-survivors in conflict or post-conflict settings is even more challenging. Victim-survivors of conflict-related sexual violence are likely to have been exposed to extraordinary sexual violence, as well as other acts of violence and hardship over an extended period. These experiences are likely to have aggravated trauma and increased the risk and range of consequences. Justice initiatives operating in conflict or post-conflict settings typically work under difficult circumstances, including limited financial, material and human resources, with competing objectives relating

to peace, justice and reconciliation. Finally, sexual victimisation in conflict does not occur in a vacuum, but victim-survivors are likely to be a member of a society that has been divided by a history of damaged relationships and violence. Therefore, justice activities dealing with conflict-related sexual violence are likely to form part of a broader, more complex approach to achieving justice and reconciliation for divided communities dealing with generations of trauma and suffering.

Despite these challenges, this research showed that achieving a sense of justice for victim-survivors of conflict-related sexual violence, even of the extreme case of genocidal sexual violence, may be possible. To support victim-survivors to experience justice, it is recommended to break the abstract and complex concept of justice down according to victim-survivors' justice needs. This research has developed and defined a comprehensive set of justice needs, distinguishing between process-related and outcome-related justice needs. It has also added additional nuances to the various elements that form part of each justice need, and provided examples of how each justice need applied in the context of post-genocide Rwanda and *gacaca*. Furthermore, this research has contributed to a better understanding of how the various justice needs are interconnected. To increase the chances and options for victim-survivors to experience justice in other settings in the future, justice initiatives dealing with sexual violence should be designed in a way that allows for as many justice needs (and components thereof) as possible to be addressed. Through the assessment of *gacaca* against victim-survivors' justice needs, this research provides specific examples of how victim-survivors' justice needs may be met by a justice initiative. Thereby, this research has added empirical evidence to the knowledge base on the strengths and limits of justice mechanisms dealing with sexual violence.

This research also confirmed that victim-survivors are not a homogenous group: an individual victim-survivor's justice preferences depend on several factors. These factors include the context of victimisation, the environment in which a justice initiative takes place, and the victim-survivor's individual situation and attitude. These differing preferences have highlighted the need to offer victim-survivors choices in terms of what justice mechanism they prefer and how they wish to participate in the process.

Finally, this research flagged that while justice mechanisms can assist victim-survivors in experiencing a sense of justice, no one mechanism can ever address the full range of

consequences that victim-survivors suffer. Any justice process dealing with sexual violence must be accompanied by additional initiatives, including medical care, as well as psychological, social and material/financial support. One indispensable measure to help victim-survivors in settings such as Rwanda consists of therapy groups in which victim-survivors can safely share their stories and suffering, reconnect with others who have experienced the same, and support each other during their long and challenging process of recovery.

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13 Appendices

APPENDIX 1: CHARGES AND SENTENCES FOR CATEGORY 1 CRIMES ACCORDING TO ORGANIC LAW 13/2008

Charges	Sentences
<p>1° any individual who committed or was an accomplice in committing an offence that puts him or her in the category of planners or organisers of the Genocide or crimes against humanity.</p> <p>2° any individual who was at a national leadership level and that of the prefecture level: public administration, political parties, army, gendarmerie, religious denominations or in militia group, and committed crimes of genocide or crimes against humanity or encouraged others to participate in such crimes, together with his or her accomplice;</p> <p>3° any individual who committed or was an accomplice in committing an offence that puts him or her in the category of people who incited , supervised and ringleaders of the genocide or crimes against humanity;</p> <p>4° any individual who was at the leadership level at the Sub-Prefecture and Commune: public administration, political parties, army, gendarmerie, communal police, religious denominations or in militia, who committed any crimes of Genocide or other crimes against humanity or encouraged others to commit similar offences, together with his or her accomplice;</p> <p>5° any individual who committed the offence of rape or sexual torture, together with his or her accomplice.</p> <p>Refused to confess or whose guilty plea was rejected.</p>	<p>Life imprisonment with special provisions as well as permanent deprivation of the right:</p> <ul style="list-style-type: none"> - to be elected; - to become leaders, to serve in the armed forces, to serve in the National Police and other security organs, to be a teacher, a medical staff, magistrates, public prosecutors and judicial counsels; <p>Their names together with a short description of their identities and the crimes they committed, shall be posted on the history section of the Genocide memorials, at the offices of their Sectors, registered in their 'criminal record' and published on the internet.</p>

<p>pleaded guilty after being put on the list of suspects</p>	<p>A prison sentence ranging from twenty five (25) to thirty (30) years with permanent deprivation of the right:</p> <ul style="list-style-type: none"> - to be elected; - to become leaders, to serve in the armed forces, to serve in the National Police and other security organs, to be a teacher, a medical staff, magistrates, public prosecutors and judicial counsels; <p>Their names together with a short description of their identities and the crimes they committed, shall be posted in the history section of the genocide memorials, at the offices of their Sectors, registered in their 'criminal record' and published on the internet.</p>
<p>pleaded guilty before being put on the list of suspects</p>	<p>A prison sentence ranging from twenty (20) to twenty four (24) years with permanent deprivation of the right:</p> <ul style="list-style-type: none"> - to be elected; - to become leaders, to serve in the armed forces, to serve in the National Police and other security organs, to be a teacher, a medical staff, magistrates, public prosecutors and judicial counsels; <p>Their names together with a short description of their identities and the crimes they committed, shall be posted in the history section of the genocide memorials, at the offices of their Sectors, registered in their 'criminal record' and published on the internet.</p>

APPENDIX 2: DEMOGRAPHIC DETAILS OF INTERVIEWEES

Code for Interviewee	Date of interview	Location of interview ¹⁷²¹	Year Born	Number of children given birth to	Number of children alive at time of interview	Marital Status before genocide	Marital Status at time of interview
M1	18/12/2015	Muhanga, Southern Province	1961	6	4	Married	Separated
M2	18/12/2015	Muhanga, Southern Province	1949	8	7	Married	Widow
M3	18/12/2015	Muhanga, Southern Province	1971	5	5	Engaged	Single
M4	19/12/2015	Muhanga, Southern Province	1957	8	6	Married	Widow
M5	19/12/2015	Muhanga, Southern Province	1962	6	4	Married	Widow
M6	19/12/2015	Muhanga, Southern Province	1960	5	5	Married	Married
M7	19/12/2015	Muhanga, Southern Province	1971	4	1	Married	Married
M8	28/12/2015	Muhanga, Southern Province	1975	4	4	Unknown	Married
M9	28/12/2015	Muhanga, Southern Province	1970	3	2	Single	Separated
M10	28/12/2015	Muhanga, Southern Province	1973	4	4	Single	Married
M11	28/12/2015	Muhanga, Southern Province	1968	1	1	Married	Widow
M12	28/12/2015	Muhanga, Southern Province	1965	4	4	Married	Widow
M13	29/12/2015	Ruhango, Southern Province	1972	6	5	Single	Married
M14	29/12/2015	Ruhango, Southern Province	1975	3	2	Married	Widow
M15	29/12/2015	Ruhango, Southern Province	1955	7	2	Married	Widow
M16	29/12/2015	Ruhango, Southern Province	1960	4	1	Married	Widow
M17	29/12/2015	Ruhango, Southern Province	1958	8	0	Married	Widow
M18	9/01/2016	Muhanga, Southern Province	1958	11	3	Married	Widow
M19	4/01/2016	Muhanga, Southern Province	1962	7	6	Married	Widow
M20	4/01/2016	Muhanga, Southern Province	1962	3	1	Married	Widow
M21	7/01/2016	Gasabo, Kigali City	1965	4	4	Married	Widow
M22	9/01/2016	Muhanga, Southern Province	1963	4	4	Married	Widow
M23	9/01/2016	Muhanga, Southern Province	1974	4	4	Married	Separated

¹⁷²¹ For reasons of confidentiality of the interviewees, the name of the exact interview location is omitted and only the district and province in which the interviews took place are cited.

Code for Interviewee	Religious preference	Years completed at school	District and Province of <i>gacaca</i> trial ¹⁷²²	Region where <i>gacaca</i> trial took place ¹⁷²³	Group	Monthly income
M1	Muslim	8	Ruhango, Southern Province	Rural	Therapy Group A	No fixed income
M2	Roman Catholic	3	Muhanga, Southern Province	Urban	Therapy Group C	No fixed income
M3	Seventh-day Adventist	8+1	Ruhango, Southern Province	Rural	Therapy Group B	No fixed income
M4	Pentecostal (ADEPR) ¹⁷²⁴	6+3	Muhanga, Southern Province	Rural	No Group	No fixed income
M5	Roman Catholic	0 ¹⁷²⁵	Muhanga, Southern Province	Urban	Therapy Group C	No fixed income
M6	Seventh-day Adventist	6	Ruhango, Southern Province	Rural	No Group	No fixed income
M7	Roman Catholic	None	Muhanga, Southern Province	Rural	Therapy Group C	No fixed income
M8	Seventh-day Adventist	5	Muhanga, Southern Province	Urban	Therapy Group D ¹⁷²⁶	No fixed income
M9	Pentecostal (ADEPR)	8	Ruhango, Southern Province	Rural	No Group	No fixed income
M10	Roman Catholic	8	Ruhango, Southern Province	Rural	Therapy Group B	No fixed income
M11	Roman Catholic	6	Ruhango, Southern Province	Rural	Therapy Group B	No fixed income
M12	Roman Catholic	8+3	Kamonyi, Southern Province	Rural	No Group	No fixed income
M13	Seventh-day Adventist	5	Ruhango, Southern Province	Rural	Therapy Group A	No fixed income
M14	Roman Catholic	3	Ruhango, Southern Province	Rural	No Group	No fixed income
M15	Seventh-day Adventist	0	Ruhango, Southern Province	Rural	Therapy Group A	No fixed income
M16	Roman Catholic	6+3	Ruhango, Southern Province	Rural	Therapy Group A	No fixed income
M17	Pentecostal (ADEPR)	6	Ruhango, Southern Province	Rural	Therapy Group A	No fixed income
M18	Roman Catholic	4	Muhanga, Southern Province	Urban	Therapy Group A	No fixed income

¹⁷²² For reasons of confidentiality the names of the cells and sectors in which the interviewees' trials took place and where they reported their cases are omitted.

¹⁷²³ The categorisation of the region where the interviewees' trials took place as urban and rural is based on information provided by the interviewees about the sector in which their *gacaca* trial took place and information by Emilienne as to whether the sector would rate as rural or urban.

¹⁷²⁴ ADEPR stands for the Association of Pentecostal Churches in Rwanda.

¹⁷²⁵ While the interviewee did not attend school, she explained that she did three years of reading and writing lessons for adults in a program called IGA (presumably the Income Generating Activity (IGA) training programme by AVEGA).

¹⁷²⁶ Group for women with different ethnicity to their husbands.

M19	Jehovah's Witnesses	3	Ruhango, Southern Province	Urban	Therapy Group E ¹⁷²⁷	No fixed income
M20	Pentecostal (ADEPR)	6	Muhanga, Southern Province	Rural	Therapy Group C	No fixed income
M21	Pentecostal (ADEPR)	6+3	Nyarugenge, Kigali City	Urban	No Group	RWF40,000 ¹⁷²⁸
M22	Pentecostal (ADEPR)	3	Ruhango, Southern Province	Rural	No Group	No fixed income, but receives some benefits ¹⁷²⁹
M23	Roman Catholic	6+3	Muhanga, Southern Province	Rural	No Group	No fixed income

¹⁷²⁷ Group through AVEGA.

¹⁷²⁸ At the time of the interviews, RWF40,000 converted to approximately USD50/ AUD70.

¹⁷²⁹ Receives benefits for being handicapped – no specific amount stated.

APPENDIX 3: INFORMATION SHEET – VICTIM-SURVIVORS

Understanding the needs of Rwandan women and their experiences with *gacaca*

You are invited to take part in a research project about the needs of Rwandan women who participated in *gacaca* and their experiences with the process. The study is being conducted by Judith Herrmann, who is completing her PhD at James Cook University in Australia, assisted by a local interpreter, Ms Anathalie Umugwaneza, who will translate between you and Judith. This study will contribute to Judith’s research about the needs of women who were affected by violent conflict and their experiences with justice processes.

If you agree to participate in the study, you will be invited to be interviewed. The interview, if you agree, will be recorded on an audio-recording device, and should take approximately 1 hour of your time. The interview will be conducted at a suitable location or a location of your choice. It is important that the interview location is a safe space in which Judith can speak with you confidentially about your personal experiences.

The interview will include questions about your personal situation after the Genocide against the Tutsi as well as today, and your experiences with *gacaca*, which may cause distress for you. If you should feel any distress, we can stop the interview at any time and you will be free to decide whether or not to continue without any negative consequences for you if you decide to stop.

Here are the details of a local counselling service that you can contact after the interview if needed:

Your responses will be recorded without including your name or any other identifying information. Your name will not be used in any publications or reports that result from the research project, including Judith’s PhD thesis, unless otherwise required by you.

If you have any questions about the study, please contact Judith on Content has been removed for privacy reasons or Content has been removed for privacy reasons (Judith’s office phone number at James Cook University in Australia) or contact Anathalie UMUGWANEZA (Interpreter) on

Content has been removed for privacy reasons

If you have any concerns regarding the ethical conduct of the study, please contact:

Human Ethics, Research Office
James Cook University, Townsville, Qld, 4811

Phone: Content has been removed for privacy reasons

APPENDIX 4: INFORMED CONSENT – VICTIM-SURVIVORS

Researcher: Judith Herrmann
Understanding the needs of Rwandan survivors of sexual violence and their experiences with <i>gacaca</i>

- I understand that the aim of this research study is to learn about the needs of Rwandan women who participated in *gacaca* in relation to sexual violence committed against them, and their experiences with *gacaca*.
- I agree to participate in this project, the details of which have been explained to me, and I have been provided with a written information sheet to keep.
- I understand that my participation will involve an interview and I agree that the researcher may use the results as described in the information sheet.

I acknowledge that

- any risks and possible effects of participating in the interview have been explained to me and that the researchers are able to give me contact details of a local counselling service
- taking part in this study is voluntary and I am aware that I can stop taking part in it at any time without having to give the researchers a reason for this and without being judged if I do stop taking part
- that any information I give will be kept strictly confidential and that no names will be used to identify me with this study unless I require this.

I consent to being interviewed		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
I consent for the interview to be audio taped		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>

Signature Interviewee:	Date:
Name Witness:	
Signature Witness	Date:
Name Researcher	
Signature Researcher	Date:

APPENDIX 5: INTERVIEW SCHEDULE – VICTIM-SURVIVORS

Demographic questions

- A. When were you born
- B. What is the number of children that you have ever given birth to?
- C. What is the number of children who are still alive?
- D. What is the highest level of education you have completed?
- E. Do you have a monthly income and if yes, what is it?
- F. What is your marital status?
- G. What is your religious preference?

Interview questions

1. When did you raise your case during *gacaca* (year, pilot phase, information gathering or trial phase)?
2. Where (district, sector) was the *gacaca* hearing in which you raised your case?
3. What prompted you to raise your case during *gacaca*?
(E.g., was it your own decision, were you encouraged or were you compelled by anything or anybody?)
4. How did you raise your case?
(E.g. raised by yourself or someone else during public *gacaca*, spoke to an “inyangamugayo” of your choice, submitted case in writing to an “inyangamugayo”)
6. What did you hope to achieve by raising your case?
8. What happened during the *gacaca* process?
 - a. What was the best thing that happened during the *gacaca* hearing(s)?
 - b. What was the worst thing that happened during the *gacaca* hearing(s)?
10. Was there a judgment in regards to your case?
 - a. If yes, what was the judgment?
 - b. How did you feel about it (either the judgment or the fact that there was no judgment)?
11. Was there anything that you found difficult at *gacaca*, and if yes, what discouraged you?
12. What/who supported you during *gacaca*?
13. What do you think could have made your *Gacaca* experience better?
14. Have you participated in any trauma healing workshop or any other kind of support process, e.g. counselling before, during or after you participated in *Gacaca*? If yes, when and where did the workshop take place?
15. Tell me about what your life looks like today?
 - a. What is difficult about your life now?
 - b. What is good about your life now?

APPENDIX 6: INFORMATION SHEET – PROFESSIONALS

Researcher: Judith Herrmann

A critical analysis of the needs of female survivors of sexual violence and their experiences with *gacaca*

You are invited to take part in a research project about the needs of Rwandan women who experienced sexual violence (SV) during the Genocide against the Tutsi and their experiences with *gacaca*.

What is the research about?

This research project investigates the needs of female survivors of conflict-related sexual violence (SV) and explores the women's experiences with transitional justice processes dealing with the crimes. The research focuses on Rwanda and the needs and experiences of Rwandan women who spoke before a *gacaca* court about SV committed against them during the Genocide against the Tutsi. The study will provide data aiming to inform initiatives to support Rwandan women beyond *gacaca* as well as transitional justice measures dealing with SV in other post-conflict settings.

Who is carrying out the research?

The study is being conducted by Judith Herrmann, who is completing her PhD at James Cook University in Australia (assisted by a local interpreter, Ms Anathalie Umugwaneza, who will translate between you and Judith)¹⁷³⁰. This study will contribute to Judith's research about the needs of female survivors of sexual violence and the women's experiences with justice processes.

What does the research involve?

The study involves finding out about needs of Rwandan survivors of sexual violence and their experiences with *gacaca*. This will be done primarily by interviewing women who survived sexual violence committed as part of the genocide and who raised their case in *gacaca*. The study will also include interviewing Rwandan professionals who participated in these *gacaca* trials dealing with sexual violence, e.g. as counsellor, or as a member of the *gacaca* panel. Your participation involves an interview in which you will be asked questions about your role in a *gacaca* process as well as your experiences, thoughts and feelings about *gacaca* and its impact on SV survivors. The interview, if you agree, will be recorded on an audio-recording device.

How much time will the interview take?

The interview should take approximately 1 hour of your time.

Can I withdraw from the Study?

Your involvement in the research is entirely voluntary. You have the right to withdraw at any stage without affecting your rights or the responsibilities of the researcher. We can discuss any concerns or questions you have about the research at any time during the process. You

¹⁷³⁰ Only applicable if the interviewee does not speak English or French.

will be asked to sign a consent form to indicate you have agreed to participate and allow the use of your answers during the interview as part of this research.

Will anyone else know the results?

Unless you agree to your name being used, the information that you provide will be strictly confidential, and only the researcher will have access to the answers you provide during the interview. The interview transcript will not have your name or any other identifying information on it, and your answers to my questions will be used anonymously in any reports or publications arising from the research, unless you agree to your name being used.

Will the research benefit me?

The research may benefit you indirectly in that it is aimed at increasing understanding of the needs of Rwandan survivors of SV. If you are still working today in a role providing support to survivors, this may mean an increase in your knowledge base and understanding of how to improve the effectiveness of the interventions you provide. If you work in a role that involves the sharing of information about the genocide and / or *gacaca*, then the research will benefit you by adding further information to the existing body of knowledge regarding the genocide and *gacaca*.

Can I tell other people about the research?

You are allowed to tell other people about the research, but not to reveal the identity of any other participants in case they have requested confidentiality.

What if I require further information?

When you have read this information, the researcher will discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact Judith on

Content has been removed for privacy reasons
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If you have any concerns regarding the ethical conduct of the study, please contact:

Human Ethics, Research Office
James Cook University, Townsville, Qld, 4811, Australia

Phone:

Content has been removed for privacy reasons
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APPENDIX 7: INFORMED CONSENT – PROFESSIONALS

Researcher: Judith Herrmann

A critical analysis of the needs of female survivors of sexual violence and their experiences with *gacaca*

In giving my consent I acknowledge that:

1. I understand that the aim of this research study is to learn about the needs of Rwandan women who participated in *gacaca* in relation to sexual violence committed against them, and their experiences with *gacaca*
2. The procedures required for the research and the time involved have been explained to me, and any questions I may have, have been answered to my satisfaction.
3. I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the research with the researcher. I have been provided with a written information sheet to keep.
4. I understand that being in this research is completely voluntary – I am not under any obligation to consent.
5. **I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher, the University of Sydney or any other organisation involved in the research. Moreover, if I not happy with the way questions are being asked I can decide to withdraw at any time.**
6. I request that any information I provide be treated as strictly confidential and **I do not agree** for any information about me to be used in a way that reveals my identity.

 I am happy if any information I provide is made public and **I agree** for any information about me to be used in a way that reveals my identity.
7. **I agree** for this interview to be taped/recorded.
 I do not agree for this interview to be taped/recorded.
8. I understand that I can stop the interview at any time. If I do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

Signed:

Name:

Date:

APPENDIX 8: INTERVIEW SCHEDULE – PROFESSIONALS

1. In what role did you participate in *gacaca*?
2. In how many *gacaca* trials dealing with sexual violence (SV) did you participate?
3. Where (district, sector) were the *gacaca* trials in which you participated?
4. What level/ type of trial did you participate in (sector / cell level, 1st trial, appeals court)
5. If you participated in a number of trials in the same sector, was the *gacaca* panel always the same or did the people within the team change?
6. Can you describe a typical *gacaca* trial dealing with SV (e.g. how many people were present, what were their roles, in what building was the trial held, what was the process, how long did the trial typically take, how was the judgment announced)?
7. What are your thoughts on what prompted the women who you saw in *gacaca* to raise their SV case? What evidence do you have to support this?
8. What are your thoughts on what women hoped would happen by raising their case in *gacaca*? What evidence do you have to support this?
9. What, in your opinion, was particularly challenging for women in *gacaca*? What evidence do you have to support this?
10. What, in your opinion, helped women during *gacaca*? What evidence do you have to support this?
11. What else, in your opinion, could have helped the women during the *gacaca* trial? What evidence do you have to support this?
12. What were the judgments in the *gacaca* trials in which you participated?
13. What are your thoughts on how the women felt about the judgment made in their case? What evidence do you have to support this?
14. Did you continue working with the women after *gacaca* finished? If yes, can you describe how the women's lives were impacted by their participation in *gacaca*?
15. Do you still work with the women today? If yes, can you describe how the women's lives look today
 - a. What, in your opinion, are the most urgent needs of the women today?
 - b. What, in your opinion, is of greatest support to the women today?
 - c. What evidence do you have to support the two responses above
16. Are there any additional points that you would like to add?

APPENDIX 9: THEMES EMERGING DURING THE FIRST READ OF INTERVIEW TRANSCRIPTS

The genocide story

Consequences of the genocide

Meeting the perpetrators at *gacaca*

Truth

Punishment

Forgiveness

Faith/ god / church

Support Group

Relationships with others (own family, community, family of perpetrator, perpetrators, other victim-survivors)

APPENDIX 10: NVIVO NODES USED FOR CODING THE INTERVIEWS

Awareness of own suffering
Blamed for raising the case
Comments on Tutsi ethnicity
Confidentiality
Consequences from the genocide
Physical Suffering
Handicapped
HIV
Pregnancy
Psychological Suffering
Shame
Suicidal thoughts
Trauma
Social consequences
Family reactions to rape
People made fun of her
Stripped off dignity
Interviewee being blamed for rape
Corruption and Bribes at <i>gacaca</i>
Bribes
Bribing other victim-survivors
Bribing the interviewees
Bribing the jury
Bribing witnesses
Resisting bribes
Corrupt prison staff
Different ethnicity husband and interviewee
Difficult
Empowerment
Feeling powerless
Power through helping others
Power through truth-telling
Power through vocation
Power through winning their case
Restoration of power relative to the perpetrator
Experiences with Inyangamugayo
Biased judges
Competent and supportive <i>gacaca</i> judges
Corrupt <i>gacaca</i> judges
Incompetent judges
Insensitive judges
Forgiveness
Interviewee decides to forgive
<i>Gacaca</i> experience

Evaluating <i>gacaca</i> in general - not related to sexual violence
How the women felt during <i>gacaca</i>
Felt brave and strong
Fear
Fear of reprisal
Being in the same room with perpetrator
Felt alone
Felt hurt
Felt sick
Felt sorrow
Experiencing episodes of trauma during <i>gacaca</i>
Hospitalised after <i>gacaca</i>
Needed privacy
Not easy
Ran out of the room
Felt like she was not believed
Had a tough time
Interview questions about <i>gacaca</i>
What could have helped during <i>gacaca</i>
What helped during <i>gacaca</i>
What was difficult about <i>gacaca</i>
What was good about <i>gacaca</i>
What interviewee thinks about sentence
Interviewees evaluation of the verdict
Perceived impact of <i>gacaca</i> on the interviewees' lives
Interviewees' opinions on private versus Public <i>gacaca</i>
<i>Gacaca</i> trial - functioning of the process
Appeal
Level of the trial - cell or sector
Location and set up
Multiple <i>gacaca</i> trials
Multiple sessions
Other Participants' actions/reactions at <i>gacaca</i>
Community making participation in <i>gacaca</i> difficult
Community reactions to rape
Community support at <i>gacaca</i>
Behaviour of perpetrators' family's at <i>gacaca</i>
Behaviour of Interviewees' family reaction at <i>gacaca</i>
People present during <i>gacaca</i>
Inyangamugayo
Other women raising their case
People waiting outside
Perpetrators present
Support people for perpetrator
Support people for interviewees
No support from family and friends

Support from family and community
Trauma Counsellor
Emilienne as trauma counsellor
No counsellor
Witnesses
Corrupt witnesses
Perpetrators actions/reactions at <i>gacaca</i>
Perpetrator confessing
Perpetrator denying
Perpetrator first denied and then confessed
Perpetrator trying to intimidate interviewee
Set up of <i>gacaca</i> process
Testimonies
Testimonies from witnesses
Interviewee giving testimony
Timing
Trial in absentia
Verdict and sentence
Deciding and announcing verdict
Genocide experience
Describing the perpetrators
Sexual violence
Death of family members during the genocide
Property loss
God - religion
Good governance
Helpful
Information and support at <i>gacaca</i>
Information at <i>gacaca</i>
Information about sentences
Information about timing of SV trials
Received information from <i>gacaca</i> judges
Received Information from other people
Support during <i>gacaca</i>
Interviewee as inyangamugayo
Justice
Being listened to
Exposure
Punishment
Reparation
Learning about other women being raped at <i>gacaca</i>
Life today
Feeling better now
Feeling guilty
Feeling safe
Health situation today

Hope for the future
Lucky to have children alive
Lucky to not have caught HIV
Poverty
School fees
Unemployed
Social situation today
Living with shame
People don't care about us
Relationship between interviewee and perpetrators family
Wondering about future relationship with perpetrator
Relationship with own family
Standing in the community
Interviewees blamed for sexual violence
Still alive
Participation
Ask questions and receive answers
Face-to-face interaction
Having influence on the process
Perpetrator responsibility
Interviewees' feelings and thoughts on perpetrator responsibility
Anger with perpetrator
Interviewee not accepting apology as sincere
Interviewee ready to accept token of responsibility
Perpetrator responsibility more important than punishment
Relationship punishment and perpetrator responsibility
Wanting perpetrators to feel responsible
Perpetrator demonstrating responsibility
Perpetrator asking for forgiveness
Asking for forgiveness outside of <i>gacaca</i>
Perpetrator confessing
Perpetrator not accepting responsibility
Perpetrators family showing responsibility
Perpetrators fled
Punishment
Acknowledging need for authorities to punish
Crime has consequences
Ending culture of impunity
Fair punishment
Imprisonment as punishment
Pay for it
Punishment albeit apology needed
Punishment to prevent future crime
Retribution
Unfair punishment
Wants to see perpetrator suffer

Raising children
Raising the case
How interviewees raised their case
Case raised by others
Not possible to raise case
What prompted interviewees to raise their case
Determination to raise their case
When interviewees raised their case
Why interviewees raised their case
Reconciliation
Reparations
FARG
Not asking for reparations
Safety
Feeling unsafe
Psychological safety
Safety through exposure
Safety through imprisonment
Threats and actions against interviewees
Trauma support and training after <i>gacaca</i>
Support from Emilienne
Support group
Trauma training
Truth
The truth was revealed during <i>gacaca</i>
Truth seeking
Asking questions and receiving answers during <i>gacaca</i>
Want to know their perpetrators
Want to know why
Figuring out how to behave towards perpetrators
Truth telling
Being listened to
Difficult to share their story
How they told the truth
Platform to talk about SV
Whom to tell the truth outside of <i>gacaca</i>
Public speaking
Talking to the perpetrators' family
Talking to the researcher
Why truth telling
Exposure
Giving details to convince the jury
Importance of telling the truth
Need to speak for others
No choice but had to speak about it
Personal catharsis

Talking about it makes you feel good
Want to share her pain
Validation
Rape is a crime
Victims of injustice
Wanting acknowledgment for what happened
Vindication
Relieved from a burden
Relieved from stigma
Wanting to get rid of stigma