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# Contesting Community: Legalized Reconciliation Efforts in the Aftermath of Genocide in Rwanda

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# Contesting Community: Legalized Reconciliation Efforts in the Aftermath of Genocide in Rwanda

## **Abstract**

In recent decades, national governments and international authorities have increasingly emphasized the role of legal institutions in restoring order after political violence. This study explores how, following the 1994 genocide, the Rwandan government created new decentralized grassroots legal forums that aimed to produce community out of a divided population. The legal institutions were designed to enable Rwandans to resolve disputes with the help of locally-elected mediators, based on principles that prioritized collective cohesion over individual rights, combined with state-backed punishment. Drawing on eighteen months of ethnographic research in Rwanda between 2004 and 2008 with genocide courts (*inkiko gacaca*), mediation committees (*comite y'abunzi*) and a legal aid clinic, this study shows how the discourse of mediation in courts derived from national and transnational processes, and how it shaped people's experiences across a wide range of disputes. People used the courts' flexible proceedings both to rebuild inclusive relationships, and to contest belonging and reinforce divisions. The study suggests that state-backed legal forums embedded in daily life can facilitate social rebuilding in the aftermath of violence, while it examines what differences are created as "community" is brought into being through politicized processes, and shows how customary law as a tool of state development can both empower and curtail rights.

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**CONTESTING COMMUNITY: LEGALIZED RECONCILIATION  
EFFORTS IN THE AFTERMATH OF GENOCIDE IN RWANDA**

**KRISTIN C. DOUGHTY**

**A DISSERTATION**

**in**

**Anthropology**

**Presented to the Faculties of the University of Pennsylvania in Partial Fulfillment of  
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**CONTESTING COMMUNITY: LEGALIZED RECONCILIATION EFFORTS IN  
THE AFTERMATH OF GENOCIDE IN RWANDA**

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**2011**

**Kristin C. Doughty**

**To Natalie and her brother-to-be, with great love.**

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Out of respect for the privacy of the people from Ndora, Nyanza, Butare, Kigali, and elsewhere in Rwanda whose stories fill these pages, I do not name them here, and have given them pseudonyms in the text. It has been my privilege to learn from them, and I am grateful they shared their lives with me. I hope they recognize their experiences in my re-telling and that I accurately captured the complexity of their experiences living simultaneously with loss alongside hope in the possibility of new futures. *Murakoze cyane.*

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**ABSTRACT****CONTESTING COMMUNITY: LEGALIZED RECONCILIATION EFFORTS  
IN THE AFTERMATH OF GENOCIDE IN RWANDA**

Kristin C. Doughty

Sandra T. Barnes

In recent decades, national governments and international authorities have increasingly emphasized the role of legal institutions in restoring order after political violence. This study explores how, following the 1994 genocide, the Rwandan government created new decentralized grassroots legal forums that aimed to produce community out of a divided population. The legal institutions were designed to enable Rwandans to resolve disputes with the help of locally-elected mediators, based on principles that prioritized collective cohesion over individual rights, combined with state-backed punishment. Drawing on eighteen months of ethnographic research in Rwanda between 2004 and 2008 with genocide courts (*inkiko gacaca*), mediation committees (*comite y'abunzi*) and a legal aid clinic, this study shows how the discourse of mediation in courts derived from national and transnational processes, and how it shaped people's experiences across a wide range of disputes. People used the courts' flexible proceedings both to rebuild inclusive relationships, and to contest belonging and reinforce divisions. The study suggests that state-backed legal forums embedded in daily life can facilitate social rebuilding in the aftermath of violence, while it examines what differences are created as "community" is brought into being through politicized processes, and shows how customary law as a tool of state development can both empower and curtail rights.

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## **Chapter 1: Introduction**

This study explores how the Rwandan government created new legal institutions in order to restore the social fabric in the aftermath of genocide. By doing so, it hoped to recreate families, to repair communities, and to rebuild a unified nation. It is simultaneously the story of the people whose lives were inevitably permeated by the new force of these institutions, and how they shaped collective belonging through disputes and debates in these new legal forums. As such, it is one piece of a story about how people rebuilt their social lives after violence. It illustrates how belonging was built and contested through the micro-disputes that formed the warp and woof of daily life, and how legal forums served as sites for social healing, with inherent divisions.

### **Rwanda in the Aftermath of the 1994 Genocide**

Specifically, this study focuses on Rwanda a decade after the 1994 genocide, where the social fabric was particularly torn and therefore where governmental and individual processes to recreate it were especially visible. The Rwandan genocide, in which up to a million people were killed in only a few months, is a vivid example of state terror directed at domestic populations, often ethnic in nature, that occurred at the end of the millennium (Appadurai 2006; Friedman 2003; Hinton 2002a; b; Scheper-Hughes & Bourgois 2004; Sluka 2000).

The genocide, far from being an explosion of primordial ethnic hatreds, was a carefully organized effort by the government at the time, which was led by a political party that alleged to represent the majority ethnic Hutu population (approximately 85 percent) through a Hutu-power ideology that cast the country's minority ethnic Tutsi



population (approximately 14 percent) as threatening outsiders.<sup>1</sup> Over several years, the government put in place the ideological framing for radicalization, and the organizational planning for genocide. It used the media, schools, and political speeches to draw on and fuel racialized and politicized definitions of ethnicity that created a rationale in which people could take up arms against one another, with the support of government soldiers and organized militias. (See Chapter 2 for a brief overview of history, including the genocide.<sup>2</sup>) After over three years of civil war between the government and a Tutsi-dominated rebel army (Rwandan Patriotic Front, RPF), and in the context of an uneasy peace agreement, when the President's plane was shot down in April 1994, the government responded with an immediate and carefully-orchestrated effort to eradicate the Tutsi population, along with any of its political opposition (Newbury 1995a; Newbury 1998b). The killings were the final step in a desperate attempt to maintain political and economic power.

For several months, from April to July 1994, normal life was suspended. Militias attacked with guns, aided by civilians with a variety of traditional weapons. The violence occurred in the landscape in which people lived their daily routines—their homes, markets, schools, and churches. Those who were hunted went into hiding in desperate efforts to survive, while hundreds of thousands took to the roads on foot in hopes of escaping the chaos, as the RPF and government forces battled for control of the country. Schools, churches, hospitals, markets, and government services basically ceased to function, and violence and fear reigned. Those who survived did so by looting crops,

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<sup>1</sup> The remaining one percent of Rwanda's population were Twa. They did not play a significant political role in the genocide, so I do not discuss them in detail, though they were similarly touched by the violence.

<sup>2</sup> For detail on the planning and implementation of genocide, see, for example, Chretien 1995; Des Forges 1999; Prunier 1995; Strauss 2006.

livestock, and material goods, all shared or exchanged illicitly. The social fabric was shredded. Yet social disaggregation was not complete, insofar as people still found connections in collective solidarities of, for example, shared violence, victimhood, or efforts at protection.

The genocide officially ended when the RPF, under the command of General Paul Kagame, captured Kigali in July 1994. The RPF government retained power from that moment through the present, first under a transitional regime, then through elections in 2003, in which Kagame became president and established a strong central government. Across Rwanda, people continued to struggle with the consequences of genocide, including poverty and a fragile economy, trauma, a high number of households headed by women or orphans, and public health concerns including HIV/AIDS (Biruta 2006:153-162; Newbury 1998b:92). Life in Rwanda slowly regained a degree of normalcy with functioning infrastructure, government institutions, schools, markets, and transport. By 2004, many international dignitaries and institutions lauded Rwanda as a model for post-conflict reconstruction and development, for Africa and other developing countries more widely.

Since 1994, victims, perpetrators, bystanders, their families, and the recently returned diaspora population have lived side by side across the country's tightly-packed hillsides. As bodies lay unburied, and refugees streamed out of Rwanda fleeing retaliatory violence, equal numbers crossed into Rwanda after years in exile. These diaspora people replaced, and eventually exceeded, the dead. More than a decade later, this cosmopolitan mixture of people mingled in markets and tilled manually their adjacent fields, they rode

pressed hip-to-hip and shoulder-to-shoulder in minibus taxis, and their children sat together in schoolrooms.

The following chapters address two interrelated problems of how Rwandans were able to rebuild their social lives in the aftermath of the violence of the 1990s, and in the face of the ongoing consequences. First, how did the Rwandan government use law as a tool in efforts to produce national unity and reconciliation? Second, how did Rwandans negotiate collective belonging during disputes in grassroots courts? This introduction and Chapters 2 through 4 emphasize the former question, while Chapters 4 through 7 emphasize the latter.

### ***Creating new decentralized legal institutions***

The Rwandan government identified the genocide as a formative event in the creation of the new nation-state of Rwanda, as captured in the Constitution's preamble, "We, the people of Rwanda, in the wake of the genocide. . ." (Constitution of the Republic of Rwanda 2003). Time was structured as pre- or post-genocide, with the recent "before" (Independence through 1994) categorized as corrupt and even evil, and juxtaposed with the positive liberation and potential of the post-genocide period. People were characterized by their position with regards to the genocide—where they were, what they did or did not do. Every policy that was implemented was framed as responding to the causes or consequences of genocide. Yet, the genocide was not used to justify a severance from the past. Rather, the government narrative and policies explicitly connected the "new post-genocide Rwanda" with a natural pre-existing Rwandan nation both territorially and culturally.

The post-genocide Rwandan government identified law as central to reconstructing Rwanda, resolving to build a state “governed by the rule of law, based on respect for fundamental human rights, pluralistic democracy, equitable power sharing, tolerance and resolution of issues through dialogue” (Constitution of the Republic of Rwanda 2003, Preamble Article 6). This emphasis was consistent with how states and non-state actors increasingly fetishize laws and legal institutions as key mechanisms for building stable democracies with accountability, legitimacy, and good governance (Comaroff & Comaroff 2003; 2006; Mattei & Nader 2008). Reforms were based on the idea that legal institutions had a significant role to play in helping Rwandans in dealing with the past and in reshaping people’s mindsets and relationships to one another. As the then President Pasteur Bizimungu explained in 1999, law was not just intended to punish or to make people “be afraid” of committing a crime, but rather to change the “bad ideology” that caused the violence and to rebuild the nation (Bizimungu 1999:6).

Strengthening of rule of law took many forms. In addition to rebuilding courts to try genocide suspects (see Chapter 3), the government took on vast efforts at legal reform intended to make the judiciary more accountable, transparent, efficient, and modern. Old laws were updated, and new laws created, including the establishment of a new Constitution in 2003 at the close of the period of transitional government. Existing courts and legal structures were refurbished and new ones created. New training facilities were established, including Faculties of Law at the growing number of universities in Rwanda. A Bar Association was created in 1997 for the first time, and grew from 30 to over 300 members by the end of 2007 (Kimenyi 2007). In 2008, a new Institute for Legal Policy and Development opened.

The ability of “rule of law” to create order was a visible sign of the law’s presence as a form of social control used to regulate the conduct of citizens (Foucault 1982; Rose 1999). This was particularly clear in the capital of Kigali, which residents and visitors described as orderly and safe in comparison with regional cities like Kampala and Nairobi. New laws took many forms, such as banning the use of plastic bags, prohibiting raising animals in city limits, and removing beggars and ad-hoc vendors from the streets. While in 2005, the ubiquitous moto-taxi drivers were bare-headed, by 2007, they and their passengers wore newly-mandated helmets, and even the most regally-dressed women were required to straddle the bike, prohibited from riding side-saddle. Minibus drivers respected passenger capacity limits and their money-collectors no longer leaned awkwardly over tightly packed passengers, but rather they took their own seats. Across the country, groups of pink-clad prisoners engaged in work projects, whether constructing buildings or digging drainage ditches, a constant reminder of the state’s power to lawfully incarcerate. Police officers lined the tarmacked roads, ensuring compliance with new traffic regulations such as speed limits and seat belt requirements. New physical court structures sprouted across the landscape.

Authorities encouraged people to formalize social relationships in legal terms, such as paternity, marriage, and divorce. Legal aid clinics expanded in number to meet citizens’ growing needs to navigate these shifting legal systems, teaching them to be legal citizens—for example, how to frame complaints in terms of legal claims and rights, how to marshal evidence to substantiate claims, and how to provide legitimate written documentation. Overall, people came to experience the government’s emphasis on

regulating conduct through punishment-backed laws as a powerful social force shaping their lives.

The rebuilding of rule of law was perhaps most noticeable through the creation of two new legal systems, *inkiko gacaca* and *comite y'abunzi*, which were established in the early 2000s based on a mixture of customary and Western law. This study focuses in particular on these newly-developed legal institutions, which pervaded and infiltrated people's everyday lives. In these courts, locally-elected lay judges used principles of compromise and unity alongside state-backed punishment to resolve disputes among their neighbors. Specifically, Rwandan political leaders saw *inkiko gacaca* (*gacaca* courts), which assigned criminal responsibility for genocide, as uniquely suited to the key challenges of post-genocide restorative justice: expediently trying the large volume of suspects and facilitating their eventual reintegration into their mixed communities. *Comite y'abunzi* (mediation committees), which handled ordinary and civil complaints, were a way to formalize these same legal principles in an enduring institution. The premise was that these court systems' culturally-relevant mediation approach was a more natural way for Rwandans to address conflict and produce national unity than using externally-imposed adversarial legal principles. These systems would address local conflicts on-site, which could be crucial in preventing their escalation from impeding national peace (see, for example, Autesserre 2010:125).

The implementation of *gacaca* and *comite y'abunzi* was part of a broader nationwide process of decentralization, formally adopted in May of 2000 (Constitution of the Republic of Rwanda 2003, Article 167; Ministry of Local Government 2008b). The main thrust of Rwanda's governmental decentralization policy was to help local populations to

“participat[e] in the planning and management of their development process” (Ministry of Local Government 2008b:4). It was part of the community empowerment framework in Rwanda’s broader overarching national economic development strategy called “Vision 2020” (Ministry of Finance 2000). Vision 2020 was based on an approach called “Community Driven Development”, advocated by both the World Bank and USAID, which aimed to “empower communities and local governments to ‘take control’ through a bottom-up approach that treated communities as partners in development” (Johnson 2009:10). These approaches were consistent with neoliberal policies based on the creation of individual citizens who play an active role in self-governing.

Specifically, decentralization aimed to disperse the functions of the national government and strengthen the administrative districts as the core local governance authority. In an administrative restructuring in 2005, Rwanda’s 30 administrative districts were sub-divided into sectors (416 total), and sectors into cells (2,148 total). Sectors served as the focus of local service delivery, and were administered by several RPF-appointedees including an Executive Secretary and Civil Affairs Coordinator (Ministry of Local Government 2008b:9). The cell level was intended to serve as the center for information and community mobilization, while villages (*imidugudu*, approximately 15,000 total) were intended to involve community members in participatory sustainable community development activities. In each cell, there was an Executive Secretary at the cell level, and a Cell Coordinator, as well as a team of ten people to help manage it.

Leadership at the village level was invested in one coordinator and a four-person committee.<sup>3</sup>

*Gacaca* courts and *comite y'abunzi* were designed to “move deep to the places where the crimes were committed” (Karemera 2004). *Comite y'abunzi* were implemented at the cell level. *Gacaca* courts were implemented both at the cell level (for cases regarding crimes against property during the genocide) and the sector level (for murder cases). Both courts aimed to bring legal resources closer to rural Rwandans, and to process cases efficiently and cost-effectively, unclogging the national court system of cases that could better be resolved locally.

Consistent with the philosophy of community empowerment linked to decentralization, both *gacaca* and *comite y'abunzi* were designed to use lay judges elected by their peers, rather than professional judges or lawyers. The idea was to empower citizens to solve disputes among their neighbors. For example, authorities described *gacaca* repeatedly as being “the responsibility of all the Rwandans with no exception and in the first place to rebuild their society.”<sup>4</sup> The forums required public participation, and occurred on-site where disputes and crimes occurred. They privileged local knowledge of people and context rather than expertise in objective legal norms. Authorities and lay judges exhorted participants to set aside their own feelings, and to forgive one another for the good of the community and nation, based on cultural values of mediation and unity.

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<sup>3</sup> Interview, Chargé d'Etat Civil. July 7, 2008. Ndora.

<sup>4</sup> National Service of *Gacaca* Jurisdictions promotional print materials. Received July 2007. Author's personal files.



One of the key ways that both *comite y'abunzi* and *gacaca* courts were intended to support the national “Vision 2020” agenda of empowering communities was, specifically, that they were designed to help *create* community. They were not intended simply to ensure compliance with pre-existing shared values and norms. As anthropologist Danielle de Lame wrote in 1996, “the old representations that unified Rwandan culture have become meaningless” in the wake of such catastrophic violence and displacement (2005:491). Instead, the decentralized legal forums were designed to create the rules, values, and norms among the participants that would “become the basis of collaboration and unity.”<sup>5</sup> *Gacaca* and *comite y'abunzi* were designed to (re)create moral bonds and emotional relationships that were shattered during the political violence. They would restore family, community, and nation as three levels of nested belonging.

Consistent with the government’s goals of decentralization of legal institutions, around the time *gacaca* and *comite y'abunzi* were launched the National University of Rwanda created a legal aid clinic to provide easier access to legal services to the surrounding population. The clinic provided *pro bono* legal advice to clients with cases ranging from divorce or land disputes to employment concerns or insurance claims. Though it was technically a university-led organization and was staffed primarily by third-year law students, clients experienced and described the legal aid clinic as a legal forum insofar as it represented the rule of law. Students and the law faculty supervisors emphasized the same principles of mediation and unity undergirding *gacaca* courts and *comite y'abunzi* in their interactions with clients.

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<sup>5</sup> National Service of *Gacaca* Jurisdictions. <http://www.inkiko-gacaca.gov.rw/En/EnObjectives.htm>. Accessed February 1, 2011.

Legal forums and processes in post-genocide Rwanda were not abstract or distant from people's lives, but were proximate with immediate impacts. Rwandans suddenly were required to sit alongside one another weekly in *gacaca* sessions and to submit to obligatory mediation efforts to resolve other disputes before going to court. These decentralized legal forums created the space for new kinds of in-person social interactions among neighbors and families across Rwanda. The coexisting forms of law had intertwined effects—for example, people's experiences in *gacaca* shaped how they engaged with *comite y'abunzi*, their awareness of a pending genocide ideology law influenced how they testified in *gacaca*, and their interaction with legal aid clinic staff made them more or less inclined to accept *comite y'abunzi* judgments.

The government emphasized strengthening rule of law on one hand, but undermined it by enforcing laws in an often one-sided and inconsistent manner, as I discuss more below. Critics contended that legal decentralization served primarily as a tool to extend authoritarian state control more deeply into the lives of individuals, and that these institutions were a form of “lawfare,” the instrumental, coercive use of law in efforts to conquer and control people (Chakravarty 2009; Thomson & Nagy 2010). As I demonstrate in the following chapters, people used these forums to shape collective belonging, but not solely in ways intended by the government.

### *Nationwide reconciliation discourse*

The Rwandan government's emphasis on strengthening “rule of law,” broadly defined, was situated within a broader reconciliation agenda that the government adopted as the foundation of its governance strategies to restore peace and rebuild a prosperous

nation-state. This was consistent with how reconciliation emerged as one of the global master narratives of the late twentieth century (Scheper-Hughes & Bourgois 2004). I talk about this as reconciliation discourse here in order to refer to the pervasiveness of ideas that circulated, and how they structured thought and enacted realities (e.g., Foucault 1978; 1982; Rabinow 2003). National and transnational discourses in the public sphere configured possibilities for citizenship and belonging, and people responded to those citizenship constraints in varied ways (Biehl 2005; Hall 2002; Petryna 2002; Thomas 2004).

Reports and documents produced by the Rwandan government and international NGOs commonly diagnosed post-genocide Rwanda as suffering from a “devastated” social fabric, including the “destruction of family bonds” (Biruta 2006:155; Ministry of Finance 2000; Ndagiza 2007). The government’s goal was to “bridge the deep rifts in society and heal the wounds inflicted by the genocide,” creating cohesion out of division and exclusion (Ndangiza 2007:1). Particularly by the late 1990s government programs were framed in terms of “eradicat[ing] ethnic, regional and any other form of divisions,” “emphasizing the necessity to strengthen and promote national unity and reconciliation,” and recognizing that “peace and unity of Rwandans constitute the essential basis for national economic development and social progress” (Constitution of the Republic of Rwanda 2003, Preamble Articles 2,4,5). The government discourse explicitly linked law, decentralization, and reconciliation, noting, for example, that: “Bringing government decision-making closer to the people through decentralization and adjudicating crimes of genocide and building the basis for reconciliation through truth telling are central

elements in the Rwandan strategy to rebuild the social fabric of the country” (Ndangiza 2007:1).

National unity was justified on the basis that “we enjoy the privilege of having one country, a common language, a common culture, and a long shared history which ought to lead to a common vision of our destiny” (Constitution of the Republic of Rwanda 2003, Article 7). This reference to the historical past was consistent with other contexts where history was used as a legitimating practice by modern states (Berdahl 2005; Leopold 2005; Sharp 2002). To counter the genocide narrative which portrayed Hutu and Tutsi as distinct racialized ethnic groups that had separate histories, habits, and innate dispositions, the government promoted a revised narrative that aimed to shift Rwandans to seeing themselves as one people, *Abanyarwanda*, with a shared past. This new narrative stressed that the categories Hutu and Tutsi had shifted over time, and were only consolidated during the colonial period, as ethnicity became a political tool in a struggle for power and resources. The disunity introduced by colonizers led directly, in the hands of corrupt and immoral politicians, to the genocidal logic of the 1990s. The post-genocide government, in response, prohibited the public use of ethnic labels, removing them from identity cards, government discussions, and documents. Thus, the government substituted one primordial identity, ethnicity, for another, membership in the Rwandan nation. This is consistent with global trends where the intensification of ethnic conflict has been met by corresponding homogenizing efforts at strengthening national identity (Appadurai 1998; Ceuppens & Geschiere 2005; Comaroff 1995).

Examples of the discourse of reconciliation that reached into people’s daily lives abounded between 2004 and 2008. The government established a National Unity and

Reconciliation Commission in 1999, which worked at the national level in collaboration with ongoing government programs, as well as at the grassroots level educating the population (Law N.39 of 12/03/99; Rwandan Constitution, Article 178). Schools taught a revised history and civics curriculum consistent with the national narrative. Public speeches by cell leaders, mayors, and national government officials always included reference to unity and reconciliation. Every year, between April and July, genocide commemoration activities used speeches, banners, marches, and concerts to convey themes of unity, “never again,” and the importance of eradicating genocide ideology. Even seemingly apolitical arenas, such as sports, fashion shows, or concerts typically included speeches about national unity. This overarching discourse, along with the new decentralized legal forums, were part of government efforts to construct national identity, to produce the people who would form an imagined community of *Abanyarwanda* (Anderson 1983).

The discourse of reconciliation and the decentralization approach are crucial to understanding the socio-political climate in which Rwandans went about daily activities and rebuilt their lives. Yet the rhetoric cannot be understood as representing the achievement of collaborative, egalitarian development and unity, as it was countered by tightening restrictions on what could and could not be said.<sup>6</sup> In the name of reconciliation and national unity, the government justified suppressing dissent that reflected “divisionism” (introducing ethnic division), “revisionism” (disagreeing with, and therefore revising, the dominant historical narrative), and “negationism” (negating genocide). These terms, symbolically weighty and politically loaded, became particularly

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<sup>6</sup> Interviews with residents, staff of INGOs, former staff of NURC. 2004 through 2008. Kigali.

prevalent by 2004, and their vagueness meant they could be wielded with grave consequences. For example, people who asserted that the RPF committed atrocities during the genocide period, a claim corroborated by national and international scholars and human rights activists (Des Forges 1999; Lemarchand 2009; Prunier 2009), could be detained, threatened, or expelled from the country on grounds of being divisionists or negationists. By the ten-year anniversary of the genocide, domestic and international human rights groups increasingly expressed concern about the closure of space for public debate, the suppression of dissent, and the eradication of civil society (Reyntjens 2005). The government eliminated political opposition, closed domestic opposition newspapers, curtailed research activities, and denied access to foreign researchers seen to publish divisive or revisionist views.

The government asserted that vigilance and even suppression were necessary given the ongoing existence of genocide ideology. Newspapers and radio constantly reminded people of ongoing threats to Rwandan sovereignty posted by active rebels launching incursions into Rwanda, and against ethnic Tutsi in the Democratic Republic of Congo (DRC). The media and politicians further underscored that the danger of genocidal ideology also lurked at home. In a representative example, the pro-government newspaper *The New Times* reported in 2004 that a Parliamentary probe revealed that “there are political leaders high in government positions who are still obsessed with ethnic and genocide ideology” (Bugingo 2004). In a related move that same year, the senate launched a two year study into the genocide ideology and strategies for its eradication, publishing the results in 2006 (Biruta 2006). In 2007, the threat of genocide ideology continued to be touted, as headlines reported, for example, “Damning

revelations,” that eleven schools had 80-97% rates of genocide ideology (Buyinza 2007), and people held marches to protest against genocide deniers (Mwesigye 2008).

This climate led, by 2007, to the creation of a Commission for the Fight Against Genocide (Law N. 09.2007 of 16/02/2007; Rwandan Constitution, Article 179) and heavily-publicized discussions about creating a law to criminalize genocide ideology. The law, which ultimately passed in 2008, defined the “characteristics of the crime of genocide ideology” as including clear-cut actions such as threatening, intimidating, or killing based on a person’s “ethnic group, origin, nationality, region, color, physical appearance, etc.,” but also much more vague actions and behaviors seen to threaten unity, such as “marginalizing, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading... stirring up ill feelings” (Law N.18/2008 of 23/07/2008, Article 3). This broadness meant that many words or actions could potentially qualify.

Overall, while the government history and reconciliation discourse posited a unified Rwanda, it simultaneously promoted identity categories and differentiated forms of citizenship. The discursive production of national identity impacted individuals differently depending on their position in the social field (Calhoun 1997; Hall 2002). With the official erasure of ethnicity, new labels emerged based on people’s experiences during the genocide: *rescapés* (Tutsi survivors), *repatriés* (repatriated diaspora Tutsi who returned post-genocide after fleeing earlier political violence), and *genocidaires* (perpetrators). These labels were used colloquially in everyday conversation, and were also institutionalized as legal statuses, influencing access to resources including housing or university scholarships.

Survivors in particular were a special category of citizen. In 1998, a national survivor's assistance fund was created (Law N. 22/01/1998 of 02/1998). Survivors enjoyed other special privileges, such as rights to burial at genocide memorials, having access to university scholarships, and easier access to counseling and medications. A law passed in 2008 further codified Tutsi as the victims by referring to the genocide specifically as *jenocide yakorewe aba Tutsi*, or genocide against the Tutsi (Burnet 2010:103), a shift away from the more general term *itsembabwoko n'itsembatsemba* (genocide and massacres). At the same time, many remarked on the clear split that existed between elites and rural people, which came to be marked by Tutsi diaspora versus other, and which included divisions between survivors and governing elites (Jefremovas 2002:125).

Among the socio-legal labels, the only category for the country's Hutu majority was perpetrator—that is, there was no public term for an innocent Hutu (Burnet 2005; Doughty 2008; Lemarchand 2009). At the same time, Hutu, particularly men, were the most vulnerable to accusations of genocide ideology. It was against this backdrop that the new decentralized legal forums were implemented.

### **Legal Forums, Social Healing, and Collective Belonging**

Post-genocide Rwanda provides a specific example of a broader global phenomenon, where state-sanctioned violence has been met by national and international efforts to rebuild in the name of law and reconciliation. Looking at post-genocide Rwanda enables us to examine in more detail how reconciliation discourse is operationalized in legal forums. How is law used as a tool for reconciliation, and how does it shape the conditions



under which people rebuild their social lives? How do people follow and adapt its guiding rules, and what kinds of collective belonging result?

Rather than starting from the perspective that legal forums were designed to avoid the escalation of conflict among participants with existing shared norms and a sense of collective belonging, this study explores how legal processes were explicitly designed to create community out of a deeply divided, fractured, and wounded set of people. In Rwanda, legal forums were established to repair relationships in a context of social fragility, where shared values had been shattered or shaken, where many bonds had been destroyed, and where even newly rebuilt networks remained tenuous. I show how legal forums were not only punitive but generative, and had a variety of ancillary effects in addition to the government-sanctioned ones.

I argue that these legal forums can be understood as processes of social healing, not in the sense of achieving fully-reconciled communities, but by creating processes, albeit flawed ones, for creating social connections and negotiating collective belonging. I illustrate how people used the courts' flexible proceedings to rebuild inclusive relationships among family, neighbors, and fellow citizens. At the same time, I show how people also used these courts to contest belonging and produce differentiated citizenship, often reinforcing divisions along lines of class or ethnicity at local and national levels. Thus, I show how in the face of the government's reconciliation discourse, people continued to contest collective belonging both within and across boundaries defined by the political violence, and how legal forums shaped the construction of social forms.

### *Legal forums as rituals of social healing*

By examining how legal forums are used in repairing the social fabric, this study contributes to an increasing body of scholarship that examines how, in the wake of political violence, people cope with loss and rebuild their social worlds in everyday practice (Berdahl 1999; Borneman 1992; 2002; 2003; Das et al 2001; Hinton & O'Neill 2009; Hromadzic 2009; Ring 2006; Schuetze 2010; Wagner 2008). Specifically, I suggest that we should consider the decentralized legal forums in Rwanda as sites for social healing. This lens draws attention to the politicized processes through which people rebuild relationships and escalate differences, and prompts us to question (rather than assume) *among whom* relationships are being healed.

There is an existing rich body of literature about the role of legal or legal-like rituals used to resolve conflict and maintain order and community, often framed as restorative justice, in Africa and elsewhere (Bohannan 1957; 1967b; Dillon 1976; Merry & Milner 1993; Nader 1990; Nader & Todd 1978). This includes classic ethnographic examples such as the leopard-skin chief among the Nuer (Evans-Pritchard 1940), moots among the Kpelle (Gibbs 1967), and courts among the Barotse (Gluckman 1955b). Looking at legal dispute resolution processes as rituals draws attention to several elements. First, they are performative, formal, stylized, and repetitive (Comaroff & Comaroff 1993:xviii; Nader 1990; Turner 1969). Second, legal rituals are not simply a conservative mechanism of social reproduction that give voice to shared values, but rather have generative potential to create new meanings and open fields of argument, a site of “experimental practice”, “creative tension,” and “transformative action” (Comaroff & Comaroff 1993:xxix). Further, legal processes, like other rituals, can serve a politically integrative function

(Barnes 1996; Comaroff & Comaroff 1993; Leach 1977 (1954); Ross 2004; 2007; Turner 1957). I use this lens of legal forums as rituals to underscore how *gacaca* and *comite y'abunzi* created processes in which people actively participated and performed, within an institutional format with rules shaping communicative practice, and through doing so, enacted and created new social alliances and divisions, reshaping the social fabric.

I want to connect *gacaca* and *comite y'abunzi* to another deep literature on the role of rituals of social healing, particularly in Africa. Social healing addresses a variety of threats to social reproduction, including poverty, hunger, disease, or violence, blurring the line between medical and socio-political remediation of trauma (Feierman 1995; Feierman & Janzen 1992; Janzen 2010). There is a wide literature in Africa on how rituals led by traditional healers, spirit mediums, diviners, and religious healers have been used to cleanse people from the trauma of war in order to restore their position in a functioning social community, and to heal relationships compromised during the violence (Alexander et al 2000; Bhebe & Ranger 1995; Honwana 2005; Irega & Dias-Lambranca 2008; Janzen & Janzen 2000; Janzen 1992b; Latigo 2008; Leopold 2005; Longman 1995; Nordstrom 1997; Ranger 1992; Reynolds 1990; 1996; Schuetze 2010; Werbner 1991; 1995; Wilson 1992).

There are several elements of social healing relevant to my discussion of legal rituals. First, this work underscores that healing applies with equal validity to the treating of individual bodies and the body public, and that social healing, especially in Africa, is fundamentally about rebuilding networks of relationships between people (e.g., Feierman

1999; Feierman & Janzen 1992; Honwana 2005).<sup>7</sup> Social health is built through creating alliances of mutual support and moral community. People generate networks in which they take responsibility for one another, share resources, and work together. This idea is at the heart of *gacaca* and *comite y'abunzi*, with which the government intended to create new social community, and in which people themselves negotiated collective belonging among family and neighbors.

Second, healing is widely recognized as containing ambivalent power, both to injure and to restore, to divide as well as connect, to hurt as well as to help (e.g., Ashforth 2000; Schoenbrun 2010). Danger and violence are intimately tied up with, not opposed to, healing. Current critiques, therefore, that *gacaca* exacerbates tensions or perpetuates certain kinds of violence (Burnet 2010; Chakravarty 2009; Rettig 2008; Thomson Forthcoming 2011; Waldorf 2006) do not necessarily disqualify it as a form of healing, nor does the often adversarial nature of proceedings.

Third, social healing rituals, movements, or discourses often operate as a kind of public-sphere in which public opinion is shaped and ultimately feeds back to influence the state, though the forms of communicative practice may not mirror the rational Enlightenment debate that Habermas imagined (Comaroff & Comaroff 1993; 1999; Feierman 1995:77; 2004; Habermas 1974; 1984). Social healers have historically worked against forms of established political order and authority, and healing movements provided contexts in which people criticized and evaluated their leaders and the socio-political context (Feierman 1995). This draws our attention to how even given post-

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<sup>7</sup> I am indebted to papers and plenary discussions at the conference “Social Health in the New Millennium.” April 23-24, 2010. University of Pennsylvania.

genocide Rwanda's constraints on speech, and even though *gacaca* and *comite y'abunzi* were tools of the state, because of their popular control, they could serve as sites for public sphere debates in which people shaped belonging in ways that challenged normative definitions of community and citizenship.

Work on social healing in Rwanda has revealed a range of institutions and metaphors of healing, including Nyabingi mediumship, *ngoma* drumming, and populist religious movements called *Kubordwa* (Feierman 1995; Janzen & Janzen 2000; Janzen 1992b; Taylor 1992; 1999). For example, people used Nyabingi mediums in Northern Rwanda to connect with spirits of ancestors in order to cope with individual and collective misfortune (Feierman 1999). Similarly, there is evidence in pre-colonial and colonial Rwanda of a drumming culture called *ngoma* that was prevalent around Central Africa more broadly, used to invoke the spirits of the dead and to address threats to social reproduction (Janzen & Janzen 2000; Janzen 1992b). Yet, in post-genocide Rwanda, there was a surprising absence of these institutions (Janzen 2010; Janzen & Janzen 2000; Taylor 1992; 2002). Janzen has argued that since Independence, postcolonial elected authorities in Rwanda and the Great Lakes region more broadly have played a crucial role in maintaining social health and reproduction (Janzen 2010). I suggest that it is helpful to consider *gacaca* and *comite y'abunzi* as forms of social healing, by focusing on *process* over the final outcome—that is, without asserting simplistically that state-implemented legal forums can stand in as a replacement for other contextualized forms of social healing, or that full peace has been achieved.

If we consider healing as a process, an epistemological stance of “trying”, rather than a conclusively, fully “healed,” reconciled end-state, then social healing is a productive

lens through which to frame *gacaca* and *comite y'abunzi*. This lens shifts attention away from a privileged focus on punishment to emphasize relationships and deliberate efforts to rebuild community. It draws our attention to the moments where people successfully created or reinforced social solidarities, some enduring and some fleeting, and to the moments in which they created divisions and hierarchies. It reveals how healing is intertwined with forms of violence, and sheds light on the possibility for social critique within even these state-driven institutions.

### ***Legal forums and collective belonging: solidarity and division***

Through a lens of social healing, we see how the decentralized legal forums in Rwanda served as spaces aimed at rebuilding the social fabric, in which people negotiated and contested collective belonging, particularly at the levels of family, community, and nation. In *gacaca* courts, I show that through discussions about the past, people contested the meaning of categories of citizenship through debating what it meant to be victim, perpetrator, or bystander. In *comite y'abunzi*, through heated disputes over land and property, people negotiated collective belonging at the proximate levels of “family” and “community.” I use the term collective belonging, like many contemporary anthropologists, to encompass the variety of ways that people belong as members of groups, varying in formality, durability, and scale (e.g., Amit & Rapport 2002; Ferguson 2006; Malkki 1992).

Collective belonging in Rwanda has long taken many forms. As I discuss in more detail in Chapter 2, lineage, clan, hillside, or social status have existed as kinds of belonging alongside ethnicity or nationality (Newbury 1988; Newbury 1980b; Vansina

2004). In post-genocide Rwanda, these forms of belonging continued to exist to varying degrees, while at the same time people associated with other collective solidarities, notably religious organizations, student clubs, women's groups, trade collectives, prisoners' groups, or affiliations based on shared experiences as diaspora refugees (Burnet 2005; Clark 2010; Janzen & Janzen 2000; Thomson 2009). Recognizing that there were a variety of forms of social affiliation, I examine how people operated within and against the definitions of belonging implicitly and explicitly framed in legal forums and the reconciliation discourse.

I draw attention to two salient components of collective belonging as it was revealed and shaped in legal forums. First, people evaluated one another in relation to the past violence, specifically *vis-à-vis* their understandings of the meaning of victim, perpetrator, bystander, innocent, or guilty. That is, collective belonging in post-genocide Rwanda came to be conceptualized and enacted in relation to the past (specifically, the political violence around the genocide), which different people understood and interpreted in various ways. Citizenship was defined in terms of the genocide, whether as survivor/victim, perpetrator, or refugee, and people contested the meaning of those categories in *gacaca* proceedings. At a more intimate scale, people debated how the events of the past shaped their obligations and duties to one another in the present.

Second, collective belonging in legal forums was framed with respect to the nation-state. Even debates over seemingly personal, non-political kinds of solidarity such as family or local community were linked to citizenship, since through law, the government aimed to define these forms of belonging normatively, with associated rights, duties, and obligations, and to link them as nested within citizenship. Of course, this does not

overlook the presence of transnational connections or the ways collective belonging expanded beyond the nation-state and territory (Malkki 1992; Ong 1999). Even people living in the most rural areas of Rwanda moved in and out over time, many having crossed into and out of Burundi, Tanzania, Uganda, or the DRC, largely in relation to cycles of violence. Most had family members who had worked in neighboring countries in previous decades, or had themselves sought work outside Rwanda. A variety of existing forms of social solidarity and belonging reflected transnational connections, such as membership in religious organizations—whether Catholicism, Pentecostal churches widespread regionally in Africa and reaching to the West, or Islam—or ongoing ethnic affiliations (e.g., Malkki 1995), including with family living outside Rwanda.

At the same time, the grassroots legal forums, which were a significant part of daily life, reaffirmed the nation, territorially- and governmentally- defined, as a significant container of belonging both materially and emotionally. The Rwandan government shaped, and sometimes dictated, the material conditions of people's lives, whether through incarceration—a very real possibility for a large percentage of the population—or more subtly through providing support in the form of jobs, scholarships, or financial aid. In the face of work emphasizing the wide-reaching potential of imagined affective belonging (e.g., Appadurai 1996; Inda & Rosaldo 2002), this reminds us that collective solidarity is also strongly shaped by nostalgic connections to national territory, and access to material resources (Ferguson 2006), especially under conditions of displacement and economic scarcity people so often face in the wake of mass violence. As the following chapters illustrate, daily pragmatics as well as moral imaginaries shaped the rebuilding of lives.



Attention to legal forums as rituals of social healing does not imply that restored relationships were inclusive, harmonious, or egalitarian. State-backed legal systems were instrumental tools for producing social solidarities as well as divisions, as part of the cultural construction of the meaning of community including hierarchy. These forums did not serve simply to produce a homogeneous nation of Rwandans, but rather were part of a process of producing difference as well as connection. Debates in legal forums were highly contested and adversarial, despite the emphasis on mediation and reconciliation discourse. This shows how belonging at the levels of family and community was fractious, crosscut by lines such as ethnicity and class. Conflicts did not simply mirror the former (ethnic) markers of conflict, but rather they occurred as often within groups as between them, consistent with other periods in Rwandan history (Newbury 1988:13; Newbury 1997:213; 1998b:76).

Specifically, as tools of the state, legal forums need to be understood as enabling a particular kind of politicized social healing. I find it useful to use the idea of government-through-community, articulated by Nikolas Rose (1999:176) building on Foucault (1982; 1991), to underscore how “community” was brought into being through deliberate efforts of the state as well as by everyday participants. Rose drew attention to how governments identify “weak communities” as a problem needing to be solved through technical, governance solutions aimed at mobilizing those same communities to solve their own problems through self-government. Using this lens draws attention to how *gacaca* courts and *comite y’abunzi* were intended not only to determine guilty from innocent, to punish, or to elicit truth, but “to shape, guide, [and] direct the conduct” of participants as a “community” (Rose 1999:3).

I draw attention to two specific dimensions of government-through-community that shed light on how *gacaca* and *comite y'abunzi* operated. First, community is seen as an object of governance, framed as a “moral field binding persons into durable relations,” emphasizing emotional relationships and micro-cultures of values and meaning. This perspective reveals *gacaca* and *comite y'abunzi* as techniques of governance directed at linking sets of people who resided proximately into an enduring moral field. Second, the idea of government-through-community draws attention to how people are supposed to take on “active practices of self-management and identity construction, of personal ethics and collective allegiances” (Rose 1999:172-176). This lens underscores how these forums were aimed at shaping and directing people to manage themselves and, equally importantly, to manage their relationships to one another, emphasizing ethics and collective allegiances.

Linking government-through-community with the aim of social healing draws attention to how community was actively brought into being through specific, historically-situated forms of governance, in *gacaca* and *comite y'abunzi*. This denaturalizes the very idea of “community” as a repository of innate solidarity (Theidon 2009:296). There is a paradox, when community is the object of government, where the idea of community is assumed as being natural and pre-existing, yet is also being technologically enacted (Rose 1999:177). The sleight-of-hand which presents “community” as apolitical rather than constituted through contestation and suffused with power imbalances and coercion, warrants investigation—especially in a context like Rwanda where restoring functioning communities was at the crux of the national reconciliation discourse.

Overall, I suggest that the ability of *gacaca* and *comite y'abunzi* to serve as rituals of social healing was related to their deep contextualization. As I show in the following chapters, these legal forums were deeply connected with, not separate from, everyday life. Participation in legal forums was a part of daily practice, intertwined with friends, family, and neighbors, and embedded in the physical landscape, not experienced as abstract or external. Case sessions were part of longer-term, deeply situated social processes and interactions. Lay judges were part of locally-rooted social and knowledge networks, and participants saw one another in other contexts. *Gacaca* courts' and *comite y'abunzi*'s public, ritualized, contextualized processes enabled conversations and interactions that were one part of restoring social connections (cross-cut by other divisions) and which sometimes served as ways of critiquing the normative socio-political order.

### ***Social healing and everyday violence***

Claiming that decentralized legal forums in Rwanda served as rituals of social healing is likely to be seen as controversial. To be clear, I do not claim that *gacaca* or *comite y'abunzi* have led, or will lead, to a fully reconciled social fabric in terms of permanent peace or absence of forms of structural violence or hierarchy among all Rwandans. Yet this does not negate the value of using a lens of social healing.

Even as international dignitaries paraded through Rwanda in 2004 through 2008 (including World Bank President Paul Wolfowitz in 2005 and President George W. Bush in 2008) explicitly praising the government and its successes in rebuilding, they were implicitly condoning pervasive ongoing forms of physical, symbolic, and structural

violence (Bourdieu 1993; Das et al 2000; Scheper-Hughes & Bourgois 2004). Though state-sanctioned killing and detainment of people suspected of genocide had decreased from late 1990s levels, it had not disappeared. More broadly, people suffered from poverty, hunger, displacement, loss of dignity, and internalized trauma (Das 2007; Thomson 2009).<sup>8</sup> Legal forums themselves at times contributed to this violence, for example, through institutional biases that created hierarchies in which Hutu men in particular were silenced and dominated, or through threats or actual brutality against survivors who testified before *gacaca*. Leading scholars on Rwanda criticize the continuities between the current “dictatorial” government and the pre-genocidal regime (e.g., Lemarchand 2009; Pottier 2002; Reyntjens 2009; Vidal 2001), and note the “spectacular increase in inequality” that occurred between 1985 and 2000, and which continued to increase over the next decade (Ansoms & Marysse 2005:78). Using the terms post-conflict and post-genocide, or reconciliation and healing, can obscure the continuance of this everyday violence by suggesting there emerged a sense of personal closure and political peace (Das et al 2001; Ring 2006; Scheper-Hughes & Bourgois 2004).

At the same time, requiring the erasure of all forms of social injustice or structural violence to qualify something as contributing to healing (or reconciliation or peace) disqualifies much of the existing literature, given the enduring hierarchies and inequalities linked to gender, age, or economic status. Scholars and activists involved in peace-building typically agree that it is not pragmatic to require complete societal transformation before using terms like reconciliation, and argue for nuances like stronger

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<sup>8</sup> Personal Communication, John Janzen. April 24, 2010. Philadelphia, PA.

and weaker reconciliation, coexistence, or functional harmony, which recognize the progress societies make in moving away from active fighting and bloodshed to look towards new political futures (Amstutz 2005; Nader 2003; Ross 2004; Sampson 2003; Shriver 1995; Wilson 2003). Das and Kleinman captured this perspective as a blend of medical, religious, and socio-political understandings of violence and suffering, using the term “healing” to talk about “the creation of a new normality in areas devastated by such experiences of terror” (2001:27). They observe that while “to cure pain or to repair loss may not be possible . . . [instead] communities may see health as the measure of sufficient cooperation to allow for the resumption of everyday activities” (2001:19). Healing is an ongoing process, a step away from catastrophic violence.

Overall, ethnographic attention to *gacaca* and *comite y’abunzi* provides insights into efforts at social healing in the aftermath of genocide in Rwanda, from the perspective both of the government and of everyday participants. The forums’ novelty and hybrid mixture of Western- and customary-style law meant that legal forums had ambiguous authority among people who were actively working out the rules of living together in the aftermath of mass violence. While legal forums such as *gacaca* and *comite y’abunzi* represented a top-down effort to impose order, they were implemented in ways that allowed negotiation and contestation among participants.

### **Fieldwork and Methodology**

Based on eighteen months of fieldwork conducted in Rwanda between 2004 and 2008, this project describes the period following the ten year anniversary of the genocide, when daily life had resumed a large degree of normalcy, but people still were accounting

for the horrible events of the past and the genocide continued to loom large in the national imaginary. For the extended year-long period of my research in 2007 and 2008, I left Kigali, which I used as a home base in my earlier field visits, to focus primarily on rural and small-town areas in the South province, as more representative of the vast majority of Rwanda and Rwandans. In response to the profusion of academic and applied research based in Kigali, especially post-genocide, several scholars have drawn attention to the importance of working with Rwandans outside the capital (De Lame 2005; Newbury & Newbury 2000; Thomson 2009). While recognizing that rural Rwanda is quite different from urban—for example, in terms of access to infrastructure, material goods, modern amenities, and degree of cosmopolitanism—it is also important not to overstate the isolation of rural areas. Given how small Rwanda is, no village is more than a day’s bus ride to Kigali, and people routinely circulate back and forth.

Rwanda is a small landlocked country in central Africa, 26,000 square kilometers, approximately the size of the state of Maryland.<sup>9</sup> It is bordered by the DRC, Uganda, Tanzania, and Burundi. (See Appendix 1 and Appendix 2 for maps.) It is a former Belgian colony, and gained Independence in 1962. The official languages are Kinyarwanda, French, and since the genocide, English. The population is over 90 percent Christian (Catholic, Protestant, or Pentecostal), with a small Muslim population (5 to 6 percent). The most densely populated country in Africa (see Appendix 1), its population in 1994 was approximately seven million people, and in 2007 was ten million.<sup>10</sup> The population is predominantly rural, with 90 percent of people engaged in subsistence

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<sup>9</sup> CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html>. Accessed January 20, 2011.

<sup>10</sup> *ibid.*

agriculture (Ministry of Finance 2000:7). In 2001, 60 percent of the population lived below the poverty line. Food is imported, and Rwanda receives significant foreign aid. GDP was \$10.69 million in 2008, and Rwanda ranked 144th worldwide in GDP in 2010. Life expectancy is 57-years-old.<sup>11</sup>

### ***South Province***

I focused my research in two specific fieldsites in the South province of Rwanda, which represented two of the eight districts in the province. I use these as loosely representative of the predominantly rural Rwandan population. People in these sites participated in the same legal forums that were implemented nationwide, and were broadly representative of national trends in economic activity (primarily agriculture), educational level (primary school), and religious activity (predominantly Christian). That is, their daily lives were recognizable to most rural Rwandans, and the problems they faced were familiar. At the same time, regional variations have been, and continue to be, pronounced in Rwanda (Burnet 2010; De Lame 2005; Newbury 1988). Local dynamics of history and violence shaped the specific hurdles faced in rebuilding, as I describe in more detail below. Further, decentralization put control of *gacaca* and *comite y'abunzi* in the hands of individual participants, so they played out differently across the country. My observations derived from Ndora and Nyanza should not be taken as uncritically identical for all rural areas of Rwanda.

The South province is one of five provinces constituting Rwanda. (See Appendix 2.) The genocide plan faced initial resistance in the South province in 1994. For the initial

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<sup>11</sup> CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html>. Accessed January 20, 2011.

two weeks after the President's plane was shot down, the region remained calm, as a handful of administrators—both Hutu and Tutsi—worked to suppress conflict amidst national calls for attacks. The late historian and human rights activist Allison des Forges hypothesized:

Perhaps this reflected the history of the area, the heart of the old kingdom, where bonds between Tutsi and Hutu were multiple, long-standing, and strong, disposing the Hutu to defend Tutsi more vigorously. Remote from the major military posts, resisters in the region also had more time to organize their efforts before substantial military force was brought against them (1999:496).

Before the genocide, the region had high rates of inter-ethnic marriage, and a higher percentage of Tutsi than the national average of 15 percent. For example, Butare, the largest city in the South, home of the National University of Rwanda and former colonial capital, was a quarter Tutsi before the genocide, higher than Kigali's 17 percent (Des Forges 1999:353, 432).

Killings only began when the genocidal regime sent militias from the capital, at which point the bloodshed escalated to new levels of scope and intensity (Des Forges 1999). Ultimately the violence was perpetrated by militias as well as civilians, people from inside the area and people who came from outside. Thousands of Burundian Hutu refugees, who had been living in the province since fleeing national massacres in 1993, participated once the situation deteriorated. Confusion increased further as tens of thousands of Rwandans passed through on the way to Burundi or the DRC for safety.

This history—which combined coexistence, protection, and catastrophic violence—made the South province a particularly compelling place in which to learn how people more than a decade later were rebuilding their lives, particularly using legal forums and understandings of the past to shape collective belonging. By 2004, people living in the



South province represented a range of experiences from the genocide, including those who lived through it and others who returned after living as refugees or citizens in Burundi, DRC, Uganda, Kenya, Tanzania, or Europe. The province's population was diverse across class, from farmers to civil servants to university professors, as well as across religion. Its population highlighted the challenge of rebuilding the social fabric across varying lines of identification.

Grassroots legal forums in the South province had high hurdles to overcome in terms of creating community. The South province was among the worst affected by the genocide, where the consequences seem to have had the most severe and enduring effects (Des Forges 1999; Ntangiza 2007:4). Despite representing 25 percent of the population, the South province housed 47 percent of cases of people accused as planners of the genocide (4,357 cases out of a total of 9,362), who were tried before Western-style domestic courts.<sup>12</sup> The South province also had the most *gacaca* cases. Further, according to a nationwide 2007 survey, the South province had the highest levels of self-reported poverty, where 68 percent of people lived below the poverty line (Frw 90,000, or US\$ 180, per year), and 90 percent self-identified as somewhat poor, rather poor, or very poor (Ntangiza 2007). The same survey showed that the South province had the lowest levels of meat consumption and mattress ownership in the country. Southerners also expressed the strongest preference for continuing to live on agriculture, rather than engaging in land reforms, which were aimed at the "transformation of agriculture into a productive, high

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<sup>12</sup> All other provinces had between 274 (North) and 1,981 (East). National Service of *Gacaca* Jurisdictions, July 2008, Author's files.

value, market-oriented sector” as part of the national economic development plan in Vision 2020 (Ministry of Finance 2000:3).

People’s faith in and respect for the legal institutions that privileged their neighbors’ knowledge, and which depended on lay judges and their neighbors’ testimony, could not be taken for granted. According to the National Unity and Reconciliation’s 2007 report, compared to the rest of Rwanda, the South had “lower levels of interpersonal trust and a perceived lower ability to work together among citizens” (Ndangiza 2007:4). The same report argued that people in the South province were more skeptical about decentralization, with increased levels of preference for centralized government, linked to their distrust of neighbors being able to effectively govern without corruption. Thus, government-through-community in this province was particularly visible in efforts to create binding relations and a shared moral field.

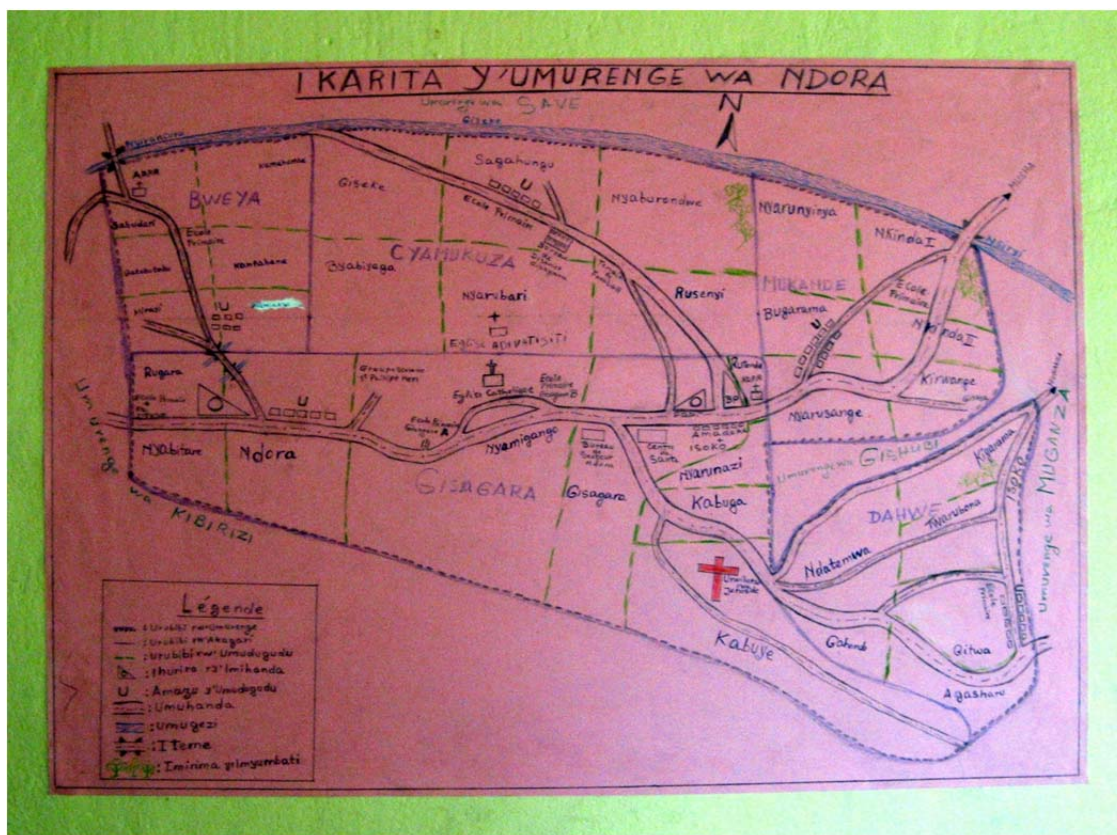
### *Ndora*

Ndora, the sector capital of Gisagara district, is a rural agricultural community approximately 18 miles south of the university town of Butare, near the Burundian border. The population as of December 2007 was 20,340 people.<sup>13</sup> Ndora was one of 13 sectors in Gisagara district (total population of 262,426).<sup>14</sup> A typical rural sector capital, it had a weekly market, a small center of town with a handful of individual storefronts, a primary school, a health clinic, and several churches.

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<sup>13</sup> Interview, Chargé d’Etat Civil. July 7, 2008. Ndora.

<sup>14</sup> GEOHIVE/National Institute of Statistics. <http://www.geohive.com/cntry/rwanda.aspx>. Accessed January 31, 2011.



**Figure 1:** Map of Ndora sector, hanging on wall of sector office (Author's photo).

As of July 2008 as the *gacaca* process was winding down, 2,842 *gacaca* cases had been completed in Category Two (killing) in Ndora, and 5,824 cases had been completed in Category Three (crimes against property). Thirteen cases were outstanding on appeal, with 33 undecided requests for appeal. In general, officials and the population in Ndora reported that the *gacaca* process had proceeded relatively smoothly, though all expressed concern and frustration at the lack of resolution and enforcement of judgments in property cases as an ongoing problem. The *comite y'abunzi* in Ndora sector heard approximately 125 cases between June 2007 and May 2008. Approximately 25 percent of those cases were re-filed in the first-instance ordinary courts at the sector level.<sup>15</sup>

<sup>15</sup>Interview, Chargé d'Etat Civil. July 7, 2008. Ndora.

The patterns of genocide in Ndora were similar to elsewhere in the country, in terms of how, from April to July 1994, groups of civilians armed with traditional weapons (farming machetes, sticks studded with nails, sharpened sticks, or knives) and occasionally guns chased people out of their homes or fields where they hid, and killed them publicly, during daylight as well as at night. Civilian militias set up road blocks to prevent people from escaping, and required passers-by to show identity cards—if marked Tutsi, that meant death. Like elsewhere in the country, there were collective killings at Gisagara district's health clinic and a church. The violence in Ndora was committed both by residents and by civilians and soldiers from outside.



**Figure 2:** Center of Ndora (Author's photo).

Ndora was also the site of a notorious massacre at Kabuye Hill, which could be reached by a 20 minute stroll from the Ndora sector office, where *gacaca* was held, down into the valley and up the facing hillside. An International Criminal Tribunal for Rwanda (ICTR) indictment against Dominique Ntawukuriryayo, the *sous-préfet* of what at the

time was called Butare prefecture, outlined what allegedly happened in “the massacre at Kabuye hill”:

On or about 23 April 1994, in the afternoon, Dominique Ntawukuriryayo ordered Tutsi who were gathered at Gisagara market place that they were to move to Kabuye hill where they would be protected and fed. Those that were unwilling to go were chased to Kabuye hill. Upon arrival in the late afternoon or early evening, Ntawukuriryayo told the refugees that they would be protected by armed soldiers. . . . Within a short time of their arrival at Kabuye hill, on or about 23 April 1994, gendarmes and communal policemen had surrounded the hill and started shooting at the refugees . . . By reason of the large numbers of refugees present at Kabuye hill, it took several days from on or about 21 April to 25 April 1994 to kill those Tutsi who had taken refuge there. . . . As many as 25000 Tutsi refugees . . . were killed at Kabuye hill (Prosecutor v. Dominique Ntawukulilyayo 2005:4-5; 2010:1).<sup>16</sup>

A survivor of the Kabuye hill massacre, a 37-year-old woman named Francine who testified frequently at *gacaca* in Ndora, described her experiences of the events, as an invited speaker during the commemoration ceremony on April 7, 2008. She said:

Around the 10<sup>th</sup> [of April 1994], some relatives of ours came from Kigali to come and stay with us in Kabuye. They thought maybe the chaos would be mostly in the cities, where people indulged in politics, while they thought the village would be safe. . . . The local leaders ordered all the people of Gisagara to move to Kabuye where they would guard and protect us. When we got there we were relieved.

She explained that instead of being fed and protected, they were soon attacked. They started to fight back, but were overcome with greater force. She explained:

We have heard perpetrators reveal, while confessing in *gacaca*, that they went to get back-up after they failed to overcome us because we were fighting back with stones. That’s when the soldiers came and mounted their guns all over those hills overlooking Kabuye Hill, and they aimed and started shooting. The shooting was so horrible. My father told us to take cover, to lie on the ground, but still we would see people dying. . . .

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<sup>16</sup> Ntawukuriryayo was charged with genocide, complicity in genocide, and direct and public incitement. The ICTR issued the arrest warrant for Ntawukuriryayo on September 21, 2007. He was arrested on October 16, 2007 in France, but fought his extradition for months before being transferred to the ICTR on June 5, 2008. His trial began on May 6, 2009. He was found guilty of genocide on August 3, 2010 (Prosecutor vs. Dominique Ntawukulilyayo 2010).

We were a perfect target, we had been surrounded, they were in very good strategic positions, they could shoot us so easily. We were frightened and we didn't know exactly what to do. The only thing we wished for was to die quickly if shot. It rained so heavily at night, that was the only break we got, when they stopped shooting. That's when some of us were able to run away and escape. We took different directions. The attack had been well prepared, and those running after us were organized. While they chased us they had whistles they blew and they would meet according to different sectors, and others would take over. They had surrounded us, they kept bringing other people. They kept on killing as we tried to escape. When they were shooting at us and cutting us with *pangas*, poking us with sharpened sticks, I lost consciousness. I regained it at around 6pm. I woke up with bodies all over, covered in blood.



**Figure 3:** Kabuye hill genocide memorial (Author's photo).

Francine's description of what occurred at Kabuye hill—which echoed testimonies at *gacaca* by witnesses, victims, and perpetrators—reflected the macro-narrative of how

most Tutsi were killed in Gisagara District. Many *gacaca* cases I attended in Ndora included accusations centered around events at Kabuye hill, both in terms of murder, complicity, and looting property. Many *comite y'abunzi* cases also referred to Kabuye. This description provides context for the ethnographic detail in later chapters about discussions of the past and forms of belonging that occurred within legal forums in Ndora.

### *Nyanza*

Nyanza was an administrative town located on the main road from Kigali to Butare. It was the seat of the monarchy from 1899 to 1961, and a strong Tutsi presence remained there afterwards (Des Forges 1999:353). It was named the capital of the South province after decentralization in 2006, which brought new infrastructure and administrative development. The town of Nyanza had a population of 56,000, and the district as a whole had a population of 239,707.<sup>17</sup> I attended *gacaca* in Busasamana sector, which encompassed the center of town.

Given its size and central location as compared to Ndora, Nyanza had a more dynamic economic sector, before and after the genocide. Its market was vibrant and open daily, and it had long been home to a hospital, several primary and secondary schools, courts, and offices of national companies like Electrogaz. The main national dairy plant, Nyabisindu Dairy, was located there as well as a national museum at the home of the former *mwami* (king). It had several churches and a mosque. It was easily reached by public minibus, which ensured regular movement of people in and out, and it had several

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<sup>17</sup> Geohive/National Institute of Statistics in Rwanda. <http://www.geohive.com/cntry/rwanda.aspx>. Accessed January 31, 2011.

small hotels. Its population was more diverse and well-educated than that of Ndora, with people having relocated there from other regions of Rwanda, with livelihoods not exclusively based on agriculture.



**Figure 4:** Courtyard where Busasamana *gacaca* sessions were held (Author's photo).

*Gacaca* sessions for Busasamana sector were held across the road from the High Court, and up the hill from the newly-opened Institute for Legal Policy and Development. In Busasamana sector, by mid- 2008, 2,206 *gacaca* cases had been submitted in Category Two, 2,079 cases had been submitted in Category Three, and 538 cases were appealed.<sup>18</sup> None of the sector administrators could provide me with clear statistics on *comite y'abunzi*, which met infrequently. The head of *comite y'abunzi* indicated that scheduling was difficult, since the work of *abunzi* was unpaid, and the mediators and most participants held jobs that were difficult to leave.<sup>19</sup> (This was in distinct contrast to

<sup>18</sup> Interview, *Gacaca* Coordinator for Nyanza District. January 30, 2008. Nyanza.

<sup>19</sup> Interview, Nyanza *umwunzi*. May 9, 2008. Nyanza.



Ndora, where most mediators and participants were farmers, who could attend after spending several hours in the fields.)



**Figure 5:** Nyanza, quiet on *gacaca* day (Author's photo).

During the genocide, the *Bourgmestre* of Nyanza, Jean-Marie Vianney Gisagara, a Hutu, refused to ally with the Hutu power movement and helped the area resist the genocide in the initial weeks. He repelled attacks against Tutsi from outsiders, and kept order locally, punishing and imprisoning those who attacked Tutsi (Des Forges 1999:469). The military found and killed *Bourgmestre* Gisagara in late April, at which point the massacres intensified and victims attempted to flee (Des Forges 1999:497). The patterns of violence in Nyanza were similar to Francine's testimony in Ndora and elsewhere nationwide, in terms of how perpetrators included a mixture of civilians and militias, and how they chased victims out of their homes and rounded up and killed them in central locations like hospitals or schools. Administrators and civilians set up a network of roadblocks to prevent escape, manned by armed civilian militias. Dynamics of violence further intensified as the RPF gained ground in Rwanda, bringing increased military skirmishes between the RPF and the army around Nyanza beginning in May

(Des Forges 1999:585). *Gacaca* sessions in Busasamana included extensive testimony about events at local hospitals, orphanages, schools, and churches, as well as the actions of individuals at roadblocks.

*Gacaca* in Busasamana was complicated by the movement of people in and out of Nyanza during the genocide. This meant that victims and killers often had not been then, and were not now, residents of the area. Some were only passing through Nyanza in 1994. Many accused perpetrators had to be summoned from where they now lived in Kigali, for example, or others could not be located and were tried *in absentia*. This challenged the idea, implicit in *gacaca*, that cases were tried among people who knew one another then and now. The composition of *gacaca* sessions in Busasamana demonstrated the more fluid, contingent constellations of people who lived together during and after the genocide. Another issue complicating *gacaca* in Nyanza was the military's heavy involvement there, meaning many victims' deaths had no obvious perpetrator to accuse before *gacaca*. Many cases involved complicated discussions of complicity—for example, how responsible a defendant was for handing over a victim to the soldiers, or for cutting down bushes to inhibit Tutsi from seeking shelter, whether by independent initiative or on authorities' orders.

Property cases were a significant concern in Nyanza, as looting was rampant. More expensive property was taken in towns, and so the resolution and enforcement of these cases was as difficult as in Ndora, if not more so. Overall, alongside the higher education level of participants (though still a minority had completed secondary school), and the more cosmopolitan nature of economic and social connections, there was more skepticism in Nyanza than Ndora about the suitability of customary-style law for

handling genocide crimes. This skepticism translated to *comite y'abunzi* as well. People often tried to find ways to circumvent *comite y'abunzi* and take their complaints, such as a failure of contract in a business transaction, straight to courts. Often these disputants had only a passing acquaintance with one another.

### ***Methodology***

In each of these sites, I used public legal processes, both those dealing explicitly with the 1994 genocide and those handling ordinary disputes, as a window into social dynamics. These legal processes highlighted struggles over interpretations of the past, illustrating how the past continued to influence disputes in the present, and provided a window into people's social connections and disconnections and their ongoing efforts to shape collective belonging.

I used ethnographic methods including participant observation, interviews, and document analysis, conducted in Kinyarwanda, French, and English. I attended 56 *gacaca* sessions, 14 *comite y'abunzi* sessions, and 12 Legal Aid Clinic sessions. In all of these, working with a research assistant, I took detailed written notes of the proceedings, audio recordings, and photos. I also obtained records of over 650 Legal Aid Clinic cases during the six months from July 2007 through January 2008 from the clinic's registry. Finally, I conducted six weeks of participant observation at the International Criminal Tribunal of Rwanda.

I focused in particular on the lay judges at the center of the grassroots legal forums, who were intended to act as "intermediaries" (Merry 2006b) between government and ordinary Rwandans. They served as decentralized state representatives, embodying

central government power while deeply rooted in local social and knowledge networks.

Ethnographic attention to lay judges drew particular attention to the specific operation of government-through-community, in which people tried to shape the conduct of others, to self-regulate, and to convince others to do the same.

At trials and the legal aid clinic, I paid attention to who was disputing with whom, and about what. I listened for the narratives people told, how they framed the past, and how they described belonging. I was attentive to with whom people allied and when, and with whom they created distance and when. I attended to continuity versus changes in alliance and division patterns between case sessions. I watched who sat next to whom, and how people responded to one another's testimony.

Outside of *gacaca* and *comite y'abunzi* sessions, I conducted repeated semi-structured interviews with over 30 *gacaca* judges, community mediators, local authorities, religious leaders, and community members in Ndora and Nyanza. I also talked informally to people in the hours spent waiting for legal forums to begin, or waiting for bus service to resume after sessions ended. I attended community meetings and genocide commemoration events. I walked through markets and drank sodas at local bars on days *gacaca* was not in session (as businesses were closed on *gacaca* day).

I supplemented the work in Ndora and Nyanza with work in Kigali and at the ICTR, to provide a broader national and international perspective. In Kigali I attended *gacaca* sessions in the economically and religiously diverse neighborhood of Nyamirambo, and in Arusha (home of the ICTR), I attended various case sessions. At the ICTR, I conducted over 40 interviews with members of Chambers, prosecution, defense, and translation teams. Further, in Kigali, I conducted over 40 interviews with staff of NGOs and

government parties. These discussions provided information on how the architects of “development” and “progress” in Rwanda used law as a tool, and how they saw it furthering reconciliation and security in Rwanda.

### **Chapter Outline**

In the next two chapters, I provide background and historical information to familiarize a reader to Rwanda. I begin in Chapter 2 by providing a history of Rwanda. I present the dominant version of history the government used from 2004 through 2008, and analyze what it selectively emphasized versus excluded to illustrate how it framed belonging and justified current configurations of power, connections, and exclusion. I concentrate on tracing collective belonging over time, including ethnicity, class, region, and kinship. In Chapter 3, I situate the post-genocide legal responses in Rwanda with respect to national and international legal developments. I provide a brief outline of Rwanda’s post-genocide legal responses, emphasizing the institutions at the heart of this study. I consider Rwanda’s legal developments in historical and comparative context, showing that law in Rwanda, including “customary” law, was a mixture of Rwandan, African, colonial, and international influences, across different time periods.

The next four chapters present the heart of the ethnographic data. Chapter 4 examines how ordinary people experienced the emphasis on legalized reconciliation across grassroots legal institutions that emphasized compromise and avoided adversarial disputation. Authorities justified this emphasis on unity and compromise, which I call mediation discourse, as a long-standing cultural approach to resolving conflicts and enforced it through punishment. I show the contradictions that emerged from the

legalized mediation discourse and how they were experienced differently depending on how people were positioned.

In Chapter 5, I focus on *gacaca* courts to ask how people's engagement with this legal process of confronting the past influenced their ongoing efforts to rebuild the social fabric. I show how the public format emphasized oral debate, and served as a forum for negotiating relationships and collective belonging. People used *gacaca* to reinforce the lines of the political violence, but also to create cross-ethnic alliances or intra-group divisions. More broadly, in *gacaca* sessions, people negotiated their position with respect to the genocide, and consequently their citizenship status.

I turn next, in Chapter 6, to consider the mediation committees, *comite y'abunzi*. I ask how people's use of this decentralized legal format shaped their efforts to resolve disputes and rebuild relationship with neighbors and family. In *comite y'abunzi*, through heated disputes over land and property, people negotiated collective belonging at the proximate level of "family" and "community." The often adversarial debates in these forums revealed the tensions placed on localized levels of belonging. Cases showed that disputes occurred as often within families as outside them, drawing our attention away from an exclusive focus on Hutu versus Tutsi as the only, or most important, ongoing tension in contemporary Rwanda.

In the final ethnographic chapter, Chapter 7, I focus on the lay judges who were at the center of the decentralized grassroots legal forums. I ask how, in everyday practice, lay judges managed these courts, and the complex mixture of harmony and punishment in the mediation discourse. I show how lay judges relied heavily on their position within local social and knowledge networks in adjudicating truth and attempting to restore the social

fabric, consistent with the government's privileging of cultural solutions to rebuilding Rwanda. I suggest that what positive effects they had on rebuilding the social fabric were due to their dual status as insiders and state representatives. From their position embodying both state and community, lay judges revealed how the two were intertwined, showing that community was contested, and the exercise of state power was not uniform.

### **Conclusion**

Ethnographic attention to law in Rwanda illustrates how legal processes shape the construction of social forms out of uncertainty and fragmentation in the aftermath of violence. The story I tell here, by foregrounding the role of legal institutions in post-conflict contexts, is consistent with the recent rise in popularity of "transitional justice" around the world. National governments and international actors increasingly create legal forums to help people cope with the past and restore peace, even without a full understanding of the ways that law shapes people's social relationships.

My framing of this story overcomes several artificial separations that persist in writing and thinking on the role of law in post-conflict contexts. It moves beyond a dichotomy between customary and official law by showing how customary law has been a tool of the state, uniquely adapted to deal with genocide as well as quotidian disputes. Further, by focusing simultaneously on forums with jurisdiction over genocide and ordinary disputes, I show how the past continues to permeate the present in a variety of ways, and how people can create connections or divisions through a range of conflicts in the wide-reaching aftermath of genocide. Above all, the story captures the hardships and despair rampant in the wake of tragedy, alongside the simultaneous inspirational

resilience and hope. It therefore examines both the coercive effects and the creative possibilities of restorative justice, while denaturalizing the idea of “unity” at the heart of post-conflict reconciliation programming and transitional justice.



## Chapter 2: Official Narrative of History and Its Implications

### Introduction

The post-genocide government rapidly developed a dominant narrative of history that covered the pre-colonial through post-genocide period (Eltringham 2004; Lemarchand 2009:99-108; Newbury & Newbury 1999; Pottier 2002; 2005; Reyntjens 2005; Vidal 2001). This narrative drove national policy and even international involvement in Rwanda. In this chapter, I examine the dominant version of history the government used from 2004 through 2008. It warrants careful attention because this version allowed little contestation, while there was “ample evidence that the regime continue[d] to manipulate the historical record for the sake of an official memory” (Lemarchand 2009:105), providing “disinformation” about both the distant past and the period from 1990 through the present (Pottier 2002; Reyntjens 2009:57-58).

Analyzing what the narrative selectively emphasized versus what it excluded denaturalizes the government’s assumptions about belonging and legitimacy of authority, and illuminates how the narrative justified ongoing configurations of power, connections, and exclusion. First, by emphasizing ethnicity as *the* key source of division in the past, the dominant narrative overshadowed other markers of difference, such as class, region, or gender, that were forms of stratification in the past, and remained so in the present (Pottier 2005). It replaced one primordial identity (ethnicity) with another (nationality). Second, by placing blame on outsiders for creating ethnic divisions and allowing genocide, it absolved current Rwandan leaders of guilt and elevated their moral authority to govern and to implement controversial reconstruction policies such as *gacaca* courts

(Lemarchand 2009:95, Reyntjens 2005:32). Further, by establishing a monopoly of suffering on the part of Tutsi, it silenced a wide range of Hutu experiences of the violence, and suggested collective guilt on all Hutu, justifying their political and economic exclusion (Burnet 2009; Lemarchand 2009:99-108; Vidal 2001).

I begin with a brief discussion of the production and contestation of history in Rwanda, using the concept of narratives. In the following sections, I present the dominant narrative of Rwandan history from pre-colonial times through the present, alongside a summary of the extensive scholarship on Rwandan history during these periods. I close the chapter with a brief summary of how the government's narrative, with its clear inclusions and omissions, justified ongoing patterns of economic and political power, belonging, and exclusion.

### **Production and Contestation of Historical Narratives in Rwanda**

The government narrative of history dominated the public sphere from 2004 through 2008, intended equally for re-socializing Rwandans and for the benefit of the international community. It was propagated in pro-government newspapers, radio, and government documents, was taught in schools, and was at the core of genocide memorialization and *ingando* "solidarity camps" attended by released prisoners, returning refugees, and students (Clark 2010:106,135).

There are two dimensions that make denaturalizing the Rwandan government's use of history particularly important. First, political elites in Rwanda have long controlled and centralized the production of history to justify their own rule, while obscuring their role in doing so (Newbury 2009; Vansina 2004). Historian Jan Vansina has argued that the

royal court in Rwanda used “historical remembrance” as the “ultimate legitimation” of their rule as far back as 1780, and by the nineteenth and twentieth centuries, the royal court was an “institution in charge of controlling the production of history and its representation. . . an institution of such a wide reach and such a degree of subtlety,” that researchers and Rwandans alike became “caught in its cognitive glue” (2004:5,90-95). A decade after the genocide, many outsiders and Rwandans similarly found themselves caught in the “cognitive glue” of the regime’s version of history (Des Forges 1995; Pottier 2002; Reyntjens 2005).

Second, history in Rwanda is notoriously contested, as political leaders used competing interpretations of the past as a central tool in solidifying, polarizing, and mobilizing group identities towards violent conflict. Many aspects of Rwanda’s pre-colonial and recent history have been vigorously disputed, as I demonstrate below, with implications for collective belonging and citizenship.

I use the concept of “narratives of history” to remind us of several aspects of how historical narratives work. It underscores how the dominant version is but one interpretation, which highlights certain events and glosses over or omits others, and which draws power not from objective accuracy but from social functions. It emphasizes how the “plot” silences certain events and attributes causal relationships between others, evaluating them in order to draw moral lessons, to make the past meaningful, and to provide legitimization for present and future action (Lemarchand 2009; Ross 2002; Trouillot 1995:26). I prefer the term “narrative” over “myth,” which Rene Lemarchand has used in analyzing historical interpretations in Rwanda (2009:49-68), because I want to stress how these stories are intimately tied up with, and presented as, history, rather

than risk dismissing them by over-emphasizing their imaginary or invented nature. I underscore how the production of historical narratives is always implicated with power, and shapes what is thinkable.

Narratives of history play an important role in explaining, justifying, and solidifying group identity such as ethnicity or nationality, by framing and legitimizing group identities and socio-political dynamics in particular ways, and justifying certain approaches to the future. Specifically in contexts of political violence, narratives can be powerful forces towards bringing communities together or fueling division and conflict. Scholars of Rwanda and the Great Lakes region of Africa more broadly have shown how these “mental maps of history” (Newbury 1998a:7) or “mythico-histories” (Malkki 1995) order and reorder social and political categories, and thus can create imagined communities of fear and hatred (Lemarchand 2009:57,70).

The official Hutu-power narrative, propagated by the architects of the genocide to mobilize people and justify the violence, contended that the history of Rwanda was one of conquest by “foreign” Tutsi cattle herders who, through economic and military means, gradually imposed centuries of oppression and exploitation on the Hutu (Eltringham 2004; Malkki 1995; Rutembesa 2002; Semujanga 2003a; Twagilimana 2003). In the 1959 social revolution, this narrative continued, the Hutu reversed this feudal situation and acquired their rightful place. They continued to defend their right to majority rule against domineering, power-hungry Tutsi who wished to reestablish hegemony and oppression, evidenced by continued Tutsi-led violent incursions into Rwanda.

The official post-genocide narrative was a renegotiation of the Hutu-power narrative, with altered evaluations and different implications for future action. It stated that the

*Abanyarwanda* (inhabitants of Rwanda) were a single ethnic group, with the differences between the Hutu and Tutsi originally reflecting no more than socioeconomic divisions. The European colonizers were responsible for creating the Hutu-Tutsi divide and the rigid socioeconomic inequalities between them. This version contended that the violence of 1959, when Hutu came to power, marked the beginning of the genocide. Having lived side-by-side with Hutu for centuries in a relationship of mutual respect and even friendship, Tutsi then were oppressed and persecuted for decades building up to 1994. In 1994, according to this narrative, the current government, the Rwandan Patriotic Front (RPF), reversed this trend by defeating the genocidal regime and restoring order, including implementing policies such as abolishing ethnicity and promoting national unity.

In the following sections, I move through three historical periods in turn: pre-colonial and colonial history (seventeenth century through 1950s), Independence and the first two Republics (1959 through 1994), and then the 1994 genocide through the present. For each period, I first provide a brief chronology and introduce the main contested points of interpretation. I then show how the government's dominant narrative framed that period, by using excerpts from a speech President Kagame gave at the ten-year anniversary of the genocide, on April 7, 2004, in Kigali,<sup>20</sup> along with other documents that capture the master narrative, such as school curricula and genocide memorial texts. I demonstrate the points of scholarly agreement and disagreement with the narrative. Overall, the pre-colonial period provided the basis for the government's claims about unity and belonging. The period of Independence through the lead-up to genocide was crucial for

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<sup>20</sup> I attended the speech, and taped and transcribed the radio broadcast. The quotes below are verbatim.

establishing Tutsi victimhood and discrediting Hutu leadership and attempts at democracy. The genocide period solidified Tutsi victimhood as a basis for the RPF's moral authority to govern. I compare the dominant narrative with the academic history of Rwanda to show the elements that scholarship supported and the points of disagreement.

### **Pre-Colonial and Colonial Periods**

Pre-colonial Rwanda is most simply understood as a monarchy, ruled by Tutsi kings and chiefs. Lineages and patron-client ties figured heavily in social and political organization. For hundreds of years, ancestors of the people who came to be called Hutu and Tutsi in Rwanda lived side by side. They spoke the same language (Kinyarwanda), shared the same religion both prior to the colonial period (traditional) and since (Christianity), participated in the same economic networks, and inter-married to varying degrees.

The nature of social harmony, stratification, and power has been heavily debated, characterized by the Hutu-power narrative as feudal exploitation and by the post-genocide government as harmonious. Similarly, the peopling of Rwanda—when the peoples referred to as Hutu, Tutsi, and Twa arrived in the territory now called Rwanda—has been long contested. The dominant view was that Tutsi arrived in the region centuries after Hutu, but the details and implications of this view remained contentious. Did it mean Tutsi were destined to rule, or that they were foreigners who should not be allowed to do so? Did it mean Hutu were autochthonous and therefore had rights to govern?

The first German colonial officer arrived in 1897. Two decades of German rule influenced primarily the royal court without interfering substantially in internal affairs.

When Belgians took over Rwanda after World War I, in 1916, they extended their influence such that Belgian rule had much deeper social and economic impacts. Both the Germans and the Belgians, accompanied by the Catholic Church, ruled indirectly through the Tutsi kings and chiefs. Tutsi elites had preferential access to education and to administrative and church positions.

***Government Narrative: Colonialists introduced disunity***

In many ways the genocide in Rwanda stems from the colonial period when the colonialists and those who called themselves evangelists sowed the seeds of hate and division.<sup>21</sup>

Before the arrival of colonialists in Rwanda in 1894, Rwandans were united. . . . [There was] one king for all Rwandans who was considered as a unifying element. . . . Once the king was nominated, he was no longer considered as a Tutsi but rather as the king of the people. The Hutu, Tutsi, and Twa could approach the king without any obstacle related to their social origin, economic or physical characteristics (Rutayisira 2004:32).

We had lived in peace for many centuries, but now [with colonial rule] the divide between us had begun... (Kigali Genocide Memorial, April 2004).

At the core of the government's narrative was the idea that pre-colonial Rwandans were unified under a harmonious monarchy, and then colonial authorities introduced ethnic divisions. Ethnicity in pre-colonial Rwanda was primarily socio-economic, was flexible, and was less important than other forms of identity such as lineage or clan. Colonial administrators, missionaries and other Europeans instrumentally created and mobilized ethnicity for their own advantage.

***Points of agreement***

Overall, scholars agree with three main aspects of this narrative. First, pre-colonial Rwanda was not universally characterized over time by the feudal exploitation of Hutu

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<sup>21</sup> President Paul Kagame. April 7, 2004. Kigali.

by Tutsi as was portrayed in anti-Tutsi propaganda in newspapers, radio, and schools from 1959 through 1994. Second, scholars agree with the government in debunking a racial or otherwise essentialized view of Hutu and Tutsi, linked to the Hamitic myth's definition of Tutsi as superior. Third, Europeans (colonial administrators, missionaries, explorers, and scientists) had a central role in the construction and transformation of ethnicity in Rwanda. Outsiders profoundly influenced both how ethnicity was defined and perceived, and how it impacted people's concrete life conditions.

Current scholarship agrees with the dominant narrative, contra the genocidal narrative, that pre-colonial kings were not simply autocrats who ruled as they pleased (Vansina 2004:66,85), and that patron-client institutions did not merely involve exploitation of subordinate Hutu (Newbury 1988:90; Vansina 2004:33). *Ubuhake*, a controversial form of cattle clientship, was at the center of anti-Tutsi narratives, cast as a historically deep form of domination and exploitation of all Hutu by all Tutsi in the pre-colonial and colonial periods. *Ubuhake* was a contract between individuals in which the patron (*shebuja*) gave one or two head of cattle to the client (*umugaragu*) in usufruct, but maintained ownership of the cattle and assured his client of protection. The client had to help his patron whenever needed, and the relationship was hereditary (Maquet 1961:129-142; Vansina 2004:47). The institution had a powerful political role in incorporating Rwandans in a dense network of social ties, but resulted in a social integration based on inequality, in which Hutu had access to cattle and protection, while Tutsi maintained ultimate control over cattle, the symbol of political, economic and social power (Maquet 1961; Reyntjens 1987:72-73).



Scholars have shown that *ubuhake*, particularly as it existed in the colonial period, was not representative of all patron-client institutions across time. *Ubuhake* changed over the centuries, and clientship took many forms—whether the exchange centered on land or cattle, whether the contract was between individuals or corporate groups, and what degree of power differential existed between patron and client—and the degree of reciprocity and benefit in the clientship relationship varied (Newbury 1988; Vansina 2004). Patrons were not always omnipotent and unrestrained because in time-periods and regions when the central government was still limited, lineage heads were the main political leaders and could limit patrons' power (Newbury 1988:90). In early clientship and up to the mid-nineteenth century, there were often strong social relations between patrons and clients, as clients derived significant benefits from the relationship, patrons made limited demands, and clients' negotiating position was fairly strong (Newbury 1988:79-82).

Scholars also agree with the government narrative that the colonial period shaped ethnicity for the worse. For more than a century, Europeans argued that Hutu, Tutsi, and Twa constituted distinctly separate racial or ethnic groups (Codere 1962; 1973; Hiernaux 1963; 1975 [1974]; Mair 1962; Maquet 1961; 1970; Seligman 1930; Speke 1863; Westermann 1949 [1934]). As I demonstrate briefly below, even as scholars moved away from the blatantly racial science of the nineteenth and early twentieth centuries, which attributed hierarchical views of biological superiority (Tutsi) and inferiority (Hutu) to these groups, they continued to identify differences in both biology and culture, which reinforced a prevailing view of human migration history that Tutsi herders had arrived in Rwanda centuries after Hutu farmers. Thus, colonial-era involvement in Rwanda directly

and indirectly reinforced ethnic division in Rwanda. Colonial administrators and church leaders privileged Tutsi because they believed they were superior, and excluded Hutu. Further, Rwandan political leaders used these outside ideas in their own efforts to articulate agendas and mobilize followers, with divisive consequences.

The government narrative blamed the ethnic divisions and their devastating effects on Rwanda on the Hamitic Hypothesis, put forth by explorer John Hanning Speke in 1863. Between 2004 and 2008, the Hamitic Hypothesis was mentioned in newspaper articles, narrated by taxi drivers and tour guides, included as part of Rwanda's official colonial history in the Kigali Genocide Memorial Center (Smith 2004:9), and it was referenced in virtually every academic and popular history of Rwanda (Gourevitch 1998; Lemarchand 2009:49-68; Mamdani 2001; Prunier 1995; Sanders 1969; Semujanga 2003b; Twagilimana 2003). Speke proposed that a race of tall, sharp-featured people who had Caucasian origins and were superior to the native Negro had introduced the cultures and civilizations of Central Africa. Speke described his view in a section headed "Theory of Conquest of Inferior by Superior Races":

[I]t appears impossible to believe, judging from the physical appearance of the [Tutsi], that they can be of any other race than the semi-Shem-Hamitic of Ethiopia. The traditions of the imperial government of Abyssinia go as far back as the scriptural age of King David. . . . Junior members of the royal family . . . created separate governments, and, for reasons which cannot be traced, changed their names. . . . [They] cross[ed] the Nile close to its source...where they lost their religion, forgot their language, extracted their lower incisors like the natives, changed their national name. . . . We are thus left only the one very distinguishing mark, the physical appearance of this remarkable race . . . as a *certain* clue to their Shem-Hamitic origin (Speke 1863:246-250).

Speke's hypothesis was consistent with prevailing Western understandings of human variation at the time as determined by race, wherein each race had distinct physical,

behavioral and psychological characteristics, and races were hierarchically organized, reflecting different stages of human evolution (Harrison 1985; Winant 2000; Wolpoff & Caspari 1997). His analysis had neither empirical evidence nor explanation for how and why these supposed transformations and loss of identity occurred, yet it served as a “convenient paradigm for others uncritically to follow” (Newbury & Newbury 2000:852) and informed over a century of scholarship on, and administrative rule in, Rwanda and Africa more broadly. Anthropologists converted Speke’s conjectures into scientific truths with regards to African peoples in ensuing years (e.g., Seligman 1930). In a typical example, Westermann wrote in 1934:

The significance of the Hamites in the composition of the African population consists in the fact that as nomads and conquering warriors they have . . . pushed their way into the countries of the Negroes. Owing to their racial superiority they gained leading positions and became the founders of many of the larger states in Africa (Westermann 1949 [1934]:13-14).

Colonial and church leaders in Rwanda seized on Speke’s view because it meshed with what they found—a Tutsi monarchy ruling a primarily Hutu peasantry. They reinforced a view of Hutu and Tutsi as separate groups of people, where Tutsi’s superiority and capacity for rule was in the bloodline. In a typical example that represents how phenotype was linked with group definition and overlaid with moral attributions, in 1925, Belgian administrators in the *Rapport sur l’administration belge du Ruanda-Urundi* used scientific research to show how Hutu had typical Bantu features, while Tutsi were more Caucasian, and superior:

[Bahutu] are generally short and thick set with a big head, a jovial expression, a wide nose and enormous lips. They are extroverts who like to laugh and lead a simple life. . . . The Mututsi of good race has nothing of the negro, apart from his colour. He is usually very tall, 1.80 m at least, often 1.90 m or more. He is very thin. . . . His features are very fine: a high

brow, thin nose and fine lips framing beautiful shining teeth. . . . Gifted with a vivacious intelligence, the Tutsi displays a refinement of feelings which is rare among primitive people. He is a natural-born leader, capable of extreme self-control and of calculated goodwill (Quoted in Harroy 1984:26,28; see also Prunier 1995:6).

Colonial leaders used these views of Tutsi superiority to justify their decision to favor Tutsi, using the Tutsi court and chiefs as intermediaries in their system of indirect rule (Newbury 1988:131). The Catholic Church similarly believed in the natural superiority of Tutsi, and used their influence to reinforce the rights of the royal court to rule (Longman 2010:58-81).

By the 1950s and 1960s, scholars no longer defended views of Tutsi as a biologically superior race, but with the notable exception of d'Hertefeldt (1971), they nonetheless maintained the view that the two groups were physically distinct with separate origins, arguing now that these differences could be attributed to environmental and socio-political factors (Hiernaux 1963; 1975 [1974]; Rodney 1972:137-141). Explanatory models privileging biology were perhaps particularly seductive and enduring in the absence of other clear markers of difference between the groups. Even as belief in the scientific validity of race began to weaken and scholars moved from biological towards other socio-cultural means of identifying groups, Hutu and Tutsi did not fit easily into typical definitions of ethnic groups as marked by distinctive cultural features, such as language or religion, used to define boundaries in opposition to other collective identities (Eller 1999; Tambiah 1989; Weber 1968:389). While occupation varied, what cultural differences existed were minimal—for example, preferences in diet—and the groups had intermarried for centuries.

Through the twentieth century, scholars writing on Rwanda continued to emphasize that there were three separate groups in Rwanda (Hutu, Tutsi, and Twa), and to imply that their current form had existed relatively unchanged since Tutsi had arrived in the tenth century (Newbury & Newbury 2000:836; Twagilimana 2003:53). For example, anthropologist Jacques Maquet described Rwandans' prevailing stereotypes of each other in the 1950s as follows: "Tutsi were said to be intelligent (in the sense of astute in political intrigues), capable of command, refined, courageous, and cruel; Hutu, hardworking, not very clever, extrovert, irascible, unmannerly, obedient, physically strong" (Maquet 1961:164). Maquet's work—which was widely disseminated to other scholars of Africa, particularly in the works of Lucy Mair (1962; 1974; 1977)—marked a shift from earlier scholarship in that he did not argue that the differences were genetic, but instead stressed that Rwandans *believed* these perceptions, which correlated with physical stereotypes, about themselves and others. He reaffirmed that Tutsi were outsiders who "came into Rwanda as conquerors," and who asserted superiority over Hutu (Maquet 1961:10-12, 170; 1970:106), but rather than try to justify how this rightfully predisposed Tutsi to rule, he aimed to explain the existing deep social inequalities in Rwanda. He called the ethnic stratification a caste system, underscoring how people experienced ethnic group membership as permanent and closed, and linked to power or domination. This perspective thus contributed to emphasizing the rigid and static nature of inter-ethnic relations in Rwanda (Codere 1962).

These are the views that prevailed within and outside Rwanda during the years leading up to and after Independence, which later informed the anti-Tutsi propaganda and genocidal ideology, and which the dominant post-genocide narrative adamantly sought to

overturn. In recent decades, scholars clearly showed that, in agreement with the post-genocide government, categories of Hutu and Tutsi in pre-colonial and colonial Rwanda were not primordial. Specifically, in the 1970s and 1980s, they began to take careful note of the historical and socio-political conditions under which these “ethnic castes” were produced (Newbury 1988; Newbury 2009).

Current scholarship argues, along with the government narrative, that the categories of Hutu and Tutsi were primarily socio-economic, referring to elites, or to control over wealth (particularly cattle) and power (Newbury 1988:11-12). As far back as the seventeenth century, the term Tutsi “referred mostly to a social class among herders, a political elite,” while the term Hutu applied to everyone else, including poor Tutsi and foreigners (Vansina 2004:37,134-135). In the eighteenth century, the first direct and institutionalized use of Tutsi versus Hutu came in relation to combatants and non-combatants in armies that were part of territorial expansion, meaning Tutsi referred to those with power (Vansina 2004:134). Yet not all the Tutsi were elites, even during the colonial period when virtually all elites were Tutsi (Codere 1973:70; Newbury & Newbury 2000:839).

Consistent with the government narrative, scholars have shown that the boundaries of the ethnic categories had some flexibility, so people could move across statuses over generations as their families gained or lost wealth (Newbury 1998b:84-86; 2009; Twagilimana 2003:55). Further, ethnicity was only one form of identity, and other forms, such as region, class, lineage (a corporate descent group), or clan (a social descent group), were often more significant (d'Hertefelt 1971; Newbury 1978:17; 1988; Newbury 1998b:83; 2009). The term for ethnic group, *ubwoko*, also translates as clan. Each clan

was made up of people from all three putative “ethnicities,” and clans changed over time, operating as strategic alliances between lineages (Newbury 1988:96; Newbury 1980b; Vansina 2004:34-35,198).

The colonial state contributed to formalizing and legitimizing the Hutu-Tutsi distinction, reifying formerly fluid boundaries, in its efforts to make more legible the existing complex ethnic configurations (Lemarchand 2009:9; Scott 1998). As part of the standardization of the administration in the late 1920s, the Belgians introduced identity cards that marked ethnicity (Des Forges 1995; Thomson 2009:103; Twagilimana 2003:55). Further, the colonial period dramatically increased the political salience of ethnicity, while undermining the political autonomy of lineage groups and their role as a form of belonging, and changing the relations between the groups Hutu and Tutsi for the worse (Lemarchand 1970; Longman 2010; Newbury 1988; Reyntjens 1985).

The growing power of the colonial state privileged Tutsi’s access to power while incorporating Rwanda into the world economy, which dramatically increased the advantages and disadvantages of being Tutsi versus Hutu. While Tutsi chiefs had political power and were in a position to accumulate wealth through taxes, rural dwellers, predominantly Hutu, faced new demands, particularly under the Belgians, including increased taxes, compulsory cultivation of certain crops, and forced labor. The Catholic church and educational institutions discriminated against Hutu for most of the colonial period (Lemarchand 1970; Longman 2010; Newbury 1988). Clientship institutions, particularly *ubuhake*, became less reciprocal and voluntary—in conditions of growing economic insecurity, people’s “choice” to enter into clientship was a form of indirect or direct coercion—and more rigid and exploitative, as they extended to less powerful

people, and became aligned with administrative demands (Newbury 1988:137-140).

Overall, rural Hutu's conditions worsened, as they bore the brunt of the increasingly onerous forms of exploitation and discrimination (Newbury 1988:178-179; Reyntjens 1985:135-142).

Catharine Newbury has persuasively argued that this shared structural position of oppression contributed to the development of Hutu ethnic and political consciousness (Newbury 1978; 1980a; 1988:178-179,207-208). She and Vansina point specifically to the role of *uburetwa*, a form of mandatory unpaid labor performed for a chief as payment for occupation of the land, as “poisoning” inter-ethnic relations because it was imposed only on farmers, not herders (Newbury 1980a; 1988; Vansina 2004:134-139). To do *uburetwa* symbolized low status and powerlessness, and it was “difficult to exaggerate” its “exploitative character” (Newbury 1988:141). *Uburetwa* was the only traditional obligation which remained legal under colonialism. Unlike other taxes and prestations that were monetized by 1934, colonial leaders felt that *uburetwa* was so central to the socio-political order that to replace it “would undermine the chief’s authority over the population” and they did not fully convert it to cash payment until 1949 (Newbury 1980a:112,141; Reyntjens 1985:133-142).

Overall, scholars agree that pre-colonial rule was not universally exploitative, and that the colonial period altered inter-ethnic relations in profound ways, and for the worse. There remains debate about the precise origins of the biological differences and what they mean for interpreting human migrations (Cavalli-Sforza et al 1994; Excoffier et al 1987; Mamdani 2001:43-50), but Vansina’s recent analysis suggests that what physical



differences existed must go back millennia, not centuries, as posited in the migration histories (Vansina 2004:37-38;198).

### ***Points of disagreement***

Despite the agreement discussed above, contemporary scholarship on Rwandan history argues it is factually inaccurate to suggest there was comprehensive unity prior to the colonial period, or that ethnicity only became salient due to the actions of non-Rwandans. While perhaps a generalized unity characterized pre-colonial Rwanda in the seventeenth century, by the end of the nineteenth century, prior to the arrival of colonialists, society was highly stratified, and institutionalized hierarchies along lines of Hutu and Tutsi had developed (Lemarchand 2009; Vansina 2004). Assertions of pre-colonial harmony homogenize Rwanda across time and territory, and erase many kinds of difference, including region and class. Further, placing blame on colonial leaders ignores how Rwandan chiefs were crucial to implementing exploitative practices during the colonial period. The dominant narrative overlooks how social identities such as ethnicity, clans, and class changed over time, and can only be understood in relation to changes in political organization and state power (Newbury 1978; 1988:10-16; Newbury 1980b; Vansina 2004:134-139).

To justify the Rwandan kingdom as a basis for unified national identity, the post-genocide government used a version of history that was consolidated and gained legitimacy in the writings of Abbé Alexis Kagame, a Catholic priest and court intellectual in the 1940s. Scholars and politicians have drawn on Abbé Kagame's historical works as received truth and even ten years after the genocide, his legacy was "still rooted in the

general historical consciousness of Rwandans and it still dominate[d] the perception of Rwanda's history" (Vansina 2004:4). Yet, beginning in the 1960s, several scholars persuasively demonstrated how this official version of court history could not be uncritically accepted as objective historical truth, because it derived from a "single reservoir of traditions," though masking itself through tautological corroboration with other sources (Newbury 2009:19; Vansina 2004:4-12). They showed how Abbé Kagame's history was developed in dialogue with the royal court, and therefore should be understood to reflect the views and interpretations of the royal court and its official ideologues, including the Catholic "white fathers" (De Lame 2005; Des Forges 1995:44; Longman 2010:63; Newbury 2009:19; Newbury & Newbury 2000; Vansina 1985; 2004:4).

The territory of Rwanda that the post-genocide RPF government referenced beginning in 1995, typically to justify "natural" national unity or military claims, was not coterminous with the Rwandan kingdom over the previous three centuries (Lemarchand 2009:64-65; Newbury 1997:53; Reyntjens 2009; Vansina 2004:52-53). Geographical areas were incorporated into the kingdom at different periods over time, typically by force, and therefore the degree of royal court penetration and resulting socio-political impacts varied dramatically by region and time period (Newbury 1988:8; Vansina 2004). Conquered peoples were not always easily enfolded, meaning there was variance in who was considered "Rwandan," and how "Rwandan" they were (Newbury 2009:204-228; Vansina 2004:156). These variations were particularly pronounced in the north and northwest, which were incorporated late, and where differences remained relevant in later political developments (De Lame 2005:45; Lemarchand 1970).

Perhaps seventeenth century Rwanda came closest to the “nostalgic utopia” the government narrative described (Vansina 2004:199). There was relative unity, understood as an absence of rigid hierarchy and divisions; ethnicity was still fluid and differences were not entrenched, people could migrate, so exploitation was not a big concern (Vansina 2004:14-43). Yet, even as early as the seventeenth century, class differences were emerging, and some institutional forms were introduced that came to play a role in social stratification later on, such as *ubuhake* and *corvée* (forced) labor (Vansina 2004:20,32-33). Further, the territorial area at the time was much smaller than present day Rwanda, so even that which was “unified” did not correlate with the geographic area in which post-genocide unity was justified (Vansina 2004:198).

During the eighteenth century, the kingdom expanded and centralized, which resulted in the consolidation of an elite class, and increasingly rigid, hierarchical social stratification by the end of the century (Newbury 2009:204-228,319; Vansina 2004:88,123,136). Patron-client relations changed, as *ubuhake* contracts, which were a tool of state expansion, extended deeper into society, adopted first among the king and his allies, then between herders of unequal power (Vansina 2004:48). Further, during this period, *corvée* labor practices increased, typically falling on the socially weakest people (Vansina 2004:97). The elite versus ordinary person divide and the civil war at the end of the eighteenth century (1796-1801) both belied claims of unity in this period.

During the nineteenth century, the reign of King Rwabugiri (1867-1897),<sup>22</sup> which was characterized as internally brutal and violent down to the level of ordinary people and daily life, perhaps most powerfully negated visions of enduring unity among pre-colonial

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<sup>22</sup> Debates continue over the precise dates of Rwabugiri’s reign (e.g. Vansina 2004:209-211).

Rwandans (Newbury 2009:131,333-334; Vansina 2004:164-195). Under Rwabugiri, who ruled immediately prior to the arrival of colonial leadership, internal factional rivalry among elite families fueled competition and further territorial expansion that increased insecurity and impoverishment for the bulk of the population, herders as well as farmers (Newbury 2009; Vansina 2004:126-139,163). The “nearly permanent recourse to violence” created social instability and led to social disaggregation (Vansina 2004:164-195).

The transformation in patron-client relationships towards less reciprocity and more rigidity, exploitation, and coercion—which was related to the growth of state power, decrease in lineage autonomy, and changes in the social relations of production—was well underway in the nineteenth century under Rwabugiri (Newbury 1988:16-19; Vansina 2004:190). Further, *uburetwa* began under Rwabugiri, and though it would become even more inflexible and humiliating under colonialism, its damaging effects were well entrenched in the late nineteenth century (Newbury 1980a; Vansina 2004:135-139,192). Under Rwabugiri, with *uburetwa*, a poor Tutsi was no longer considered a Hutu (Vansina 2004:136). The period marked a crisis of social health which would deepen further under colonialism, but which must be understood as beginning under the Rwandan rule of Rwabugiri and his predecessors, and it spurred the formation of resistance or liberation movements directed against the monarchy, as well as examples of anti-Tutsi violence (Botte 1985a; b; Feierman 1995; Vansina 2004:137-138).

Scholars therefore affirm that ethnicity was firmly entrenched and had broken into the open *prior* to the arrival of colonial leaders. Under Rwabugiri, “Tutsi and Hutu became political labels; ‘ethnicity,’ such as it was, came to assume a political importance,

determining a person's life chances and relations with the authorities" (Newbury 1988:52). This displaced an earlier social class consciousness which had made a "rough distinction" between "wealthy and poor people" (Vansina 2004:136-138).

Finally, scholars underscore that, contra the dominant narrative, the problems created under colonial rule were attributable not only to Europeans but also to Rwandans under the system of dual colonial rule (Newbury 1988:53; Reyntjens 1985:161-170). Rwandan leaders, including Tutsi chiefs, were complicit in accepting and propagating the racial model of human diversity that Europeans brought to Central Africa. While Belgian policies increased chiefs' power and provided incentives and rationalizations through entry into the world economy for them to take advantage of the rural population, it was the Rwandan chiefs themselves who determined how to meet, resist, or further exacerbate these demands, how much to privilege their own advancement at the expense of others, and how colonialism influenced the transformation of clientship ties (Newbury 1988:117-150). Many Tutsi chiefs ruled exploitatively, wielding power arbitrarily (Lemarchand 1970:35-40; Reyntjens 1985).

### **Independence and First and Second Republics**

By the 1950s, when Tutsi elites began calls for independence, Hutu activists became increasingly vocal and active in demands for majority rule. Belgian authorities and the Catholic Church switched their support to these newly established Hutu revolutionaries. In 1959, the reigning king (*Umwami* Rudahigwa) died. Shortly thereafter, in November 1959, a Hutu uprising began, in which Tutsi across the country were attacked, followed by a corresponding counterattack by Tutsi chiefs. The situation remained tense and

sporadically violent for the following two years, in the build up to elections. In September 1959, Hutu parties won an overwhelming majority in legislative elections and decisively rejected the monarchy via referendum. On July 1, 1962, Rwanda regained formal Independence from European rule. Debate remained over whether this period was best characterized as a democratic revolution where the majority took power from the minority, or as precursor to genocide.

The First Republic, from 1962-1973, was led by President Gregoire Kayibanda and his coalition of Hutu from the south. In 1963, exiled Tutsis invaded unsuccessfully from Burundi. In 1973, Juvenal Habyarimana seized the presidency in a popularly-backed military coup, and led the Second Republic from 1973-1994, with a northern Hutu power base. In 1990, a group of armed exiles, mostly Tutsi, successfully organized and invaded Rwanda as the Rwandan Patriotic Front (RPF), fighting to overthrow Habyarimana's government. Civil war ensued for the next three years. In 1991, Rwanda legitimized a multi-party system, which intensified the contestation for political power. In 1993, with the support of the major Western powers, Tanzania brokered peace talks between the Rwandan government and the RPF that resulted in a power-sharing agreement known as the Arusha Accords.

***Government Narrative: Continuous anti-Tutsi violence, genocide planning***

Genocide in Rwanda was not an uncontrollable outburst of rage by people consumed by ancient tribal hatreds as has been suggested by some Western anthropologists and sociologists. . . . It was deliberate, calculated, premeditated, and cold blooded as a result of a distorted ideology that preached death and extermination of a section of Rwandan society. . . . We know that they [perpetrators] were responding to the vicious campaign of hate by the architects of the genocide, men and women who held the highest offices in the land. This elite, which had for a long time

misappropriated and controlled the government army, radio, and television stations, was most instrumental in fomenting ethnic division and hatred, a strategy they subsequently transformed into genocide. . . . [T]he 1959 massacres and subsequent ones which had become the order of the day in Rwanda, and in which the international community had become habitual bystanders . . . culminated in the 1994 genocide.<sup>23</sup>

The dominant narrative during this period had three key elements. First, it characterized Independence and the first three decades of independent rule as overwhelmingly unjust and dangerous for Tutsi. It linked the anti-Tutsi violence in 1959 to ongoing cycles of violence in the 1960s through 1980s, and then to the 1994 genocide, which positioned 45 years of history as unified around Tutsi persecution. Second, it argued that the genocide was carefully planned, drawing attention to how this preparation occurred by politicians over decades. Third, it implicated the international community in contributing to the socio-political exclusion and deaths of Tutsi by their negligence as bystanders.

### *Points of agreement*

Scholars agree with several key elements of this narrative. Specifically, the 1959 Hutu revolution was linked to the 1994 genocide in terms of creating a political situation that excluded Tutsi from power and periodically victimized innocent Tutsi. The genocide was carefully planned over this period, and the international community was complicit in these efforts to some degree.

Scholars agree that the Hutu Revolution (1959-1962) was directed not against the Belgian colonial administration, but against Tutsi, who faced intimidation and communal violence (Codere 1962; Lemarchand 1970; Newbury 1988:195; Reyntjens 1985:267-

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<sup>23</sup> President Paul Kagame. April 7, 2004. Kigali.

269). In November 1959, in response to a non-fatal Tutsi attack on a Hutu sub-chief, a group of Hutu attacked and killed four Tutsi notables. Widespread violent incidents against Tutsi spread across the country in a matter of days, sparing only three districts, though the attacks were initially limited mainly to burning and looting (Newbury 1988:194-195). Anti-Tutsi violence flared periodically and became more deliberate and marked with more bloodshed between November 1959 and the September 1961 elections (Lemarchand 1970).

Scholars agree that after the transition in power at Independence, Hutu leaders in the First and Second Republics did not reverse the oppressive leadership style of Rwabugiri and colonial authorities, but continued to rule authoritatively, to centralize power in a small ethnic and regionally-determined elite, to be intolerant of opposition, and to discriminate on the basis of ethnicity, now against Tutsi (Jefremovas 2002:124-125; Lemarchand 1970; 2009; Reyntjens 1985:521). Hutu revolutionaries in 1959-1962 and the Hutu-power government in the 1990s operated by similar logics, especially in terms of the marginalization of moderates, dynamics of fear, and “winner-take-all” politics (Newbury 1998a).

During the First and Second Republics, Tutsi were repeatedly victims of violent attacks. In addition to the attacks between 1959 and 1961, after the failed Tutsi armed incursion in 1963 from Burundi, Tutsi political leaders were eliminated and between 10,000 and 14,000 Tutsi were killed, while thousands more were forced into exile (De Lame 2005:59; Reyntjens 1985:460-467). Beginning in 1973, there was another wave of violence when Habyarimana targeted Tutsi students and school staff in pogroms (Thomson 2009:7). Anti-Tutsi violence intensified after the RPF invasion in 1990, when



there were frequent retaliatory killings against Tutsi, as the Hutu government identified all Tutsi as RPF-accomplices whom they feared were attempting to reestablish Tutsi hegemony. These massacres were “practice” for genocide (Lemarchand 2009:84; Newbury 1998b:78).

Over time, scholars agree, this discrimination and violence created an extensive Tutsi diaspora community who became stateless, and had legitimate claims to live in Rwanda. Between 1959 and 1963, 200,000 Tutsi were forced into exile: 70,000 to Uganda, 25,000 to DRC (formerly Zaire), and 50,000 to Burundi (Lemarchand 2009:31). By the 1980s, between 400,000 and 600,000 refugees were estimated to be living in neighboring countries, many the children of Tutsi who had fled earlier waves of violence (Newbury 1995a:13). These refugees suffered as second class citizens, unable to integrate into their host country, while the Habyarimana government claimed that due to demographic pressures, they could not return to Rwanda (Newbury 1995a:13; Prunier 2009:13-16). For example, in 1982, thousands of Rwandan refugees in Uganda were forced to leave by President Milton Obote, but upon arrival in Rwanda, they were refused the right to repatriate, and were kept again in refugee camps until they were eventually returned to Uganda. It is from these refugees that the RPF was created (after many helped fight to overthrow Obote and install Yoweri Museveni as President of Uganda).

Consistent with the dominant narrative, scholars have shown that the international community played a role in the escalating tensions and violence in Rwanda between the 1950s and 1990s (Newbury 1998b:1988). One key element of external involvement over time was international pressure over political rule. In the 1950s, the United Nations set a date for Independence, which Lemarchand argues propelled revolution and violence,

because Hutu parties wanted to ensure they, not the Tutsi monarchy, had power before the deadline. The ensuing revolution was “powerfully assisted if not engineered by the Belgian authorities” (Lemarchand 2009:31). Three decades later, in the late 1980s and early 1990s, outside powers that controlled the flow of economic resources to Rwanda pushed the democratization process and legitimization of multi-partyism (De Lame 2005:65). This reorganized structures of power and forced Habyarimana to open political space to others, which angered powerful members of his own regime, and contributed to elites trying to eliminate challengers and reassert their hold on social, economic, and political dominance (Longman 1995; Newbury & Newbury 1999; Newbury 1998b:80,89).

Consistent with the dominant narrative, the international community served as bystanders or enablers in other ways. The international development aid system supported the processes that underlay the genocide by, for example, financing the processes of social exclusion, perpetuating humiliating practices, and ignoring growing racialization (Uvin 1998:224-238). The international arms trade in the wake of the end of the Cold War made it possible for the government to provide weapons for the newly developed militias (Newbury 1998b:90). International actors knew about, but did not try to stop, growing anti-Tutsi massacres in the 1990s, and France even assisted the Habyarimana regime’s military efforts against the RPF (Krosiak 2007; Lemarchand 2009:84).

A wealth of scholarship emerged quickly after the genocide which argued, consistent with the dominant narrative, that the genocide was carefully planned and organized, countering interpretations dominant in the Western media that the violence was the

unfortunate escalation of a civil war or a spontaneous eruption of hatred among people who were inherently violent (Des Forges 1999; Lemarchand 1995; Longman 1995; Mamdani 2001; Newbury 1995a; Newbury 1995b; Prunier 1995). They showed that the genocide resulted not from a failed state, but rather, from an overly strong one, where state apparatuses—political organizations, military, and the administration—were used to commit genocide (Des Forges 1995; Lemarchand 2009:85). Organization involved distinct sets of actors, including Habyarimana’s core group, the Presidential guard, rural organizers at the commune level, and civilian militias called *Interahamwe*, “those who stand together.” The genocide ideology of hatred targeting Tutsi was key to these efforts, and was well-established by 1992 (Des Forges 1995). Planning intensified after the signing of the Arusha Accords in 1993 when hard-line elements within the Rwandan government and other Hutu extremists exploited ethnically-based ideologies to mobilize the population as a strategy for maintaining power and simultaneously stepped up efforts to organize, indoctrinate, and arm segments of their supporters. Consistent with the dominant narrative, scholars have pointed to the role of the media and schools in fomenting ethnic division, particularly by propagating racist anti-Tutsi writings, cartoons, and songs, often based on the Hamitic ideology (Chretien 1995; Des Forges 1995; King 2008; Lemarchand 2009).

### ***Points of disagreement***

Scholars agree with the dominant narrative that the 1959 revolution was linked to the genocide in terms of setting a chain of events into motion that consolidated Hutu power and excluded and discriminated against Tutsi, subjecting them to waves of violence and

intimidation. They agree that this created an extensive diaspora of Tutsi who lived in precarious circumstances, with no sense of home. Further, international dynamics contributed to events in Rwanda. Finally, they agree that genocide was planned. But these details, with the emphasis on anti-Tutsi propaganda and violence, while necessary are *insufficient* to understanding the period in Rwanda from the Hutu Revolution through Independence and the First and Second Republics. By casting the political events of Rwanda from 1959 through 1994 exclusively in terms of ethnicity, the dominant narrative ignored many other factors that played a significant role, such as economic issues, regional and class divisions, and the broader interrelated Great Lakes political dynamics.

The dominant version overlooked the long-term evolution of rural grievances underlying the transformations of 1959-1962, and the fact that the revolution addressed the political exclusion of the Hutu peasants who comprised 80 percent of the population (Lemarchand 2009:31). Hutu activists in the 1950s argued that the elite Tutsi ruled in an oppressive and dominating manner, both under the pre-colonial feudal system and under Belgian rule, and benefited unfairly from the colonial administration. Hutu activists sought to address poverty, inequality, insecure access to land, inadequate access to education, and youth issues, and argued for democracy and majority rule (Lemarchand 1970; Newbury 1988; Reyntjens 1985). They were successful in large part because they responded to and channeled widespread legitimate rural discontent (Newbury 1988).

The dominant narrative ignored other factors that contributed to genocide over several decades, on top of the rabid anti-Tutsi propaganda. Region and class were crucial axes of difference and conflict in the First and Second Republics, and most conflicts

during this period were among Hutu factions (De Lame 2005; Newbury & Newbury 1999:299). North and south were in ongoing opposition beginning with the revolution, where northern Hutu advocated a more conservative agenda than southern; the same division was behind the 1973 coup when northern Hutu took over from southern; and this division fueled competition between regionally-based political parties after multi-partyism was legalized in the 1990s, which increased political tension in the lead-up to 1994 (Lemarchand 1970; Reyntjens 1985; Twagilimana 2003). Regional factions and infighting among Hutu elites were behind much of the political machinations that led politicians to use ethnicity instrumentally.

Scholars note that class remained a significant source of division in this period, as in previous historical periods, and contributed to escalating tensions and violence, especially when combined with economic decline. During the First and Second Republics, while elites consolidated power and there were advancements in public works, urban development, public health and enrichment of a middle class, at the same time, poverty and inequality grew for rural Rwandans, both Hutu and Tutsi, often in relation to land access (Ansoms & Marysse 2005; De Lame 2005:63-64,246; Newbury 1995a; Newbury 1998b; Reyntjens 1985:523). By the late 1980s, in the lead up to genocide, tensions were exacerbated by the dynamics of the global political economy. Global coffee prices collapsed in 1989 and the International Monetary Fund implemented structural adjustment programs, including devaluing Rwanda's currency in 1990 and requiring Rwandans to "cost-share," including paying higher fees for public services such as primary school, health care, and water. These factors both resulted in sharply deteriorating economic conditions and increased poverty for the vast majority of

Rwandans (Newbury 1995a; Newbury 1998b:89). These economic constraints, combined with the disconnect between rural people and elites which meant rural people were not meaningfully connected to the changing political situation, contributed to social tension and fear, especially among male youth, who were particularly vulnerable to recruitment to militias (Newbury & Newbury 1999:91-92; Newbury 1998b). That is, disenfranchisement was a function of class, not merely ethnicity, as in earlier periods.

The dominant narrative papered over the fact that during this period, as in the pre-colonial and colonial periods, ethnicity was not the only form of belonging. Kinship, neighborhood, age group, voluntary associations, and religious ties were all forms of social belonging (De Lame 2005:238.317; Longman 2010). Particularly in the north and northwest (incorporated late into the kingdom), lineage-based organization related to land ownership remained more vigorous than in other areas of the country (De Lame 2005:45; Reyntjens 1987:93). Family belonging changed with the economic and political changes, particularly with monetization, commodification of labor, and mobility, such that men had increased control over their wives, but less control over sons (Jefremovas 2002:85-93). Patronage and client ties—in the form of personal connections more so than formalized contracts—continued to play a role in access to resources, particularly land, political and economic power, and security during this period (Jefremovas 2002; Pottier 2006).

The dominant post-genocide narrative did not consider dynamics from the broader Great Lakes Region which contributed to the situation, in terms of enflaming fears of ethnic violence, adding fodder for political manipulation, and creating massive movements of refugee populations who were particularly receptive to ethnic-based

ideologies (Lemarchand 2009:20; Malkki 1995; Newbury & Newbury 1999).

Specifically, it ignored the 1972 killings of Hutu by Tutsi in Burundi, massacres that sank into “near oblivion” in broader global memory (Lemarchand 2009:71). In the wake of an aborted Hutu-instigated uprising that caused the death of hundreds or perhaps thousands of Tutsi civilians in Burundi, the ensuing (Tutsi) government-backed repression from April to November 1972 resulted in the deaths of 100,000 to 200,000 Hutu, specifically primary and secondary school children, university students, teachers, and civil servants (Lemarchand 2009:71). This helps contextualize the anti-Tutsi backlash in Rwanda that paved the way for Habyarimana’s coup in 1973 (Lemarchand 2009).

The narrative also overlooked the October 1993 assassination of the Hutu president of Burundi, Melchior Ndadaye, at the hands of the all-Tutsi army. Ndadaye was the first Hutu president in the history of Burundi, and his election brought to a close 28 years of Tutsi hegemony. His assassination three months after he took office unleashed violence in Burundi on both sides, with Hutu civilians killing up to 20,000 Tutsi in October and November 1993, and the Tutsi army killing as many Hutu in retaliation. Further, the violence caused some 200,000 to 400,000 Hutu to seek refuge in Rwanda in 1993 and 1994 (Lemarchand 2009; Newbury & Newbury 1999:85). In the context of the uneasy truce between the RPF and the Habyarimana government, these events contributed to the Rwandan Hutu-power regime’s anti-Tutsi propaganda, and were part of the undoing of any compromise from the Arusha Accords. Ignoring these two events, of 1972 and 1993, the dominant narrative erased the idea that there was any legitimacy to Hutu fears of power-sharing or of Tutsi-generated violence.

## 1994 Genocide to Present

On April 6, 1994, as President Habyarimana was flying home from finalizing details of the Arusha Accords, his plane was shot down above the Kigali airport. This plane crash, blamed by the Hutu government on Tutsi rebels, triggered a coordinated attempt by Hutu extremists to eliminate the Tutsi population. Within hours, a campaign of violence ignited in the capital and began to spread through the country. The Tutsi-led RPF broke the Arusha cease-fire and re-launched a military campaign, resuming their civil war against the Hutu regime. There remains disagreement among scholars as well as politicians and ordinary people about this period. Key points of contention are what the scale and meaning of Hutu casualties was; what the scale of participation was—how many Hutu participated versus tried to save neighbors, and how wide the web of collective guilt should be cast; and whether the RPF were heroes or aggressors.

The country was thrown into confusion. The violence began in Kigali, then spread across the country. Over the next hundred days, approximately 800,000 Tutsi and moderate Hutu were massacred. The violence was carried out by highly organized state armies, as well as the coordinated and trained *Interahamwe* militias, groups of armed youth indoctrinated in the Hutu-power ideology who killed and openly terrorized the population. Though a United Nations peacekeeping force had 25,000 troops on the ground, they were quickly withdrawn, along with foreign nationals. Adding to the confusion of the period, the vast majority of Hutu took to the roads, fleeing the violence and the approach of the RPF. The genocide ended on July 4, 1994 when the RPF captured Kigali.



The RPF put in place a government generally based on one that was mandated by the Arusha Accords, and tried to govern in a situation marked by massive death and destruction, devastated infrastructure, and displaced population. The late 1990s continued to be marked by instability and violence. Hundreds of thousands of Tutsi returnees quickly began to cross the borders from Burundi and Uganda, while hundreds of thousands of Hutu refugees left the country for refugee camps in DRC. Hutu insurgents, living in these refugee camps launched periodic attacks into Rwanda, and the newly named Rwandan Patriotic Army (RPA) responded against them, under General Kagame. In 1996, the RPA was involved militarily in DRC, both to clear the refugee camps in efforts to eliminate the rebel threat and to help overthrow President Mobutu, widely considered a dictator, and install Laurent-Désiré Kabila. In 1997, internal civil war resumed as rebel insurgents—former *Interahamwe* and members of Habyarimana's army—continued their guerilla warfare across Rwanda, and the RPA retaliated. Again in 1998, the RPA entered DRC to quell ongoing threats from Hutu *Interahamwe*. Politically, the transition period ended in 2003 with Kagame's election as President.

***Government Narrative: Heroic RPF ended genocide and rebuilt Rwanda***

The victims were all innocent civilians, unarmed and defenseless, burnt alive in their houses or hunted out in churches, schools, maize fields, banana plantations, forests and swamps by machete wielding neighbors, soldiers, and militia men. Children were particularly singled out for the lasting elimination of the targeted group. Women and girls were gang-raped, tortured, and maimed for life, if not murdered. The victims were forced to kill their kin or dig their own graves before they were buried alive. Others were thrown alive into pit latrines or in rivers and lakes. They were all treated with sadistic cruelty and suffered humiliating and excruciating agony. . . . Their tormenters and killers were fellow countrymen and women who chose to do evil because they were swayed by hate or hope of profit. They were kin to kin, raped, robbed, and

ravaged. They killed their victims without remorse, and inflicted pain and agony and enjoyed doing so. . . .

In the fight many [RPF soldiers] gave their lives in the cause of freedom and liberation. I know that every soldier in the RPF knew that the cost was likely to be high but the cause of freedom and liberation was one worth fighting for. We were fighting a difficult and determined enemy who was supported by powerful forces. We were fighting two wars at once. Our soldiers fought by day and rescued victims by night until they halted the genocide. . . . We were fighting for our rights. We were fighting to liberate our country. . . .

All these powerful nations regarded one million lives as valueless, as another statistic, and could be dispensed with. And of course some claimed that the dying people were not in their national strategic interests. But if the death of a million people was not a concern to them, then what is? I hate to think that this may be due to the color of the skin of these Rwandans who died or other Africans who might die in the future.<sup>24</sup>

The dominant narrative of this period had three elements. It positioned the victims as innocent, emphasizing the evil and inhumanity of perpetrators' extreme acts of violence. Second, it framed the RPF as a group of morally righteous freedom fighters who took up arms as a last resort and who selflessly struggled to liberate their country. This is what many have called a "genocide credit" (Lemarchand 2009; Reyntjens 2005; Vidal 2001). A third repeated theme was the failure of the international community to intervene sufficiently.

The narrative of the genocide period was buttressed by the genocide memorials across the countryside. The careful planning and the international community's failure were manifest in the enormity of the toll at any given memorial, often marked in hand-lettered signs—25,000 victims (Kibeho), 11,400 victims (Kibuye Parish), 10,000 victims (Kibuye stadium), 250,000 victims (Kigali genocide memorial). The scattered limbs and disconnected pelvises, the bullet wounds or machete cuts on skulls, the rosaries clutched

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<sup>24</sup> President Paul Kagame. April 7, 2004. Kigali.

in shriveled corpses' fingers, and the devastated physical structures of the churches or schools in which these were found, materially represented victims' desperation and dehumanization. Victims' innocence was manifest in the corpses of toddlers, the skulls of children, the baby shoes, and leg braces found within the remains. The ubiquity of sites across the landscape, and the lost lives they immortalized, underscore the narrative's emphasis on the heroism of the RPF in bringing an end to the terror.

### *Points of agreement*

Everyone agrees that the details of the violence were as horrifying, intimate, and unimaginable as the narrative depicted (African Rights 1995; Des Forges 1999; Fujii 2009; Hatzfeld 2005; Janzen & Janzen 2000; Prunier 1995; Straus 2006; Taylor 1999; 2002). People targeted by the genocidal regime, whether Tutsi or Hutu opposition, had little chance of survival. Soldiers and police officers encouraged or coerced civilian involvement, and forced civilians to "kill or be killed." Tutsi were massacred en masse in churches, schools, and public buildings where they gathered seeking safety, and were sought out in their homes and hunted while fleeing. Many of the people who killed their fellow Rwandans—often intimately, with machetes—had grown up together, went to the same churches and schools, and even intermarried and were related. Women of childbearing age were targeted, especially as objects of rape, sexual humiliation, and sexual mutilation (Newbury 1998b). Identity cards—introduced by the Belgians but maintained by the First and Second Republics—were used by killers to determine victims' ethnicity.

Scholars agree that the international community failed to act, detailing the ways the UN Security Council and key actors such as the United States, hesitated and did not intervene in ways that could have saved lives (Dallaire 2003; Power 2002; Prunier 1995). Members of the French government are widely understood, within Rwanda and outside, to have supported the genocidal regime and to have led a controversial intervention (Operation Turquoise) that resulted in aiding the escape of thousands of perpetrators (Krosiak 2007).

### ***Points of disagreement***

While acknowledging the intensity and scope of the genocide tragedy, scholars again claim that this is necessary but not sufficient to understand dynamics of the period. Specifically, Tutsi were not the only victims, Hutu were not all perpetrators, and the RPF/RPA were not guilt-free, but committed human rights violations during and after the genocide, and continued to embrace patterns of rule consistent with the pre-genocide regimes.

The dominant narrative mentioned that Hutu moderates were killed as well, but reserved the sense of righteous suffering for Tutsi. The narrative did not mention that many of the innocent people victimized by the genocide were Hutu caught up in the chaos. A wealth of research underscores how Hutu suffered, forced to flee the country as refugees, experiencing extreme hardship for many months or even years, as they faced disease outbreaks, lost family members, or themselves died in refugee camps or prisons (Clark 2010:127; Des Forges 1999; Lemarchand 2009:36-37; Nduwayo 2002; Umutesi 2004).

The quantification of genocide victims has been highly contested. In the immediate wake of the genocide, scholars quoted approximately 500,000 victims, but consensus emerged at around 800,000 victims within several years (e.g., Lemarchand 1995; 2009). In April 2004, on the eve of the ten-year anniversary commemorations, the government announced the tally was at 937,000 victims, whom they claimed were predominantly Tutsi, and they said that with *gacaca* ongoing, more victims would likely be identified (Kazooru 2004). This official number rose to over one million (Kagire 2009). Most scholars believe that both official figures are inflated, and that these numbers must include Hutu, including those killed by the RPF/RPA during and after the genocide. Davenport and Stam controversially claim that a majority of the victims were most likely Hutu, and that the events should be considered a politicide rather than a genocide (Davenport & Stam 2009). While their position remains more extreme than many Rwanda experts are willing to fully accept (and they have become *persona non grata* in Rwanda), they draw attention to the fact that Hutu victimhood should not be underestimated.

The dominant narrative gave only perfunctory reference to the actions of Hutu who actively sought to help others, though research shows that this constituted a non-trivial form of Hutu action during the genocide, both in size and importance. Scholars have drawn attention to the ways violence did not play out uniformly across the country, but rather, some politicians fought to avoid escalation of violence and many individuals sought to save neighbors (Des Forges 1999; Janzen 2000; Jefremovas 1995; Longman 1995; Nduwayo 2002; Newbury 1998b:80-82). In areas where peasants were relatively cohesive and empowered, they were less susceptible to ethnic appeals, and therefore

violence had to be imported from outside (Des Forges 1999; Longman 1995). This underscores that belonging was not solely along ethnic lines, as people protected others with whom they felt shared bonds of kin, neighborhood, religion, or humanity.

As I detailed in the previous section, scholars disagree that ethnic hatred was the *only* causal explanation for the genocide, but other economic, political, and social factors played a role. The political rhetoric of the time created a situation in which violence against Tutsi became acceptable, even when motivated by economics, personal rivalries, or revenge as well as by ethnic hatred (Des Forges 1995; Straus 2006). Debate remains on why people joined the killers, how many did, and how to understand the link between elite propaganda and individual actions (Davenport & Stam 2009; Fujii 2009; Straus 2006; Vidal 1998).

Scholars and human rights activists disagree with the dominant narrative's contention that the RPF can claim the moral high ground during the genocide. Many have accused Kagame and his RPF soldiers of committing atrocities during the genocide, specifically human rights abuses and reprisal killings against innocent Hutu civilians as the RPF pushed through Rwanda to Kigali (Brauman et al 2000:148; Davenport & Stam 2009; Des Forges 1999; Lemarchand 2009:89-91; Nduwayo 2002:11-16; Prunier 2009:12-24; Ruzibiza 2005:334-336; Thomson 2009). High ranking Rwandan and international military personnel have argued that Kagame's goals as head of the RPF were first and foremost to gain political control of Rwanda, and only secondarily to halt the genocide, with full awareness of the cost this would bring to Tutsi (Dallaire 2003:515; Prunier 2009:15; Ruzibiza 2005:10).

Scholars argue that the RPF (now RPA) continued to perpetuate violence and human rights abuses in the years after the genocide. By 1995, RPA soldiers conducted reprisal killings and created domestic insecurity, while Hutu were imprisoned summarily on genocide accusations (Reyntjens 1995). While Kagame claimed that only 300 people were killed during the closing of a refugee camp in Kibeho in Southern Rwanda in 1995, other reports claim as many as 5,000 innocent people were killed (Lemarchand 2009:73; Prunier 2009:37-42) Some reports claim that in 1997, at least 16,000 innocent Hutu civilians in the north were killed when the RPA responded to incursions by Hutu rebels into Rwanda (Reyntjens 2009:175-176). Most scholars who draw attention to these RPF/RPA abuses stop short of supporting the double genocide theory, or its implication that the RPF/RPA counter-attacks exonerate genocide perpetrators (Prunier 2009:12-13).

Kagame faced additional accusations of atrocities—crimes against humanity and even possibly genocide—for events in the mid- to- late 1990s in Rwanda and in the DRC where Rwanda “exported” its war (Prunier 2009; Reyntjens 2009). Scholars, human rights activists, and a 2010 United Nations report accused Kagame and his army (RPA) of the deaths of as many as 200,000 civilian refugees during the destruction of refugee camps in the DRC in October 1996, as part of a broader Rwandan desire to overthrow Mobutu and support Kabila (Brauman et al 2000; Lemarchand 2009:26; Pillay 2010; Prunier 2009; Reyntjens 2009:80-102). Rwanda made repeated forays into the DRC between 1998 and 2002 before officially withdrawing in 2002 because of the Pretoria Accords (Lemarchand 2009:26-27), but Reyntjens claims the RPA continued to maintain a clandestine presence (Reyntjens 2005:36).

Scholars who have worked in the region for decades conclude that Kagame and the RPF reproduced, rather than corrected, the pattern of politics characterizing colonial and post-colonial rule in the region, including regional and ethnic discrimination, exclusion, corruption and disregard for the population's needs (Brauman et al 2000; Jefremovas 2002; Lemarchand 2009; Prunier 2009; Reyntjens 2005). While the government initially appeared inclusive, within a year there was widespread Hutu flight from government, and Hutu became victims of harassment, imprisonment, and physical elimination by the RPA (Brauman et al 2000; Reyntjens 1995; 2009:23-34). These patterns were particularly evident in the lead-up to the 2003 elections, when opposition leaders were arrested or mysteriously killed, newspapers closed, and civil society compressed (Reyntjens & Vandeginste 2005). Reyntjens and Lemarchand both call Kagame's regime a "dictatorship" (Lemarchand 2009; Reyntjens 2005).

Despite claims of fostering national post-genocide unity, regional and class divisions persisted. Though the RPF improved conditions in Rwanda, economic inequality increased (Ansoms & Marysse 2005). Power continued to be consolidated in the hands of a regional and ethnic elite—the RPF prioritized Ugandan refugees, beginning in 1995—while Tutsi diaspora elites gained predominant control over urban areas (Jefremovas 2002:125; Reyntjens 1995; 2005). Tutsi survivors, along with other rural inhabitants were resettled to "villagization" projects, intended to give them better access to security and livelihoods, but often increasing their vulnerability to malnutrition, disease, or reprisal attacks (Ansoms 2009; Jefremovas 2002:125; Reyntjens 2005:28-30; van Leeuwen 2001). Elites remained disconnected from ordinary people (Ansoms 2009; Clark 2010:125).



## **Implications of the Dominant Narrative**

Especially in light of the growing critiques against Kagame and his government, and his reputation as a shrewd information manager (Pottier 2002; Reyntjens 2009), it is crucial to denaturalize the dominant narrative's assumptions about, and trace its effects on, belonging and governance in the present. The dominant narrative had several implications, specifically masking present divisions, justifying RPF rule and post-genocide reconstruction policies, emphasizing national over transnational dynamics, and discrediting the international community.

### ***Masking present divisions***

In the face of the deeply-entrenched, fundamentally flawed, and dangerous understandings of difference in Rwanda stemming from the Hamitic myth and its legacy in scholars' writings over the following century, it is in many ways understandable why the dominant narrative so singularly and vehemently focused on unity among Rwandans, not difference. In the 1950s, the ideas at the core of the Hamitic myth were at the center of the Hutu Revolution, when leaders claimed Hutu autochthony and therefore rights to govern, while Tutsi were cast as foreign and innately domineering (Lemarchand 2009:58). In the 1990s, the same ideas played a central role in anti-Tutsi propaganda in the lead-up to genocide (Chretien 1995:139-208).

At the same time, it is equally important to debunk the myth of pre-colonial unity, such as that contained in Abbé Kagame's history (Lemarchand 2009:55; Newbury 2009; Vansina 2004). Assertions of unproblematic unity obscured how region and class were crucial sources of belonging and also divisions, beginning in the pre-colonial period.

These remained significant forms of fracture and alliance that contributed to the instability and violence through the 1990s, and which continued to be pervasive in 2004 through 2008.

Despite its claims of unity, the dominant narrative simultaneously promoted identity categories based on collective guilt and innocence that re-inscribed ethnicity, and created differentiated forms of citizenship. In the dominant narrative, all Tutsi were innocent victims, and no Tutsi were perpetrators. This included the RPF soldiers, who framed their actions as a righteous liberation struggle, and claimed that any civilian deaths were unfortunate collateral damage of their war against the *genocidaires*. It included diaspora Tutsi, who constituted most of the political and economic elites, and who were not in the country in 1994. This interpretation created a shared status among victims of attacks between 1959 and 1994 that asserted belonging along ethnic lines even while ostensibly erasing ethnicity. This broader category of victim thus overlooked massive class differences and variations in experience, while allowing government elites to speak for rural genocide survivors, many of whom claimed the RPF did not meet their needs (Clark 2010:125).

While Tutsi had a monopoly on suffering, Hutu were assumed to be collectively guilty, with no rightful claims on victimhood (Burnet 2009; Clark 2010:127; Lemarchand 2009:104; Pottier 2005:211). Perpetrators were cast as inhuman and relentless in their cruelty, and all Hutu associated with that category, while the experiences and pain of Hutu were obscured. This silenced a large portion of the population. It created a contradiction in which the range of Hutu experiences during the genocide were

homogenized, even while government authorities claimed that *gacaca* would alleviate collective guilt by identifying specific guilty individuals and exonerating the innocent.

There were some exceptions to the binary opposition. A few Tutsi were singled out as being perpetrators, framed as “rogue” or outliers (Reyntjens 2009:182), and a few Hutu were celebrated as heroes, but controversially. For example, an event was held at the Kigali genocide memorial on July 18, 2004 to celebrate half a dozen Hutu heroes. Organizers told me that they had received hundreds of nominees, but most were disqualified because during the vetting process, organizers found that others alleged that those same nominees victimized them. Relatively few people attended this event—only one or two hundred, as compared to thousands or tens of thousands at other events honoring victims held in the previous months—suggesting that people either rejected the validation of Hutu heroes or did not accept the restriction on the meaning of the term. Further, it is significant that this event was held after the closure of the official genocide mourning period (April 7 through July 4, the dates marking the official genocide), rendering the attempted recognition less symbolically powerful. If anything, in the broader political context, this official recognition of only a half dozen Hutu heroes served to underscore that some people had succeeded in risking their lives to protect others, and therefore to imply that anything less counted as complicity. In the lead-up to the national launch of *gacaca* courts, this suggested that any accusations of guilt tarnished or even negated assertions of helping or saving. This set a standard of moral purity virtually unachievable in the “grey zone” (Levi 2004) created by the tumult of the genocide.

Overall, starting with the genocide, Tutsi victims (which included *rescapés* and *repatriés*) were portrayed as morally pure and projected back as such through time, while

perpetrators, coterminous with Hutu, were projected back through time as collectively guilty, and their hardships erased. This perspective was captured by a guide at the Kigali Genocide Memorial who told me, in April 2004, that the reason most guides at memorials were survivors was because, “Survivors can tell visitors the truth about what happened, while *genocidaires* would try to cover up the truth”—as if to imply that those were the only options in Rwanda, or that there is one truth about what happened. This denied or erased the variety of positions in the middle ground between simple notions of victim or perpetrator.

### ***Legitimizing RPF authority to rule and justifying ongoing policies***

The dominant narrative was also crucial to legitimizing the government’s authority to rule. By linking the genocide to 1959, the dominant narrative allowed Kagame and the RPF, predominantly comprised of people whose families fled the anti-Tutsi violence from 1959 to 1963, to claim the right to govern a country, their motherland, in which they had never lived. It was a crucial move to reinterpreting Kagame and the RPF not as outside invaders but as rightful members and leaders of the national community in spite of, or even because of, their physical displacement. The RPF gained further legitimacy in this narrative from its liberation of Rwanda and rescue of innocent victims during the genocide.

Further, by emphasizing how the genocide was planned over the decades from 1959 through 1994, the dominant narrative cast aspersion on all leadership from Independence until the RPF seized Kigali, and correspondingly on the only period of majority Hutu rule in Rwandan history. Emphasizing how multi-partyism in the 1990s led directly to mass

violence implicitly legitimized the RPF's consolidation of power and heavy-handed rule, and served as justification for further disenfranchisement of the majority population, including a variety of restrictions on civil society and on Hutu's access to political or economic power. In a related move, the dominant narrative obscured the role of Tutsi chiefs in contributing to ethnic division and Hutu oppression over time, which deflected attention from the role of Rwandan governance practices in creating and perpetuating inequalities in the present.

Suggesting that ethnicity was the salient and artificially-imposed division over time allowed the government to claim that erasing ethnicity would correct past trends and avoid recreating conditions for violence. This claim overlooked how expanding state power shaped belonging and resulting access to resources in the pre-colonial period through the 1990s, and surely did so in the present (Newbury & Newbury 1999:294; Reyntjens 2005:22). Saying that Hutu and Tutsi originally mapped onto farming versus herding minimized the importance of changes over time, particularly in relation to state expansion, *ubuhake* contracts, armies, and installation of local authorities whose authority derived from different kinds of land tenure and use (farming versus herding) (Vansina 2004:135), all processes that had correlates in the post-genocide government's reconstruction policies, including decentralization.

Ignoring regional divisions and intra-Hutu factional fighting allowed the post-genocide government to deflect attention from its concentration of power in the hands of Tutsi diaspora, primarily Anglophones from Uganda (Jefremovas 2002:125).

Disregarding class divisions and the economic woes faced by Hutu and Tutsi rural farmers shifted attention away from obvious parallels between the situation in the 1970s

to 1980s, and the period from 2004 through 2008, which were both periods when the world saw Rwanda as a paragon of development and poured in international support, while the gap between the rich and the poor increased. It drew attention away from the poverty and political disenfranchisement of rural people that contributed to their willingness to be politically manipulated, and how that same political and economic disempowerment continued for many people over a decade after the genocide.

Overall, the government used this narrative to justify its legitimacy to oversee the rebuilding of Rwanda based on “genocide credit,” casting victims’ suffering in terms made meaningful by the contemporary goals of the regime (Reyntjens 2005:32; Vidal 2001). The government claimed that allegations of human rights abuses came from people who intended to sow division, like in other periods in Rwanda’s past. The genocide credit proved highly successful, as Western leaders maintained a “strange fascination” with Kagame, and mostly turned a blind eye to accusations of atrocities against him (Lemarchand 2009:95; Reyntjens 2005:32).

### ***Emphasizing national over transnational dynamics***

Focusing on ethnicity within the territorial borders of Rwanda disregarded the broader entanglement of regional and international socio-political dynamics, particularly the waves of violence and genocide against Hutu in Burundi, and ongoing war in the Great Lakes region of Central Africa (Autesserre 2010; Lemarchand 2009; Prunier 2009; Reyntjens 2009). Overlooking the fact that, for example, four times as many people died in eastern DRC between 1998 and 2006 as in the genocide, in a war in which Rwanda was heavily involved (Lemarchand 2009:5), maintained the uniqueness of the Rwandan

situation to strengthen the RPF's genocide credit. Erasure of regional dynamics in the dominant narrative allowed the RPF to prioritize national re-socialization policies rather than macro-political and economic factors.

Focusing nationally sidelined how regional dynamics helped explain and legitimize some of the anti-Tutsi sentiment and the ease with which people could be mobilized by fear to violence. By extension, it ignored how post-genocide governmental actions within and outside Rwanda could have similar ongoing effects on regional instability today. The national focus allowed the RPF to obscure Rwanda's problematic role in neighboring countries, only publicizing international interventions when they were consistent with the dominant narrative—for example, claiming incursions into DRC were solely driven by efforts to oust *genocidaires* who remained intent on killing Tutsi, not by desire to control mineral resources or expand territorial sovereignty (Lemarchand 2009:17-19).

### ***Discrediting the international community***

Finally, the narrative morally discredited the international community based on their role in sowing division and tolerating violence in Rwanda, beginning with the arrival of the Germans in 1897, continuing with the political upheavals and violence at Independence, through the lead-up to genocide, and culminating in the world's inaction and even support of the genocidal regime. The dominant narrative framed Rwandans as twice victims: first by the genocidal regime, second by Western countries, especially based on insidious racism. This positioned Rwanda in solidarity with the African continent and the non-European developing world more globally.

The dominant narrative's condemnation of the international community over more than a century neutralized international critiques of the RPF in the past or present, and justified the government's ongoing efforts to chart its own fate. It allowed the post-genocide government to propose its own culture-based solutions to solve Rwanda's post-genocide problems, as I discuss in Chapters 3 and 4. Further, it allowed the post-genocide government to assert that the international community had a moral obligation to provide ongoing support, but on the RPF's terms.

### *Summary*

I wish to make it abundantly clear that we Rwandans take primary responsibility for what happened ten years ago. And I stand here in the name of my government and the people of this country and apologize in their name. We have to have remorse as a necessary prerequisite for us to be able to make the commitment to banish the ideology of genocide and say Never Again in our country.<sup>25</sup>

This excerpt from Kagame's speech at the ten-year genocide commemoration summarizes the key themes and implications of the dominant narrative. By starting with "we Rwandans," Kagame asserted national unity and spoke for his fellow citizens. He asserted that "we Rwandans", not the international community, were in the driver's seat in solving the problems facing "our country," defined nationally. The "we" who needed to have remorse and be rehabilitated referred to Hutu for crimes against Tutsi. This "we" did not, for example, refer to those Tutsi chiefs who ruled arbitrarily and unjustly under the system of dual colonialism and who therefore contributed to the oppression of rural Hutu, nor to those members of the RPF who killed Hutu during and after the genocide, whether episodically or systemically. For Kagame to "apologize in their name" was

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<sup>25</sup> President Paul Kagame. April 7, 2004. Kigali.



consistent with the broader silencing many Hutu perceived they experienced at the hands of the post-genocide regime.

## **Conclusion**

The government's dominant narrative of history was a key tool in its reconciliation discourse. While vigorous debates on Rwandan historiography continued among scholars, the government narrative, by contrast, did not invite contestation, and instead constrained opposition with allegations of divisionism or genocide ideology. Comparing the dominant narrative with the rich scholarship on Rwanda's distant and recent past brings to light how the government strategically highlighted and de-emphasized specific elements, with implications for how power, belonging, and exclusion were configured. Specifically, the official narrative masked present-day divisions, legitimized the RPF's authority to rule and their policies, and discredited the international community.

The dominant narrative provided the backdrop against which post-genocide legal institutions were put in place. It rendered thinkable the creation of *gacaca* courts to mass-prosecute *genocidaires*, with reduced sentences for those who confessed and renounced the genocide ideology that elites had manipulated them into accepting. Similarly, it rendered inconceivable the idea of prosecuting RPF for atrocities. It justified the creation of *comite y'abunzi* as the revitalization of a shared cultural tradition that unified Rwandans. In Chapter 3, I describe the post-genocide legal context, in historic and comparative context.

## Chapter 3: Post-Genocide Legal Responses in Historical and Comparative

### Context

#### Introduction

In the previous chapter, I presented the Rwandan government's dominant narrative of history, and put it in conversation with ongoing scholarly debates about Rwandan history to show how the narrative had specific implications for belonging, rights, and authority. It justified certain legal responses to the genocide violence, while not others. Specifically, it led to an international tribunal to prosecute the masterminds of the genocide, and to mass national prosecutions of Hutu genocide suspects, without any corresponding prosecutions of alleged RPF atrocities.

In this chapter, I situate the post-genocide legal responses in Rwanda with respect to national and international legal developments. I begin with a brief outline of legal developments in the aftermath of genocide. I then discuss overlaps and cross-fertilizations among the multiple legal jurisdictions in Rwanda. The third section considers Rwanda's legal developments in historical and comparative context. I close with an overview of global transitional justice initiatives, showing how the International Criminal Tribunal for Rwanda (ICTR) and *gacaca* reflect broader worldwide trends with regards to international versus national involvement, restorative versus retributive justice, prosecution versus truth-telling, and universal versus particular solutions. Thus, this chapter historicizes the development of Rwanda's legal institutions, and demonstrates the overlapping global, national, and local influences.

## Post Genocide Legal Institutions

Several new legal institutions were created to establish accountability for genocide, as well as to rebuild rule of law in Rwanda more broadly. In this section, I describe post-genocide legal developments, with particular attention to the specific institutions at the heart of this study: *gacaca* courts, *comite y'abunzi*, and the legal aid clinic in Butare. For each, I explain the main tenets of the forum and summarize the achievements and limitations.<sup>26</sup> Overall, I show that the systems implemented increased the proliferation of, and people's exposure to, law as defined by Western-style courts, and customary-style law.

### *International response: The International Criminal Tribunal for Rwanda*

In the wake of the genocide, the United Nations acted hurriedly to combat impunity, embarrassed by its inaction during the worst of the violence. In November 1994, the UN Security Council passed Resolution 955 that mandated the creation of the International Criminal Tribunal for Rwanda (ICTR), “for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda . . . [to] contribute to the process of national reconciliation and to the restoration and maintenance of peace” (United Nations Security Council 1994). From the beginning, Rwanda's transitional government expressed reservations at having an international tribunal on grounds of national sovereignty, and asked instead for support in creating a national tribunal (which would exclude war crimes), but ultimately agreed to the ICTR (Prunier 2009:8-12). Out of concern that the

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<sup>26</sup> For more detail specifically on legal responses to the genocide—the ICTR and *gacaca*—see Clark 2010; Jones 2010; Maganarella 2000.

situation in Rwanda at the time was still unstable, the court was located in Arusha, Tanzania. It was given a finite mandate, with the idea that it had a limited task to accomplish—to try the top leaders of the genocide—and then would cease to exist.

Teams of international investigators working in Rwanda developed indictments, moving quickly in the confusing post-genocide context to piece together facts and preliminary evidence. They could indict people for crimes occurring only in the calendar year of 1994, including genocide, crimes against humanity and other serious violations of international humanitarian law (such as murder, torture, or rape). The ICTR had no enforcement arm, so once the indictments were approved and arrest warrants issued by the court, staff had to track down the individuals—most of whom had fled the country and were outside the reach of Rwandan transitional authorities, elsewhere in Africa or Europe—and had to rely on foreign governments to help arrest and extradite them.

Cases were held in the Arusha International Conference Center, a complex of three-story, whitewashed concrete buildings in the center of Arusha. Courtroom personnel were a cosmopolitan mix of nationalities and languages, and practices were an improvisational blend of civil and common law that established a body of international criminal case law (Eltringham 2010). Panels of three international judges presided over cases. The two Chief Prosecutors of the ICTR were first from Switzerland, then The Gambia. The office of the prosecution ultimately included a few Rwandan lawyers, but was primarily international. Defense attorneys were overwhelmingly from France or francophone Africa. Defendants were assigned counsel paid by the ICTR budget because they met the criteria for indigence established by the tribunal. The defense attorneys were kept

separate from the ICTR infrastructure, a partition that was intended to ensure independence from prosecution, but in practice meant that they had fewer resources.

The operation of the ICTR was dependent upon a team of interpreters, as the cases were conducted with simultaneous translation in three languages: English, French, and Kinyarwanda. All documents entered into evidence were also translated. Court reporters recorded the proceedings verbatim. Cases were in principle open to the public, though often conducted in closed session at the request of prosecution or defense, depending on the sensitivity of a witness's testimony.

Cases typically lasted several years between arrest, trial, and judgment. The maximum punishment was 30 years or life in prison. The ICTR was funded by the United Nations, and by the close of 2010, had cost at least \$1.5 billion (Economist November 25, 2010). By December 2010, the ICTR had completed 53 cases, with eight acquittals, and 23 cases in progress or awaiting trial.<sup>27</sup> All the people indicted and tried were members of the former Habyarimana government, though it was within the ICTR's mandate to issue indictments against members of the RPF for allegations of reprisal attacks. Many saw the failure to issue indictments against the RPF as a significant weakness that risked discrediting the tribunal as providing victor's, rather than objective, justice (Amnesty International 2002:11; Peskin 2008:207-231; Reyntjens 2009:183). When the Chief Prosecutor in 2002 and 2003 began investigating RPF crimes, the Rwandan government restricted in-country operations, successfully pressuring her to stop (Jones 2010:121; Maganarella 2000:83-84; Reyntjens 2009:183).

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<sup>27</sup> ICTR website, <http://www.unictr.org/Cases/StatusofCases/tabid/204/Default.aspx>. Accessed December 26, 2010.

Overall, everyone agreed that the ICTR faced structural limitations of being expensive, time-consuming, and distant from the lives of the vast majority of Rwandans. At the same time, they recognized that the ICTR succeeded in apprehending, convicting, and therefore neutralizing, many high level genocide leaders who otherwise would probably have remained outside the reach of the Rwandan courts, and therefore able to continue to foment trouble from outside in the uneasy socio-political environment in the years after the genocide (Mose 2005).

### *Domestic courts*

Meanwhile, inside Rwanda, as the UN was building up the ICTR, the transitional government was attempting to deal with suspects and trials on their own soil, against significant obstacles. As they arrested increasing numbers of prisoners, they had no infrastructure to house them or conduct trials. While international support was offered, the government insisted on maintaining strict domestic control over justice.

Beginning as early as July 1994, authorities began arresting people, typically based on neighbors' denunciations, which authorities did not have the resources to substantiate (Amnesty International 2002; Prunier 2009:8-12; Sibomana 1999). By August 1994, there were 1,000 prisoners, which rose to 23,000 by March 1995, with between 100 and 150 people being arrested every day (Prunier 2009:9-11). The people detained were a mixture of genuine killers, and people against whom accusers sought revenge, often for property quarrels or other personal disputes (Prunier 2009:11; Reyntjens & Vandeginste 2005:110). By the beginning of 1998, there were over 100,000 people in detention, and

125,000 by the beginning of 1999 (Maganarella 2000:81; Prunier 2009:12; Reyntjens 2009:181).

This growing prison population created significant problems. Detainees were housed across the country under deplorable conditions, marked by severe overcrowding and lack of adequate sanitation (Amnesty International 2002:8; Des Forges 1999:763; Jones 2010:83; Prunier 2009:8-12; Sibomana 1999:108-109, 130-131). Many literally “rotted away” from gangrene and diseases—for example, over nine months in 1995, 13 percent of prisoners died from the prison conditions (Sibomana 1999:108-109). Most prisoners had no files and heard no charges against them (Prunier 2009:11). Meanwhile, the main perpetrators remained free, as many had fled Rwanda and the ICTR had difficulty enforcing arrest warrants (Prunier 2009:11-12). The transitional government passed a law in December 1997 which retroactively regularized detentions on remand until the end of 1999, meaning that people arrested in 1994 would spend five years in jail without a judge ruling on their detention (Amnesty International 2002:7; Reyntjens 2009:181-182). This law was later extended after 1999, meaning there was functionally no right of *habeas corpus*. The government claimed that they were trying to improve prison conditions and rebuild the legal system while coping with the devastation of the post-genocide situation more broadly, and that detention in fact protected suspects from reprisal attacks.

Government authorities faced significant hurdles in beginning trials. The pre-genocide judicial system was weak, with limited resources, insufficiently trained personnel, and lack of judicial independence, and these material resources were further reduced by two-thirds because of the genocide destruction (Amnesty International 2002:12; Prunier 2009:11; Reyntjens & Vandeginste 2005:108). Infrastructure, including

court buildings, was ruined in the fighting, and those buildings still standing were empty of supplies or personnel. There was only a handful of judges and lawyers in the entire country. There was no Bar Association for attorneys until 1997, and even then, only 30 or 40 lawyers were accepted in the first year (Amnesty International 2002:15; McCourt 2009).

The Rwandan government was willing to accept international financial support in its efforts to reconstruct the judicial infrastructure and retrain personnel. However, it rejected offers to have foreigners directly involved in the judiciary, even temporarily, claiming it would be a breach of their sovereignty (Maganarella 2000:73; Prunier 2009:12). By September 1996, approximately 127 (of an original 147) canton courts, eleven (of an original twelve) courts of first instance, and all four courts of appeal were functioning, and trials began for non-genocide criminal and civil cases (Amnesty International 2002:12).

In August 1996 Rwanda passed a law that paved the way for prosecuting genocide suspects (Organic Law of 30/08/1996). The law did three main things that influenced all subsequent prosecutions. First, it officially recognized genocide crimes as an addendum to Rwanda's existing penal code and divided them into hierarchical categories (Organic Law of 30/08/1996, Article 2).<sup>28</sup> Category One included "planners, organizers, instigators, supervisors and leaders" and people with political authority, as well as people who committed acts of sexual torture. Category Two included "notorious murders," perpetrators, conspirators, or accomplices of intentional homicide or assault, and

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<sup>28</sup> Initially there were four categories of crimes but they were streamlined, basically combining Categories Two and Three to make a total of three.



Category Three included perpetrators of crimes against property. Second, the law provided for confessions and guilty pleas, and allowed for significant penalty reduction in return for confessions found to be detailed and true. For example, if someone confessed prior to prosecution for Category Two crimes, his sentence could be reduced from life imprisonment to between seven and eleven years in prison (Organic Law of 30/08/1996, Article 15-16). Punishment overall was lower than would have been in the standard penal code (Amnesty International 2002:13-14). Third, the law created specialized chambers of the courts of first instance to try suspects in Category One (Organic Law of 30/08/1996, Article 19-23).

Rwanda's national courts began trying lower level suspects in criminal cases in December 1996 (Reyntjens & Vandeginste 2005:108). Rwanda's national courts, developed during the colonial period, were based on the Belgian system. They followed civil law, with an inquisitorial system, in which judges gathered evidence and could question witnesses, and lawyers typically served as advisors (Joireman 2001:573-574). Cases were heard before a bench of three judges (Organic Law of 30/08/1996, Article 21). The government brought charges, represented by the prosecutor's office. While defendants could be represented by lawyers, though not at government expense (Organic Law of 30/08/1996, Article 36), in reality in the first year 56 percent had no legal representation (McCourt 2009:274).

In the first year, 105 trials were held for 332 accused people (McCourt 2009:274). The courts continued to make steady progress in the next five years, despite experiencing setbacks due often to funding problems (Amnesty International 2002:16). Conditions were not auspicious for most defendants; initially, most trials resulted in convictions, and

the death penalty. Early trials were criticized for being in violation of international standards and in early 1997, 30 to 43 percent of defendants were condemned to death and only 9 percent acquitted (McCourt 2009:278; Reyntjens & Vandeginste 2005:108). In April 1998, 22 convicts, some of whom had not had a defense lawyer, were publicly executed in stadiums before large crowds in Kigali and elsewhere around the country (Des Forges 1999:761; Maganarella 2000:80; Reyntjens & Vandeginste 2005).

In an effort to address the lack of defense lawyers, partly in response to international critique and with international donor funding, Rwanda established a Corps of Judicial Defenders in 1997, training people who had not been educated as professional lawyers and therefore did not meet the criteria to qualify for the Bar, but who were still granted rights of audience before a court (Amnesty International 2002:16; Maganarella 2000:77; McCourt 2009:275-276). They completed a six month training course and two month internship, then worked as interns for a year under a supervisor. The judicial defenders addressed a crucial need with so many cases pending, and from 2000 to 2005, they provided representation in 332 cases, representing over 4,000 accused and 15,000 civil parties (McCourt 2009:277).

By the end of 2003, the national courts had tried 9,721 cases (Reyntjens & Vandeginste 2005:109). Prison conditions improved over time. By early 2003, up to 40 percent of defendants had representation (Reyntjens & Vandeginste 2005:108). There was also a clear shift in sentencing over time, where by 2003, the death penalty was only given in 3 percent of the cases, life sentences in 15 percent and acquittal in 27 percent (McCourt 2009:278; Reyntjens & Vandeginste 2005:108).

At the same time, by the end of 2003, 70,000 genocide suspects awaited trial in state prisons (Reyntjens & Vandeginste 2005:110). Prison conditions slowly improved but remained poor. Critics argued that existing trials did not meet international fair trial standards, and that the government was interfering in the judiciary (Amnesty International 2002:14-16). The judicial apparatus was dominated by Tutsi, which created a perception of partiality in national prosecutions, where most defendants were Hutu (Amnesty International 2002:13; Reyntjens 2009:182). The RPF's army, the RPA, continued to arrest people, while their alleged war crimes went unaddressed (Reyntjens & Vandeginste 2005:111).

### **Inkiko Gacaca**

The government wanted to conduct trials to establish mass punitive accountability for the genocide, but everyone recognized that conventional trials for all the suspects would have taken hundreds of years (McCourt 2009; Reyntjens 2009). Further, the government feared that the detention of so many able-bodied men kept them out of productive employment, preventing them from helping rebuild the country. In the late 1990s, particularly after 1998, Rwandan authorities began talking about resurrecting and adapting a pre-colonial model for dispute resolution called *gacaca* as the answer to the weaknesses within the national courts.<sup>29</sup> Advocates noted that since 1995, administrators in some areas had been encouraging the settlement of local claims by survivors against perpetrators through an informal *gacaca* process, which typically took place before a community gathering (Des Forges 1999:761). The law formally instantiating *gacaca*

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<sup>29</sup> For an explanation of the creation of *gacaca*, see Clark 2010.

courts nationwide was promulgated in 2001 (Constitution of the Republic of Rwanda 2003, Article 143; Organic Law N.33/2001 of 22/06/2001). *Gacaca* courts would try Category Two and Category Three suspects, defined by the 1996 law, for murder and crimes against property, respectively.<sup>30</sup>

The idea behind *gacaca* was that suspects would be tried on-site at the location of their alleged crimes, before their neighbors, by a panel of locally-elected judges. There would be no lawyers and no separate prosecutor. The witnesses, victims, and general assembly brought charges, and prosecuted and questioned defendants. The defendant represented himself, with the help of supporting witnesses. *Gacaca* judges—called *inyangamugayo*, persons of integrity—were not legal professionals, but ordinary citizens who were elected by their neighbors specifically for the purpose of adjudicating the trials. They were unpaid. *Inyangamugayo* derived from the Kinyarwanda words *kwanga*, to hate, and *umugayo*, contempt or wrongdoing, so *inyagamugayo* were those who hated wrongdoing. They attended trainings after election, prior to taking office.

Participation by the general population in the *gacaca* process was compulsory. The goal was to create an open, egalitarian, non-adversarial space. On *gacaca* day, one day a week in each town, all businesses were required to be closed in order to allow people to participate. Cases were typically held outside, where there was room for the entire community to assemble.

*Gacaca* was a combination of punitive and restorative justice. It could sentence people to up to 30 years in prison, but it also emphasized reconciliation at its core.

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<sup>30</sup> In 2008 the law was modified to put Category One suspects into *gacaca* as well (Organic Law N.13/2008 of 19/05/2008).

Consistent with the 1996 law, the *gacaca* process was designed around the idea of reduced penalties in return for confessions. The goal was for defendants to confess to what they had done and to provide information about victims and other perpetrators, and in return, to receive a significantly lighter sentence. If judges accepted the defendant's sentence as honest and full, they could reduce his sentence by up to one-half, with the remaining time served doing community service work (*Travaux d'Intérêt Général*, T.I.G.). Time already served counted towards the imposed sentence. Most who confessed could therefore be released immediately.

*Gacaca* was mandated to deal with crimes committed from October 1, 1990 through December 31, 1994. This meant *gacaca* defined the criminal genocidal violence more broadly than the ICTR, by starting with the period when the RPF invaded Rwanda, which launched the civil war and prompted retaliatory attacks against civilian Tutsi. These earlier waves of attacks against Tutsi as well as the planning that occurred over three-and-a-half years were included before *gacaca*. One of the key challenges *gacaca* faced was to establish individual accountability for collective violence, which required careful codification of degrees of participation and complicity. (See discussion in Chapter 5.)

The *gacaca* process was under the control not of the Ministry of Justice but of a separate office called the National Service of *Gacaca* Jurisdictions. *Gacaca* courts were thus established in parallel with, and with equal authority to, the national court system. The *gacaca* system included three levels of courts: cell courts, sector courts, and appeals courts. Cases could not be referred to the ordinary courts, and defendants could not be tried for the same charges in ordinary courts as well as *gacaca*.

The *gacaca* process followed three stages: documentation, trials, and appeals. In the documentation stage, people came together to develop inventories of who had lived in the area during the genocide, who died, and who was accused. Dossiers were compiled on each individual, and the charges were organized based on the categories in the 1996 law. Category One defendants (leaders accused of planning the genocide, or anyone accused of rape) were referred to the national courts, though by 2008 the law was amended to include certain Category One offenses before *gacaca* (Organic Law N.13/2008 of 19/05/2008, Article 2). Observers noted that in most areas of the country, participation was high during the documentation phase (Clark 2010; Reyntjens & Vandeginste 2005:119). Many of the people for whom dossiers were compiled were already prisoners, while others were newly accused.

In the trial stage, trials were held based on the compiled dossiers. Category Two murder cases were tried at the sector level. Category Three cases regarding crimes against property were tried at the cell level. Trials took anywhere from a few hours to several days. Some cases were conducted against specific individuals, one dossier at a time, while sometimes judges chose to hear related cases simultaneously. Fugitive defendants were tried *in absentia*, on the premise that if and when they returned to the country, they would have the right to appeal. During trials, defendants spoke on their own behalf, and judges directed the questioning, with active input from victims, witnesses, and the general assembly. People who registered to testify as witnesses were required to wait out of hearing range and separated from one another until their turn to speak, in an effort to ensure integrity of their testimony. People registered as victims were allowed to sit

through the ongoing testimony, based on the premise that they could more accurately assess the accuracy of participants' claims.

In the final stage, dissatisfied defendants could request that their case be heard before the appeals court (Organic Law N.16/2004 of 19/6/2004, Articles 85-93). Cases were not automatically forwarded to appeal, rather, defendants had to demonstrate how the case had been wrongfully handled based on a substantive issue of law, or if they could prove bias among judges.<sup>31</sup> The assembly of *gacaca* judges for each sector decided on which cases warranted review, and they were heard by a separate panel of *gacaca* judges.

The *gacaca* process began gradually, rolling out across the country over a period of several years (e.g., Aghion 2002; 2004; 2009). During the early years, the government conducted intense sensitization campaigns to educate the population about *gacaca*'s goals and methods, visiting cell meetings and prisons regularly. In October 2001, people selected *inyangamugayo* in nationwide elections. A pilot phase began in 2002 with approximately 740 cells nationwide participating.<sup>32</sup>

Shortly thereafter, in January 2003, in an effort to address ongoing problems of prison overcrowding, Kagame issued a presidential directive on the provisional release of genocide suspects who confessed to their crimes and who already had served half of their expected sentences under *gacaca* law, including release of the ill, minors, and suspects over 70 years old (Clark 2010:102; Reyntjens & Vandeginste 2005:110). As a result, over 3,000 elderly and ill inmates were released immediately, and over 22,000 men and

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<sup>31</sup> *Gacaca* community meeting. February 15, 2008. Ndora.

<sup>32</sup> National Service of *Gacaca* Jurisdictions office. July 2008. Kigali.

women returned home after attending three months of *ingando* solidarity camp.<sup>33</sup> This early wave of returnees affected local dynamics and people's perceptions of the *gacaca* process in varying ways. Some saw it as an optimistic sign of the reconciliatory potential of *gacaca*, while others feared it increased instability, as victims were apprehensive about having confessed perpetrators suddenly back home, and released prisoners worried whether they would be accepted or face retaliations (Aghion 2004; Clark 2010:98-131).

Based on the pilot phase, modifications were made in the *gacaca* law in 2004, such as reducing the number of *inyangamugayo* on each panel and consolidating the number of levels of *gacaca* jurisdictions to streamline the process, and allowing rape victims to give evidence in closed session (Organic Law N.16/2004 of 19/6/2004). The official launch of *gacaca* activities nationwide followed quickly, in June 2004, including training *inyangamugayo* for the documentation phase.<sup>34</sup> The official launch of the documentation phase at the national level was in January of 2005 while the first actual genocide trials in the pilot sectors began in March 2005. July 2006 marked the beginning of trials at the national level in the remaining approximately 2,000 cells.

From the moment *gacaca* was offered as a possible solution for domestic trials, it was highly politicized, and attracted attention and controversy, even among the government members who implemented it (Clark 2010). Critics claimed that while there was supposed to be an equal balance between parties, the wider political environment and silencing of dissent meant that prosecution was favored while defendants were presumed guilty (Amnesty International 2002:25; Reyntjens & Vandeginste 2005:120). Low

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<sup>33</sup> By June 2003, 5770 were rearrested (Clark 2010:107).

<sup>34</sup> Information provided by officials at the National Service of *Gacaca* Jurisdictions office. July 2008. Kigali.



attendance and the fact that many people chose silence over testifying threatened to undermine its participatory premise (Longman 2006; Reyntjens & Vandeginste 2005; Waldorf 2006). Because crimes committed by the RPF during the temporal jurisdiction of *gacaca* were not addressed before *gacaca*, it faced the same accusations of delivering victor's justice as did the ICTR (Longman 2006; Waldorf 2006). As further evidence of bias, some pointed to how *gacaca* prioritized testimony by victims as more credible than that of witnesses. Because there were fewer victims who survived, and the acts were committed against them, *inyangamugayo* were instructed to accept that victims could be trusted even if there was no separate corroboration of their claims.<sup>35</sup> Many thought this was unfair, as they thought victims were likely to lie, whether out of trauma, desire for property, or simply desire for revenge. Some saw *gacaca* as an excessive penetration of the state into people's everyday lives, and another way for the RPF to consolidate power (Chakravarty 2009; Thomson & Nagy 2010; Waldorf 2006). Many feared *gacaca* increased ethnic cleavage, at least in the short term (Burnet 2010; Rettig 2008).

At the same time, *gacaca* succeeded in efficiently processing defendants and by October 2008, 85,000 genocide suspects returned to their own communities (Clark 2010:102). Many victims were able to locate the remains of family members, based on information in suspects' confessions, which led to exhumations and reburials. Many felt *gacaca* had the potential to make an important contribution to combat impunity and the search for reconciliation, and that it was a strong though imperfect solution to an impossible problem (Clark 2010; Longman 2006). While some critics claimed the *inyangamugayo* were insufficiently educated and trained to perform such complex and

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<sup>35</sup> Interview, *inyangamugayo*. December 3, 2007. Ndora.

important work (e.g., Amnesty International 2002; Waldorf 2006), there was recent precedent in Rwanda for using targeted, short-term training to bring ordinary citizens up to speed to participate in the legal system in the role of the judicial defenders in domestic trials. Further, legal systems around the globe used ordinary citizens in various ways to decide contested facts and determine sentencing, for example, jurors in the American system and panels with mixtures of lay judges and professional judges in the Czech Republic.<sup>36</sup> Similarly, while many resisted the idea that defendants would have no lawyers, at that time a third of people appearing before Rwanda's domestic courts were still not represented by attorneys, and in a much more hierarchical environment (McCourt 2009:278). Further, dynamics of *gacaca* varied across the country, particularly in terms of the quality and dedication of *inyangamugayo*, so specific problems were not necessarily indicative of totalizing institutional failures (Burnet 2010; Clark 2010).

### **Comite y'Abunzi**

At around the same time that the *gacaca* process was being launched, in 2004 the Rwandan legislature passed a law creating and implementing *comite y'abunzi*, or mediation committees. These community-level courts were created by an Organic Law as an obligatory first step for resolving civil and criminal disputes before locally-elected mediators at the cell level (Constitution of the Republic of Rwanda 2003, Article 159; Organic Law N.31/2006 of 14/08/2006). They were implemented based on the same principles of Rwanda's pre-colonial model for dispute resolution undergirding *gacaca*, intended to serve as ongoing forums for public, participatory, grassroots justice.

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<sup>36</sup> Interview, ICTR Judge Fremr. March 13, 2008. Arusha.

*Comite y'abunzi* had jurisdiction over civil and criminal cases whose value did not exceed Frw 3 million, including damage to land, livestock or property, theft, insult, or minor assault (Organic Law N.31/2006 of 14/08/2006, Articles 8,9). Cases over which *comite y'abunzi* had jurisdiction were required to be heard before *abunzi* before they could be filed in ordinary courts. The law provided for sessions to be presided over by a locally-elected panel of twelve mediators, three of whom were selected by the conflicting parties to decide any given case (Articles 4, 18). The mediators were called *abunzi*, Kinyarwanda for reconcilers, mediators, or people who bring others together. Some mediators had been *inyangamugayo*, and vice versa, though people could not hold both offices simultaneously. Like *inyangamugayo*, *abunzi* were also unpaid.

The premise behind *comite y'abunzi* was that mediators would resolve low-level disputes, primarily within families and among neighbors, through a forum that emphasized conciliation. Like *gacaca*, the process was designed to be non-adversarial and non-hierarchical. Cases were held publicly, and while lawyers were technically permitted, they were allowed only to “assist” the party, not to “represent or plead” for him or her (Organic Law N.31/2006 of 14/08/2006, Article 20). I never saw a lawyer involved in any way. Attendance was required only for the immediate parties to the case and summoned witnesses, but others could participate freely. Sessions I attended typically involved 20 to 50 people. Mediators aimed to find compromise solutions with which parties would voluntarily comply, though parties could also use local authorities to enforce mediated solutions. If either party to the case was not satisfied with the mediators’ verdict, he or she could, within 30 days of judgment, file a new case in the

lowest level of the ordinary courts, at the sector level (Organic Law N.31/2006 of 14/08/2006, Article 25, 26).

*Comite y'abunzi*, then, was not a separate system from the ordinary courts, as *gacaca* courts were. Rather, the Ministry of Justice was responsible for funding, policy, and planning, though *comite y'abunzi* was under the direct oversight of the Ministry of Local Government, Good Governance, Community Development, and Social Affairs. The Ministry of Justice simultaneously acknowledged *comite y'abunzi* as a compulsory legal system and referred to mediation committees as “judicial structures” (Munyaneza 2004), while also differentiating the system from formal law, claiming “*Abunzi* [was] not designed to be a first stop into formal justice but rather a community mediation / dispute determination service.”<sup>37</sup>

The *comite y'abunzi* process had a discontinuous start. It initially launched in 2004, with the first elections of *abunzi* in July (Munyaneza 2004). The new *abunzi* attended trainings after election, prior to beginning to hear cases. For parts of 2005 and 2006, *comite y'abunzi* proceedings were briefly put on hiatus as the law was revised. The new law was launched in August 2006, and proceedings began to start up again across the country. Mediators in both Ndora and Nyanza said they began regularly hearing cases in the beginning of 2007.

*Comite y'abunzi* was framed as having three main benefits, all consistent with the national decentralization policy (Ministry of Local Government 2008b:4). First, it would make justice more affordable and accessible, and increase efficiency of the court system

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<sup>37</sup> Ministry of Justice promotional materials. <http://www.minijust.gov.rw/spip.php?article23>. Accessed December 15, 2010.

overall by relieving the burden of small cases that clogged the sector-level courts.

Second, it would “empower Rwandans in decision-making,” by having them play a more active participatory role in resolving their own disputes (Munyaneza 2004). Further, it would promote reconciliation-focused justice.

Unlike *gacaca* courts, which attracted international attention and a vast response from critics and supporters alike, there was minimal reaction to *comite y’abunzi*. Most researchers working on *gacaca* had little knowledge or opinion about *comite y’abunzi*; even researchers at the National University for Rwanda claimed to have little systematic information about its pros and cons, partly because it had only recently begun, though one advocated for it as a strong idea in theory (Runyange 2003).<sup>38</sup>

### *Legal Aid Clinic*

The Faculty of Law at the National University of Rwanda in Butare launched a Legal Aid Clinic in 2001 against this backdrop of evolving legal institutions, including the rebuilding of existing court capacity, the launch of customary-style jurisdictions of *gacaca* and *comite y’abunzi*, and the overall decentralization process which sought to remove obstacles of cost, distance, and time and bring government services, including justice institutions, closer to the people. The clinic’s aim was to provide legal services to underserved populations who could not afford lawyers and had limited knowledge of their rights and the law. It was funded by international government donors and United Nations agencies (Havugiyaremye 2008).

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<sup>38</sup> Interview, Center for Conflict Management staff member. January 22, 2008. Butare.

The Legal Aid Clinic was staffed by several professors and a rotating group of approximately 20 students from the faculty of law. Students worked at the clinic as part of a mandatory third-year course aimed to combine theory and practice. The clinic met at a town multipurpose building adjacent to the university on Thursday afternoons from 2:00pm to 5:00pm year round. At least 100 clients came each week, rain or shine, and the staff would not leave until they finished intake and consultation for each client. Students and staff conducted follow-up work throughout the week, including visiting rural cell offices to talk to local authorities and involved parties, or visiting clients in prison. All of the clinic services were provided free of charge, and clients typically learned of the services through word of mouth.

Cases regularly included: contract disputes, paternal affiliation or child support, divorce, disputes over inheritance of land and other property, or concerns about criminal cases and prison issues. Many of the cases were appeals from *comite y'abunzi* or questions related to *gacaca*. Other cases addressed issues handled exclusively by the ordinary courts, such as insurance claims or employment disputes.

Students on the clinic staff did not provide direct representation for clients in court, but helped them understand their rights under the law, wrote legal briefs clients could use to represent themselves, helped them file claims in court, and advocated for them with government officials or other relevant parties. Clinic staff often offered mediation as a first solution, particularly in disputes among people with ongoing relationships such as intra-family disputes. The lecturers at the National University law school, who oversaw the clinic and the students' work, were admitted to the Bar and could represent cases as necessary.

The clinic staff also provided training to local authorities, typically with funding from international donors, in an effort to promote overall legal knowledge and capacity. For example, in 2008, in response to a request for a proposal from the Ministry of Justice, the Legal Aid Clinic staff were awarded a contract to conduct a nationwide training with local authorities on the proper execution of court judgments.<sup>39</sup> They hoped to provide future training with local authorities on the land law and succession law, and on the regulation of *comite y'abunzi*, in hopes of reducing procedural irregularities.<sup>40</sup>

The Legal Aid Clinic cases illustrated the ways that ordinary Rwandans increasingly had to interface with the law as a part of daily life and quotidian disputes, issues that previously would have been resolved in extra-judicial forums. Clients brought concerns related both to the increasing penetration of modern law and the reach of customary-style law. Often clients framed their claims in terms of a vague idea of rights, though this did not always dovetail with their actual legal rights. Through the Legal Aid Clinic interactions, staff and students trained clients in how to be legal citizens—for example, how to narrow and frame a complaint as a legitimate legal grievance, or how to marshal supporting evidence, particularly written documents. This happened at multiple levels in the Clinic, as faculty first trained students in these processes, and the students in turn shaped the clients.

In 2001, 52 cases were registered by the Legal Aid Clinic, while the yearly total of cases handled rose to 1,987 by 2008 (Kimenyi 2010). The Butare clinic was part of a nationwide Legal Aid Forum organized in 2006, which included other national and

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<sup>39</sup> Interview, Legal Aid Clinic director. June 3, 2008. Butare.

<sup>40</sup> Interview, Legal Aid Clinic director. June 3, 2008. Butare.

international non-governmental organizations that provided more targeted legal services, such as *Haguruka*, for women's and children's rights, *Avega*, which targeted genocide widows, and Liprodhor (*Ligue Rwandaise pour la promotion et la defense des droits de l'homme*), which focused on human rights violations. The Butare Legal Aid Clinic also provided the model for three subsequent university legal aid clinics which opened in 2006 and 2007, at Kigali Independent University campuses in Gisenyi and Kigali and at the Independent Institute of Lay Adventists of Kigali. The university legal aid clinics were distinct from the NGOs in serving a wide range of clients and cases. Overall, the Butare Legal Aid Clinic's approach was consistent with the government's efforts to increase people's knowledge of law and access to legal institutions, as part of decentralization, rebuilding the rule of law, and establishing peace and stability.

### ***Summary***

In the aftermath of genocide, several different legal institutions with distinct jurisdictions were created both to handle criminal responsibility for genocide, and to rebuild the rule of law and promote peaceful dispute resolution more efficiently. These systems involved a mixture of customary-style law and modern, Western-style law, informed by international principles of human rights. Across these solutions, the Rwandan government consistently asserted rights of national sovereignty to maintain oversight and control over the post-genocide legal system in the face of international involvement and critique.

Rwanda's contemporary legal environment is consistent with many other African (and other post-colonial) contexts in which systems of "tradition" or "customary law"



coexist alongside systems of Western-style law. It is crucial to recognize that *gacaca* and *abunzi* were both fully incorporated in the state-run legal system, not outside of it. With *gacaca*, the formalized customary law system operated in a parallel track with the Western-style courts, but with equal authority and legitimacy, and arguably with deeper impact on most people's lives. With *comite y'abunzi*, the formalized customary law system fed directly into the Western-style courts. Some critics avoid the term legal pluralism because it suggests a false autonomy between realms, rather than recognizing how customary law is often a tool of colonial or post-colonial state power (Chanock 1985:64; Mann & Roberts 1991; Moore 1986; Wilson 2001:123-127). While not suggesting that customary and Western-style law in Rwanda in the post-genocide period (or historically) were distinctly separate from one another, I brought attention here to the legal pluralism to underscore that there were multiple simultaneous systems in place that drew their authority from very different bases, as I discuss more in later chapters (see Chapters 4 and 7 in particular).

*Gacaca* and *abunzi* were similar in being community-level, decentralized, public participatory processes. This decentralization extended the impact of law, and therefore the state, into people's lives. With these ongoing legal developments, law penetrated increasingly deeply, whether through a paternity claim or succession of property among siblings. Particularly, the implementation of *gacaca* brought law more intimately into people's lives, as people were expected to attend weekly meetings which endured for several years. The process carried definitive judgments about innocence or guilt, with consequences for people's neighbors, friends, and family. At the same time, by

decentralizing, the state actually ceded some control of legal forums, allowing more freedom and independence into the process (see Chapter 7).

### **Post-Genocide Legal Overlaps and Cross-Fertilizations**

The legal forums described above were, on paper, clearly demarcated. But as examples in later chapters illustrate, dividing lines were in practice less clear amidst the overlaps and connections between the jurisdictions. In this section, I briefly discuss some of the ways people and information moved across institutional boundaries, and how the forums shaped one another.

The ICTR was separate from Rwanda's domestic courts. One did not feed into, or have authority over, the other. I do not devote detailed attention to the ICTR in this study because I focus instead of experiences of ordinary Rwandans with courts on their own soil. Yet the ICTR was intimately implicated in legal developments in Rwanda, and therefore needed to be recognized as a factor shaping the conditions under which Rwandans experienced "law," even in very localized, custom-based forms.

Overlaps between the ICTR and Rwandan law took many forms. For example, testimony from *gacaca* sessions and verdicts were routinely used before the ICTR, so Rwandan rules of evidence and testimony shaped convictions and exonerations in the international court, and by extension, influenced the development of international jurisprudence. In the opposite direction, the Rwandan courts aspired toward the standards of the ICTR, even as it served as a foil that Rwandan officials could criticize, as a drain on resources, inefficient, and distant from Rwanda.

The ICTR's influence on Rwandan law was both direct and indirect. For example, in April 2008, prosecutors from the ICTR came to Rwanda to train the entire Office of the Prosecutor General in how to write indictments (not limited to genocide cases), based on the idea that the accused had the right to know the charges against him.<sup>41</sup> This was a clear example of where international "best practice" was modeled and taught to Rwandan prosecutors in an effort to reform practice, even where it meant a dramatic shift in prosecutorial approach. This training, in which Rwandan prosecutors repeatedly questioned the principles behind the ICTR rules, revealed the friction between the universal principles and existing prosecutorial practices.

Many of Rwanda's legal reforms were conducted in hopes of convincing the ICTR and United Nations to transfer outstanding cases to Rwanda, as the mandate of the ICTR was set to expire. In 2003, Rwanda embarked on an ambitious series of judicial reforms aimed to align the national courts more clearly with international standards of fair trial and due process, and the nation abolished the death penalty in 2007.<sup>42</sup> In early 2008, the ICTR Office of the Prosecutor General submitted a motion to have the first specific case (the Munyakazi case) transferred to Rwanda. In the oral arguments in support of the transfer, representatives of the Rwandan government demonstrated a trend that on one hand, Rwanda was willing to compromise and comply with international norms of human rights, as part of their effort to be on par with other developed countries, but on the other hand, Rwandan authorities maintained the uniqueness of their situation and status by

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<sup>41</sup> Training at the Institute for Legal Policy and Development. April 2008. Nyanza.

<sup>42</sup> Prosecutor General Martin Ngoga. Oral arguments, Munyakazi case ICTR-97-36A. April 24, 2008. Arusha.

justifying their rights to design their own legal system.<sup>43</sup> The ICTR's three-judge panel ultimately rejected the motion to transfer the Munyakazi case based on a variety of concerns, including that Rwanda's courts still did not meet international standards, specifically that single judge panels were insufficient for determining issues of fact in a trial and that the political climate was not conducive to impartial trials (Prosecutor v. Yussuf Munyakazi 2008). The Munyakazi case thus illustrated ongoing tensions between national and international sovereignty over post-genocide legal issues.

There were also connections between *gacaca* courts and ordinary courts, in terms of case content and procedural style, despite jurisdictional separation. A brief example illustrates this overlap, from the perspective of people's lived experience with the legal forums, rather than from the framing legal documents. In October 2007, a *gacaca* judge named Rutaysire, who was the president of the *gacaca* appeals court in a town in the South province, was murdered. Nine suspects were arrested and charged with the murder, which prosecutors said was motivated by Rutaysire's unfavorable verdicts against the suspects in recent *gacaca* cases. On January 17, 2008, the suspects were tried together before the high court of Nyanza, which had jurisdiction for criminal murder cases.

While this case was heard before the ordinary courts, there were several continuities with the style of *gacaca* cases, particularly in terms of public access, proximity to the crimes, and reliance on oral testimony. The high court judge who heard the case chose, as was his right, to conduct the case not in the high court building in Nyanza, but on site at the location where the crime was committed (Organic Law N.7/2004 of 25/04/2004,

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<sup>43</sup> President of the Kigali Bar Association, Prosecutor General, and former two-term president of the Kigali Bar Association. Oral arguments, Munyakazi case ICTR-97-36A. April 24, 2008. Arusha.

Article 61). Hundreds of community members attended, sitting for hours on the same benches that were drawn together for weekly *gacaca* sessions. Though there was some physical evidence introduced—such as a bloody walking stick and jacket—most of the evidence presented was oral testimony about what people saw the defendants and victim doing, or what they had heard them saying. This was consistent with *gacaca* trials, which were dominated by oral testimony. While defendants had the right to counsel under the jurisdiction of the national Western-style court, only two hired an attorney, and that attorney did not dominate the proceedings. The pacing of the trial was similar to *gacaca* in that the trial was completed in one day, and involved mostly discussion by the defendants and witnesses, rather than complex legal wrangling. The judge returned to the village one month after the trial, to read the verdict and judgment before the public, as was standard in *gacaca*. Seven defendants were found guilty and faced a maximum sentence of life in prison, similar to the 30-year maximum before *gacaca*, while two were exonerated (Prosecution vs. Nyirakiromba et al 2008).

Thus, a case that was closely entangled with *gacaca* and genocide was tried in the Western-style courts yet still adhered to the central tenets of *gacaca*. In a further link between “ordinary” and “genocide-related” cases, the prosecutor contended that the murder was ethnically motivated, a product of “genocidal ideology,” and therefore an extension of genocide. The violent past permeated disputes in the present, and disputes overflowed institutional boundaries. Chapter 6 illustrates this further, showing how cases before *comite y’abunzi* stemmed directly from consequences of genocide.

Overall, there was cross fertilization between and among the seemingly differentiated legal institutions in post-genocide Rwanda. While there were differences between

forums, there were also continuities in people's lived experience that did not necessarily come to light through attention to the foundational legal documents. In the coming chapters, even as I separate discussion of *gacaca* from *comite y'abunzi*, for example, the legal institutions formed part of a shared context, as people moved among them, and as the forums influenced one another.

### **Historical and Comparative Background**

Rwanda's post-genocide legal responses both derived and deviated from legal developments in earlier periods. In this section, I provide an overview of law in Rwanda from the pre-colonial period through Independence, as well as a brief comparison with other African customary law systems, in order to bring into relief the continuities and disjunctures in post-genocide legal responses. Overall, across time, there was a combination of formal court or dispute resolution systems, linked with the king or the government, along with *ad hoc* systems used more locally. Further, there were deep roots to the customary reconciliation-based systems in both historic and comparative context. At the same time, like elsewhere in Africa, customary law in Rwanda cannot be understood as pure, unchanging tradition; rather, it evolved out of the interplay of Rwandan society and Belgian colonizers and continued to change under strategic state use in the post-colonial period (Chanock 1985; Colson 1974; Mann & Roberts 1991:4; Moore 1986; 2005:104; Nader 2002:60; Reyntjens 1985:151).

#### ***Pre-colonial and colonial periods***

During the pre-colonial period in Rwanda, the notion of law as an abstract, transcendent reference did not exist (De Lame 2005:90). As late as the eighteenth

century, there existed no codified law, no formal tribunals, and no structure for appealing judicial decisions (Vansina 2004:89-90). The *mwami* (king) and the queen mother settled disputes according to their own decisions, without a distinction between a judicial session and a general audience. Justice was typically swift, though not necessarily impartial. At lower levels, local lineages enjoyed relative autonomy and resolved many conflicts, such as those over land (Newbury 1978:20).

Sources seem to agree on a general view of *gacaca* during this time without specifying precisely when it came into being or differences across centuries pre-colonially (Amnesty International 2002:20-21; Clark 2010:52; Gasibirege 2002; Jones 2010:56; Reyntjens & Vandeginste 2005:118). *Gacaca* hearings were convened when conflicts arose within or between families over issues such as land rights, property damage, marital disputes or inheritance. They were presided over by elders or male heads of household, and based on shared social norms. The primary goal was to restore social order and create reconciliation by reintegrating the offender into the community after sanctioning the offender's violation of shared values and rules. Offenders appeared voluntarily, insofar as they were not compelled by the *mwami*. The elders could determine the sanction, without having to follow formal written rules set out by the *mwami*. Decisions were intended to represent a compromise between the individual interests of the participants and collective norms. Sanctions were enforced through social pressure.

Most authors writing about pre-colonial *gacaca* do not cite primary sources or historical material, so it is difficult to locate the historical roots of pre-colonial *gacaca* versus the ideas that circulate about it. As several Rwandan studies show, by the late

1990s and early 2000s, most Rwandans believed that *gacaca* was part of the Rwandan pre-colonial heritage, that in its original pre-colonial form, it contributed to rebuilding communities, and even helped eliminate hereditary hatreds (Gasibirege 2002; Runyange 2003).

By the end of the nineteenth century, under Rwabugiri, systems of dispute resolution altered. At the elite level of the king, the judiciary was part of the politics of violence of Rwabugiri's regime, where courtiers used accusations before the *mwami*'s court to eliminate their adversaries (Vansina 2004:185). More locally, Rwabugiri introduced new chiefs who took over many of the functions, such as resolution of land disputes, which had previously been performed by lineage heads (Newbury 1978:20). This reflected the increased penetration of the Rwandan state into local affairs even before the arrival of colonial leaders (Newbury 2001).

Under both Germans and Belgians, the colonial legal system was formalized, while indigenous jurisdictions maintained the right to judge civil and penal affairs based on custom. This created two categories of rules where written law applied to Europeans and indigenous custom applied to local people (Gahamanyi 2003:265). In principle, then, justice for Rwandans remained in the hands of the *mwami* and his chiefs (Reyntjens 1985:149). In reality, custom was only allowed where it did not contradict public order as defined by the colonizers (Reyntjens 1985:159), and Rwandan people were subject to both indigenous law and Belgian written law (Gahamanyi 2003; Reyntjens 1985:155).

In the 1920s, to supplement the *mwami*'s court in Nyanza, the *mwami* and Belgian administrators put in place fifteen indigenous tribunals, one in each territory, for which the *mwami*'s court served as a court of appeal (Reyntjens 1985:150-151). These



indigenous courts were seen as a success, processing 3,219 cases in 1929. Though initially the *mwami*'s court heard all civil and criminal complaints and could provide up to one month of penal sanctions, in 1929 the Belgian administration took away indigenous courts' rights to imprisonment, meaning they basically lost power over criminal issues, retaining only civil jurisdiction (Reyntjens 1985:152).

A decade later, between 1934 and 1937, the *mwami* (likely in interaction with the Belgian resident administrator) added a third hierarchical level to the indigenous court system, establishing tribunals of conciliation at the lowest administrative levels (Reyntjens 1985:152-153). That is, in the 1930s, like in the 2000s, the *mwami* decentralized dispute resolution to the most local level, with an emphasis on mandatory conciliation before litigation. These conciliation tribunals were intended to address minor disputes among Rwandans, and aimed to put parties in agreement before they went to litigate before indigenous tribunals (Reyntjens 1985:152). Cases could come before the first conciliation tribunal only if they had first been presented to the hill chief, who, along with two other notables, attempted to reconcile the parties. If the parties failed to reconcile before the hill chief and then before the conciliation tribunals, parties could take their litigation before the territorial tribunal, and then, if necessary, to the *mwami*'s court. The *mwami* maintained oversight over all levels of the customary courts, and could serve as a judge at any level of these courts, and could revise any judgments pronounced (Reyntjens 1985:152).

In 1943, in the first colonial legislation regarding indigenous justice, the Belgians formalized this three-tiered system of indigenous courts (Reyntjens 1985:149-160). Thus the hierarchy of customary law, which was in place in the decades leading up to

Independence, rigidified gradually over more than 20 years, in interplay between Rwandan chiefs and Belgians (Reyntjens 1985:149-160).

Overall, there is clear evidence that principles of reconciliation- and compromise-based legal processes visible in *gacaca* and *comite y'abunzi* existed in pre-colonial and colonial Rwanda, and that the institutional form altered over time. The efficiency logic of the 1920s and 1930s, and the unresolved relationships between mediation and “real” law, informal and formal systems, persisted in the post-genocide period. The *mwami* in 1937 was concerned that too many cases were coming before his court (Reyntjens 1985:1952), which mirrors the language of “unclog[ging] courtrooms” (Butamire 2010) behind contemporary *comite y'abunzi* and *gacaca*. Similarly, in the 1930s, the Belgians noted that it was improper to call the conciliation courts “tribunals” since they did not in fact settle litigation; this attempted differentiation between mediation versus “real” law was echoed in 2010 in the Rwandan Ministry of Justice’s differentiation between *comite y'abunzi*’s mediation approach as distinct from formal justice.<sup>44</sup> Further, the Belgian concern that they distrusted leaving criminal matters to the system of “palaver before the chiefs” (Reyntjens 1985:150) foreshadowed critiques in the 2000s about assigning issues as serious as “genocide, crimes against humanity and war crimes” to “local justice” through *gacaca* (e.g., Waldorf 2006:79).

It is equally clear that hierarchies and inequalities were endemic within the court systems in the colonial period. Both the customary and Belgian tribunals, as part of the system of dual colonialism, served primarily as instruments through which the ruling

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<sup>44</sup> Ministry of Justice website. <http://www.minijust.gov.rw/spip.php?article23>. Accessed December 15, 2010.

elites, appointed as judges and key personnel, retained privileges (Lemarchand 1970:75; Reyntjens 1985:155). Though patrons typically supported clients in lawsuits (Maquet 1961:30; 1970:118), as chiefs' powers increased, most people's opportunities for legal redress were heavily curtailed (Newbury 1980a:103-104). Many ordinary people felt that they had no real recourse to the courts, but rather were at the mercy of the chiefs, who could choose to take people's goods, force them off their land, or even threaten their lives (Newbury 1988:133, 143). Practically, ordinary people had little recourse to the *mwami*'s court of appeal, due to discouragingly long delays and arbitrary fees (Lemarchand 1970:76; Reyntjens 1985:150). For example, the *mwami*'s tribunal tried about 60 cases per year, and had a backlog of 900 untried cases by 1949 (Lemarchand 1970:76). Thus even while that customary and Western-style law coexisted beginning in the colonial period, they cannot be seen as fully autonomous but often operated in tandem, typically to the benefit of elites at the expense of ordinary rural inhabitants.

It is less clear precisely how the customary courts related to informal *gacaca* processes in this period. Were conciliation tribunals an attempt to formalize *ad hoc* *gacaca* proceedings, or did the systems continue to exist in parallel? Overall, the colonial period did not erase *gacaca* but weakened it, primarily by greatly reducing the authority of lineage heads, who were the key leaders of *gacaca* (Runyange 2003:54). Conventional wisdom suggests that *gacaca* continued to exist, but in a diluted form that varied by location (Amnesty International 2002; Clark 2010).

### *Independence*

After independence, the new government extended Belgian written law to apply to all Rwandans, so citizens were formally subject to “modern” law (Gahamanyi 2003:266). The judicial system was based on the Belgian/French model, as it remained in the post-genocide period (Gahamanyi 2003:269). Customary law was no longer part of the state system, though local systems of dispute resolution continued to exist and in some areas to flourish. *Gacaca* was in place as late as the 1980s, distinct from the formal system of law and not regulated by any codified legal texts as it would be in the post-genocide period, but not purely popular or traditional, as it was recognized and used by the state, via local authorities, to resolve community level disputes amicably (De Lame 2005:38; Reyntjens 1990; Runyange 2003:53).

*Gacaca* sessions occurring in Ndora in the 1980s, according to a study conducted by Reyntjens (1990), had many procedural and stylistic similarities to how *gacaca* and *comite y’abunzi* operated in Ndora in 2007 and 2008. Sessions occurred once a week and were well attended. There was little differentiation made between parties to the case, witnesses, and other participants, and everyone who had something to say could speak and influence the solutions. The disputing parties had the option of either voluntarily accepting the verdict and enforcing it, or not accepting it, at which point the participants would bring the case before the first instance tribunal. The people who presided—cell committee and the sector *conseilleur*—were elected officials without formal legal training, not professional judges or legal scholars. I discuss overlaps in more detail in Chapters 5 and 6 on *gacaca* courts and *comite y’abunzi*, respectively.

Under independent rule, while there was a written code of law that allegedly applied equally and was accessible to all, there was in practice unequal access to the legal system inherited from colonial rule and post-colonial developments (De Lame 2005:386). Local authorities often interpreted the law according to their own whims and arbitrarily imposed justice (De Lame 2005:65). In Rwanda, as in many other post-colonial contexts, the introduction of modern judicial institutions with professionalization and Westernization reduced access to justice for the majority of people (Reyntjens 1990:40-41). Further, there remained a perception, carried over from the colonial period, that the customary system was inferior to the Western-style one. For example, most educated people and wealthy merchants preferred to take their cases directly to the ordinary tribunals, rather than spend time with *gacaca* (Reyntjens 1990).

Overall, under the First and Second Republics after Independence, systems based on the principles of customary law continued to exist, not formalized but nonetheless intertwined with state law. Inequality in access and application of the law persisted.

### ***Comparison with other African pre-colonial and colonial legal systems***

The philosophy behind *gacaca* and *comite y'abunzi* was consistent with wider-reaching African systems of dispute resolution which emphasized reconciliation, unity, and compromise. Analyses of African adjudication often stressed that local courts in Africa, whether formal or moots, whether newly instituted by colonial administrators or continuous with a deep pre-colonial history, aimed to restore breaches in relationships among members in an ongoing community in order to restore equilibrium (Bohannon 1957; Colson 1974:73; Gluckman 1955b).

Similarities among African dispute resolution processes can be understood as both structural and cultural. Reconciliation-based systems are often found in small, face-to-face societies globally (Bohannan 1967b; Gulliver 1979; Nader & Todd 1978). At the same time, the reconciliation focus is consistent with how, as described across Africa over time, personhood is intimately linked to community, and individual health is intricately intertwined with communal well-being (Feierman & Janzen 1992; Honwana 2005; Taylor 1992:206). That is, dispute resolution builds from the idea of community first, rather than stemming from the Western logic of individual rights (Moore 1986:169).

This idea is often framed in terms of the concept of *ubuntu*, a Bantu word that refers to the idealized vision of the rural African community, based upon reciprocity, community cohesion, and solidarity (Wilson 2001:9). Famously in the 1990s, Archbishop Desmond Tutu, as head of South Africa's Truth and Reconciliation Commission, championed the idea of *ubuntu* as centrally linked to African principles of restorative justice, celebrating it as the principle by which people should set aside individual interests and needs for the sake of the nation (Battle 1997; Villa-Vicencio 2009). In Kinyarwanda, *ubuntu* carries a related meaning, signifying goodness or generosity, and shares the root of the word *umuntu* (plural *abantu*) meaning person/people, therefore linking the idea of humankind with the idea of generosity and connections to one another. The idea of *ubuntu* was present (if not as central as in South Africa) in discourse around *gacaca* courts and *comite y'abunzi*.

Anthropological literature in the twentieth century drew attention to this reconciliatory principle in stateless societies without formal law or courts in Africa. In an oft-cited example, Evans-Pritchard (1940) emphasized how feuds were resolved among

the Nuer based on principles of restorative justice and compromise, for example, through redistribution of cattle. Further, he described the role of an “institutionalized compromiser,” the leopard skin chief, who resolved disputes between lineages as voluntary participants—that is, without powers of coercion (Bohannon 1967a:53; Evans-Pritchard 1940:176; Gluckman 1955a:14). Other anthropologists working elsewhere in Africa in the 1950s and 1960s described the reconciliatory emphasis in dispute resolution within processes that relied heavily on ritual or mystical powers (Bohannon 1957; Warner 1967).

Several notable ethnographic examples emphasized a similar focus on unity and reconciliation within conflict resolution systems more clearly recognizable as legal processes, whether courts or moots. Gluckman (1955b) wrote that the judicial process among the Barotse was aimed at reconciliation, emphasizing unity and conciliation among not only the disputing parties but the wider network of participants. Bohannon (1957) described a similar set of processes before the Tiv’s *jir*, meaning both court and moot, which was used for “repairing *tar*,” a broad word for their territory and the associated social group. In a final example, Gibbs (1967) described a similar process among the Kpelle, but in an informal dispute resolution process he called a moot, which was *ad hoc*, presided over by a mediator with kin ties to participants, and emphasized harmony, well-being, consensus in the decision, and the unity of the group. Gibbs underscored that the voluntary aspect of Kpelle moots meant they were more reconciliatory than ordinary courts, which were inhibited by their coercive aspect, their use of sanctions, and their connections to political power.

These examples' emphasis on harmony to some degree reflect the structural-functional paradigm that influenced much of the scholars' work, specifically conducted under the context of colonial rule (see, for example, Comaroff & Roberts 1981). At the same time, these three examples were strongly reminiscent of the procedures in contemporary *gacaca* and *comite y'abunzi* in several key ways, linked to the reconciliatory goals. First, they had no lawyers, incorporated broad participation of the community and had minimal hierarchy among disputants, judges, witnesses, and other attendees, all consistent with a spirit of compromise rather than adversity. Second, they used wide rules of evidence, given that the issue at hand was understood as a breach of deeply embedded relationships and practices, rather than narrowly focused on a specific point of law. Finally, the processes explicitly and clearly articulated social norms in an effort to socialize litigants as well as other participants.

There is also a wide ethnographic literature detailing the deep history in Africa of systems for dealing with resolution of violent conflicts, particularly for coping with past violence in order to reintegrate combatants (Honwana 2005; Janzen 1992a; Nordstrom 1997; Ranger 1992; Reynolds 1990; Shaw 2007; Werbner 1991; 1995; Wilson 1992). These systems were not legal *per se* but were consistent with broader goals of reconciliation and restoring the social fabric. They show that African societies historically had systems to bring combatants and perpetrators back into their home villages, often using rituals to cleanse them from the violence, rather than exiling them in distant locations or prisons. *Gacaca* and *comite y'abunzi* bear links with these communal rituals of healing the past.



Overall, while it would be inaccurate to claim simplistically that *gacaca* or *comite y'abunzi* were unadulterated Rwandan or African traditions—since customary law developed in interplay with colonialism and cannot be understood as pure or static—there clearly were continuities between what was invoked as “customary” law in post-genocide *gacaca* and *comite y'abunzi*, and principles of dispute resolution, and the format of courts, in African culture and society more broadly.

### ***Summary***

Over the past century, there was a co-evolution of Western law and institutionalized customary law in Rwanda. Legal pluralism had at least a century-long history in Rwanda, and the customary and Western-style forms influenced one another. While there were deep roots to conciliation-based systems, customary law systems shifted profoundly during and after colonial rule, and Belgian administrators had a hand in formalizing the customary legal system, suggesting that it was not a purely autonomous realm any more than *gacaca* and *comite y'abunzi* were separate from state law in the post-genocide period. Further, there were continuing inequalities in access to law and justice in Rwanda over time.

Comparison with other African examples and stories about early *gacaca* underscores three key differences between them and contemporary *gacaca* and *comite y'abunzi*. Examples in the literature on Africa in particular emphasize a pre-existing communal unity, including participation in a shared culture and moral system (Gluckman 1955b; Warner 1967). This cannot be assumed to exist in post-genocide Rwanda. The norms themselves were in the process of being contested. People did not assume that the

institution had moral authority, or that they shared values. Rather the legal institutions were implemented in an effort to *create* that unity. As Reyntjens and Vandeginste said:

The main difference between the traditional and the new systems is probably the destruction of the social capital that underlies the traditional system. *Gacaca* is traditionally based on certain common values, norms of reciprocity, mutual trust, and coincidence. The war and genocide have considerably affected this crucial basis. Also, in many local settings, ten years after the fact the composition of the local population has fundamentally changed (Reyntjens & Vandeginste 2005:119).

Second, many of the classic ethnographic examples were in “stateless” societies, with multicentric power sources, or lineage-based organization, while contemporary Rwanda clearly had a powerful centralized state which implemented these legal institutions. The legal forums were not voluntary, but contained power of force and coercion which could impose sanctions, including lengthy prison sentences for *gacaca*. (I discuss the punitive elements of each in more detail in Chapter 4.)

Finally, the classic examples involved small-scale societies, where moots and courts emphasized resolving disputes between people who had ongoing, typically face-to-face relationships. In Rwanda, *gacaca* and *comite y’abunzi* were similarly implemented to restore relationships among people in intimate daily contact. At the same time, and equally importantly, they aimed to establish national community with imagined others who participants would never meet. (I discuss this in more detail in terms of citizenship and *gacaca* in Chapter 5.) These differences meant that customary law in post-genocide Rwanda perhaps resembled historic and comparative examples, but could not be assumed to operate in the same ways, with identical effects. Overall, it is important both to recognize the cultural and historic continuities in *gacaca* and *comite y’abunzi*, while also not uncritically seeing their current incarnation as naturally Rwandan.

## **International Trends in Transitional Justice**

Rwanda's post-genocide legal responses were situated within a global movement of transitional justice, in which societies used legal institutions, widely conceived, to bring about political change and promote peace in the wake of political violence, primarily by confronting the wrongs of past regimes (Hayner 2011; Hinton 2010; Roht-Arriaza & Mariezcurrena 2006; Shaw et al 2010; Teitel 2000; 2003). In this section, I give a brief overview of international transitional justice to provide the context against which the legal responses in post-genocide Rwanda were implemented. Overall, the Rwandan government's decision to use *gacaca*, a system prioritizing customary mediation while also emphasizing punishment, was a deliberate rebuke of international courts on the one hand, and amnesty-based truth commissions on the other hand. It precipitated a broader global shift towards valuing "the local" in transitional justice.

The first two sub-sections consider first criminal tribunals, then truth commissions. This separate treatment sidesteps chronology to discuss two parallel strands, and capture what were long seen as binary oppositions between truth versus punishment, restorative versus retributive justice. For decades, there appeared to be a tradeoff where societies could either establish the truth about what happened or punish people through criminal prosecutions, but not both. That is, Western-style prosecutorial trials were seen as inhibitors to truth, because defendants had incentives and rights to withhold information. As I discuss in the third sub-section, on contemporary complementary approaches, today, truth versus punishment, and reconciliation versus retribution, are no longer viewed as diametrically opposed, as seen in *gacaca* court's emphasis on confessions alongside prison time. *Gacaca* courts were often described as part prosecution mechanism, part

truth commission. Yet the tensions between these separate historical strands remain at the heart of *gacaca* and other transitional justice processes.

### ***Criminal tribunals***

The quintessential example of transitional justice was in 1945 when, against a backdrop of calls for execution or indefinite detainment of Nazi leaders, the victorious allies agreed to hold the Nuremberg trials to prosecute Nazi leaders. This established a historic precedent for reliance on rule of law following crimes against humanity. It also created precedent for prosecution and criminal accountability led primarily by the international community, rather than national governments (Teitel 2003). In subsequent years, trends in transitional justice shifted away from the Nuremberg model in two main ways: from international to national oversight (largely due to the Cold War's constraints on internationalism), and from prosecutions towards truth commissions, as I discuss in the next section (Hayner 1995). Where trials continued, such as in Eastern Europe in the post-Communist transition, they were nationally-driven.

In the 1990s, in the wake of the Bosnian war and the Rwandan genocide, the establishment of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) marked a return to the Nuremberg model, with internationally-led prosecutions. This time the courts were under the clear direction of the international community, via the United Nations, rather than simply the victors.

At the same time, the second half of the 1990s coincided with a broader international emphasis on the policing of crimes against humanity. For example, in 1998, after being

granted amnesty by Chile, former Chilean dictator Augusto Pinochet was arrested and detained in Britain for crimes against humanity committed in his own country, based on an indictment issued by a Spanish judge using the principle of universal jurisdiction. Though Pinochet ultimately died with no convictions, his detention marked a watershed in international law because of the cooperation of international states in pursuing and attempting to prosecute him, a former head of government, for crimes committed in his own country. This principle of universal jurisdiction enabled trials of Rwandan genocide suspects in France, Canada, Belgium, and Switzerland (Jones 2010:12).

It is also under the principle of universal jurisdiction that judges issued recent indictments against members of the RPF for atrocities committed during and after the genocide, though not against Kagame because he maintains head-of-state immunity under international legal principles (Tunks 2002). French Judge Jean Louis Bruguiere carried out an investigation into the shooting down of Habyarimana's plane and concluded in November 2006 that Kagame gave the orders to shoot. Bruguiere signed indictments against nine of Kagame's senior aides. In February 2008, Spanish judge Fernando Andreu indicted 40 current or former Rwandan military officers for several counts of genocide and human rights abuses as reprisal killings during and immediately after the genocide.

The ICTR and ICTY were the only *ad hoc* tribunals of their kind, created by the UN Security Council. Recognizing the expense and difficulties in creating separate *ad hoc* tribunals for each conflict situation, the International Criminal Court (ICC) was established by the Rome Statute in 1998 by a UN conference as a permanent international criminal tribunal. The Rome Statute is an international treaty, binding only on those

states which formally express their consent to be bound by its provisions. It entered into force on July 1, 2002, once 60 states had become parties. Today, 139 states have become parties.<sup>45</sup> The court, based in The Hague, Netherlands, is not a part of the United Nations but maintains a cooperative relationship with it. It has jurisdiction over genocide, crimes against humanity, and war crimes. It can only exercise jurisdiction if the accused is a national of a state that is party to the Rome Statute or otherwise accepting of its jurisdiction, or if the crime took place in a state party to the Rome Statute. The principle of “complementarity” provides that a case will not be referred to the ICC if it is being investigated or prosecuted in good faith by a State with jurisdiction (Burke-White 2005). The ICC requires voluntary compliance by member states to enforce indictments.

The international tribunals have had mixed results (Teitel 2008). Supporters of the ICC, ICTR, and ICTY argue that there is significant value in institutionalizing respect for rule of law and human rights principles, and creating a body of international criminal law that counters impunity and deters future atrocities (Birdsall 2007; Burke-White 2005; Maganarella 2000; Mose 2005). The ICTR established many significant contributions to international law specifically by creating jurisprudence about genocide (Mose 2005; Nsanzuwera 2005). It convicted dozens of high level government leaders, had the first conviction for genocide, affirmed rape as an international crime, and demonstrated that the principle of “command responsibility” (i.e., “someone else in a chain of command told me to do it”) could not exonerate perpetrators.

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<sup>45</sup>Coalition for the International Criminal Court website. <http://www.iccnw.org/?mod=romesignatures>. Accessed January 4, 2011.

Yet these institutions remain controversial. The ICTR and ICTY have been routinely criticized for being slow to deliver justice and too distanced from the populations who suffered, and therefore failing to aid the rebuilding of national legal infrastructure, and being only marginally effective, if at all, in contributing to national reconciliation (Fletcher & Weinstein 2002; McMahon & Forsythe 2008). ICC indictments raise thorny questions about international versus national sovereignty and have prompted concerns of neo-colonialism. Early indictments have all been against Africans (Uganda, DRC, Central African Republic, Sudan, and most recently Kenya and Libya), while, for example, the United States is not a signatory, and no American citizens have been indicted for their role in civilian attacks in Afghanistan or Iraq (Gettleman & Simons 2010). Others claim that international tribunals are ineffectual, absent international political will for enforcement (Rodman 2008). Still others claim the ICC even inhibits peace processes and justice. This was illustrated particularly clearly with the case of the violence in Northern Uganda, which was the first case referred to the ICC prosecutors. While ICC indictments arguably weakened support for the rebel group, the Lord's Resistance Army (LRA), and brought them to the table, they also made negotiations more difficult, because LRA leaders used the indictments as a bargaining chip, claiming they would not stop fighting until the indictments were lifted (Blumenson 2006; Worden 2008).

Overall, during the past two decades, the role of the international community in prosecuting crimes against humanity and genocide has raised concerns about national sovereignty. As in Rwanda, national governments expressed desire to be involved in, or retain control over, their own prosecutions. In response, by 2000, there was a shift

towards the creation of “hybrid” courts that mixed national and international involvement, oversight, and law (Dickinson 2003; Shraga 2005). For example, the Special Court of Sierra Leone was set up in 2002 jointly by the government of Sierra Leone and the United Nations. It was mandated to try those who committed serious violations of international humanitarian law and Sierra Leonean law since 1996. In 2003, in Cambodia, a negotiated treaty between the United Nations and the government of Cambodia created the Extraordinary Chambers in the Courts of Cambodia (ECCC). The ECCC was part of the domestic Cambodian court system, with jurisdiction to try members of the former Khmer Rouge of serious violations of Cambodian law and international humanitarian law. Both of these courts had a mixture of national and international judges, prosecutors, and investigators.

These hybrid courts reflected a shift away from unmitigated international policing, with a compromise on the need to address impunity with punishment but also to recognize national sovereignty, and to balance national with international law. The turn to hybrid courts also reflected questions about whether there were universal solutions in terms of transitional justice, versus how much the culture and particular circumstances of each context should be taken into account, as I discuss further below. Yet the idea of punishment in the wake of political violence remained central to many transitional justice advocates, widely understood as crucial to countering impunity to break cycles of violence. Rwanda’s emphasis on mass prosecutions for genocide was consistent with this mindset (Waldorf 2010:184).



### *Truth commissions*

Beginning in the 1970s, truth commissions became an alternative solution to coping with transition after political violence. The first truth commission was established in Uganda in 1974. Six more were created in the 1980s, thirteen more in the 1990s, and another 20 between the years 2000 and 2009, with the highest concentration in Africa and the Americas (Sikkink & Walling 2006:308-309).

Truth commissions were established as temporary bodies, operational for a discrete period of time, with rights to investigate specific time periods and types of violence. They aimed to paint a picture of a particular past violence, and to fight against silences in the historical record, using documents, investigations, and testimonials (Hayner 1995). Rather than foreground perpetrators and punishment, they put victims and their voices in the center, based on a Western, Judeo-Christian, largely psycho-analytic model of the centrality of speaking and talk-therapy for healing (Borneman 2002; Minow 1998; Shaw 2007). Victims gave wrenching testimony about their suffering, while perpetrators (ideally) gave detailed information about killings and disappearances. At the end of the process, results were typically published in multi-volume reports, such as the *Nunca Mas* (Never Again) report which detailed tortures, disappearances, and deaths in Argentina under military rule between 1976 and 1983. These reports, though typically highly politicized, were understood to contribute to solidifying the authoritative history of the violence.

Typically spearheaded by national governments, truth commissions generally emerged in contexts where the alleged perpetrators shared political power, and therefore compromise had to be reached, rather than clear victors designing prosecutions on their

own terms. Several were implemented in Latin America where, following democratization processes in Chile, Argentina, and Uruguay, military leaders who had perpetrated the violence still held significant political power, in which cases prosecutions were seen as impractical, or even as risking the provocation of further coups and violence, as in Argentina (Hayner 2011; Roht-Arriaza & Mariezcurrena 2006; Sikkink & Walling 2006). In another notable example, South Africa's Truth and Reconciliation Commission following the end of apartheid, from 1995 through 2003, came out of a negotiated settlement where ongoing involvement of the National Party in high positions of power basically precluded prosecutions (Ross 2003; Wilson 2001). From the beginning, truth commissions had an uneasy relationship with formal prosecutions, and were differentiated from formal legal accountability mechanisms. Sometimes information presented could lead to prosecutions, while at other times, truth commissions granted amnesties to perpetrators in return for their testimony about what had occurred (Hayner 1995:226).

Truth commissions have attracted widespread support and critique. Proponents claim that they are crucial to giving victims a voice and to correcting the historical record, and that they can contribute to individual as well as collective healing (Hayner 2011; Minow 1998). Critics note the ways truth commissions can silence and distort victims' voices through their institutionalized processes and lack of concrete reparations, and how they can overlook citizens' desire for retributive justice (Phelps 2004; Ross 2003; Wilson 2001). While initially most were directed by national governments, there has been increasing international involvement in recent years.

Given the RPF's clear victory and claim to power after the genocide, it is not surprising that they did not pursue a truth commission model. There was historical precedent for a truth commission in Rwanda, however, as one was established as part of the Arusha talks in 1992, to investigate human rights abuses in the period after the RPF invasion into Rwanda on October 1, 1990. This commission was unique at the time in being sponsored by non-governmental organizations domestically and internationally (Hayner 1995:242-244). The commission traveled to Rwanda for two weeks in 1993, in a visit that provoked additional government violence before and after. Their resulting report concentrated on documenting violence by government forces, while also including rebel-led (RPF) human rights abuses. The commission was planning a second investigative trip when the genocide broke out.

*Gacaca* contained many elements consistent with truth commissions, including the centrality of truth-telling as linked to promoting reconciliation. *Gacaca* put victims' narratives front and center, even among the judges (see Chapter 7), and allowed for a wider (though still limited) view of victimhood than circulated in other public spaces in Rwanda (see Chapter 5). While it did not offer amnesties, it had incentives of penalty reduction to encourage perpetrators to provide information.

### ***Contemporary complementary approaches***

The past 20 years have been marked by three trends in transitional justice: first, the joint, often contentious, role played by the international community versus national governments; second, the move to establishing multiple models simultaneously, often in efforts to balance obtaining truth versus prosecuting perpetrators (Roht-Arriaza &

Mariezcurrana 2006); and third, the move to valuing local culture over exclusively universal legal and human rights norms (Shaw et al 2010). These trends coincide with a paradigm shift in the kinds of wars and political transitions occurring at the turn of the millennium. Toward the end of the twentieth century, global politics was characterized on one hand, by persistent conflict, and on the other hand, by global discourse of justice through law and society (Teitel 2003). While earlier political transitions were from authoritarian to democratic regimes, after many bloody civil wars (often in Africa), rule of law had to be established more broadly and linked to the establishment of authority (Teitel 2008).

First, transitional judicial institutions implemented in the past decade all reflect interplay between national and international actors. Gone are the *ad hoc* United Nations tribunals of the 1990s, replaced by hybrid tribunals, and even while the ICC continues to issue indictments on behalf of the international community, they are often at the request of domestic actors (such as the request by the Ugandan government for indictments of the Lord's Resistance Army). At the same time, domestic courts and truth commissions have international involvement, whether from governments, funders, or international non-governmental organizations such as the International Center for Transitional Justice. Post-genocide Rwanda demonstrated the move away from exclusively international prosecutions toward acknowledgment of national sovereignty over how to prosecute in the wake of mass violence. *Gacaca* was a dramatic challenge to the internationally-driven prosecutions, a clear assertion of domestic authority to prosecute, based on Rwanda's own rules and guidelines that did not necessarily accord with universal legal and human rights standards. Even as *gacaca* courts were designed, implemented, and managed by

the Rwandan government, this was done with the financial and capacity-building support of international donors, and under the close scrutiny of international academics and human rights organizations. The balance of power between national and international law and control remains contentious, in contexts around the world.

Second, along with blending national and international oversight, recently countries have put in place multiple complementary institutions in an effort to achieve manifold simultaneous ends of countering impunity, rebuilding rule of law, and promoting reconciliation (Roht-Arriaza & Mariezcurrena 2006). This can be seen in the coexistence in Rwanda of the ICTR, domestic trials, and *gacaca* courts, which mix types and levels of involvement. In other examples, alongside the hybrid Special Court of Sierra Leone, for the first time, a Truth and Reconciliation Commission (TRC) was implemented in parallel (Shaw 2007). The Sierra Leonean TRC, established in 2002 and operational for eight months, was a national institution with international involvement through United Nations oversight and funding, but a much smaller budget than the Special Court. Similarly, in East Timor, to respond to the violence surrounding the 1999 referendum in which East Timorese voted for independence, a UN-backed hybrid court was set up (Special Panels for Serious Crimes), an *ad hoc* tribunal was established in Indonesia by the Indonesian government, and a Commission for Reception, Truth, and Reconciliation was set up in East Timor by the national government.

Finally, the resurgence of national control in the face of international norms, and the focus on multiple simultaneous solutions, led to a distinct valuation of local, culturally-derived solutions (Shaw et al 2010). Rwanda was basically unprecedented in choosing to pursue a strategy of maximal prosecutions but through a culturally-situated, locally-

derived mechanism. I discuss the Rwandan government's justification of *gacaca* and *comite y'abunzi* as "cultural" in more detail in Chapter 4. Similarly, in East Timor, local spiritual reconciliation practices were incorporated into the Commission for Reception, Truth, and Reconciliation, with varying degrees of success (Babo-Soares 2005; Burgess 2006). In Uganda, discussions were waged on how to formalize a traditional reconciliation ritual called *mato oput*, which was based on principles of accountability, forgiveness, and reparations, either in addition to or in lieu of the ICC indictments (Latigo 2008). Contemporary transitional justice debates continue to search for the right balance of universal principles versus specific cultural values, and to identify how legal norms can be "vernacularized" without diluting their fundamental value (Merry 2006a; Shaw et al 2010).

Overall, the creation of the ICTR, and the Rwandan government's subsequent decision to implement *gacaca*, alongside other efforts to rebuild rule of law such as through *comite y'abunzi*, reflected broader global trends in transitional justice. This brief overview showed how the decisions about what legal responses to put in place in post-genocide Rwanda did not occur in a vacuum, but rather were informed by vigorous ongoing debates about the role of law in post-conflict situations and the relationships between law, justice, punishment, and reconciliation. In Rwanda truth and punishment were seen as intertwined, justice was seen as crucially linked to peace, and the government prioritized adapting models to fit local norms, even if it risked undermining key universal principles.

## Conclusion

In this chapter I provided basic information on the legal institutions at the heart of this study—*gacaca* courts, *comite y'abunzi*, and the legal aid clinic, as well as domestic courts and the International Criminal Tribunal for Rwanda—which serve as background for the remaining ethnographic chapters. Clearly, the post-genocide legal responses were consistent with the framings of innocence and guilt in the master-narrative as discussed in Chapter 2, specifically in targeting mass prosecutions and confessions of primarily Hutu perpetrators, while avoiding prosecution of RPF attacks. Moreover, the multiple legal jurisdictions, while allegedly distinct, in fact overlapped in many ways in people's lived experiences.

Further, I showed that the post-genocide legal responses cannot be understood as isolated in time or space. Law in Rwanda, including “customary” law, was a mixture of Rwandan, African, colonial, and international systems and principles, across different time periods. There were clear roots of restorative justice in Rwanda and Africa more broadly, but these systems were heavily influenced by colonial and other international influences, such that their reemergence at the turn of the twenty-first century has to be understood as strategic and instrumental, not natural.

Rwanda has been at the center of transitional justice debates, alternately lauded and criticized for its use of *gacaca* in particular. Some see the turn to cultural traditions as a warped justification for ongoing inequalities and repression. Others see the use of culture and customary law to restore the social fabric as groundbreaking. Both the overarching condemnations and the facile valuation of the “local” and “cultural,” demand further ethnographic attention in the coming chapters.

In the next chapter, I turn to the mediation framework undergirding the post-genocide legal responses, to consider how people experienced the mixture of harmony and punishment.



## Chapter 4: Re-Mediation of Rwanda

### Introduction

How did the reconciliation discourse operate in the decentralized legal forums in Rwanda, which were the main way that ordinary people interfaced with courts and dealt with legal concerns? National policies and decentralization aimed to increase people's access to legal mechanisms, and did so based on principles emphasizing compromise and avoidance of adversarial disputing, which I call mediation discourse. It was justified as a cultural approach to resolving conflicts that had a long tradition in Rwandans' shared past, yet was formalized within a larger legal framework that emphasized punishment. This chapter explores the tensions that emerged by valorizing conciliation as the most desirable approach to resolving conflict, yet embedding it in a legal system that allowed people, for example, to appeal mediated decisions or forcibly execute judgments. I consider three grassroots legal institutions together—a criminal court with the state as plaintiff (*gacaca*), a primarily civil court with ordinary citizens as plaintiffs and defendants (*comite y'abunzi*), and an independent forum in which people sought and provided legal advice (legal aid clinic)—to show that the mediation discourse was not simply a part of the restorative justice aims of *gacaca* courts, but was also a part of enduring legal institutions and practices.

I begin by discussing specifically how I use the idea of mediation discourse and state-backed punishment, and how they were conveyed in legal institutions in general. I then turn to *gacaca* courts, *comite y'abunzi*, and the legal aid clinic, in turn, discussing how the punishment and mediation discourse were conveyed, with varying effects, in each

forum. Finally, I consider the mediation discourse in comparative perspective, which sheds light on how the government used it instrumentally, and with what effects. Overall, I illustrate here how the mediation discourse pervaded Rwanda's grassroots legal forums, and was experienced differently depending on how people were positioned. While it arguably contributed to restoring relationships in some instances, it actually increased social divisions in others.

### **Mediation Discourse and State-Backed Punishment**

In using the term “mediation discourse” across a diverse set of examples, I refer to the philosophy undergirding legal reforms in post-genocide Rwanda that whenever possible, disputes should be solved through compromise and reconciliation with the help of a third party. As one legal administrator described, “It would be better for the country if people could change their mindset to accept solutions built on unity and compromise rather than litigation.”<sup>46</sup> The decentralized legal services and courts were designed to bring participants together as joint problem-solvers to find mutually agreed solutions, rather than one side winning and the other side losing. This approach posited that by reasoning with one another, understanding the other side's position, and making sacrifices, people would come to more desirable and sustainable solutions than if they went to regular adversarial courts, which imposed top-down solutions.

What I am calling mediation discourse is consistent with what Laura Nader has extensively described as harmony ideology (Mattei & Nader 2008; Nader 1990; 2002).

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<sup>46</sup> Interview, legal administrator. June 3, 2008. Butare.

Harmony ideology typically advocates, or mandates, seemingly benign features of unity, consensus, and compliance. Nader explains:

The basic components of harmony ideology are the same everywhere: an emphasis on conciliation, recognition that resolution of conflict is inherently good and that its reverse—continued conflict or controversy—is bad or dysfunctional, a view of harmonious behavior as more civilized than disputing behavior, the belief that consensus is of greater survival value than controversy (Nader 1990:2).

I use the term mediation instead of harmony to focus on how the principles Nader described functioned within legal institutions in Rwanda, where a third party (lay judges, or legal aid clinic staff) served as mediators. Mediation and reconciliation are similar ideas, as I use them here, expressed in the Kinyarwanda word *kunga*, or its reflexive form, *kwiyunga*. *Kwiyunga* is the root of the word *abunzi*, which is translated into English as mediators; *comite y'abunzi* are mediation committees. Similarly, *kwiyunga* is at the root of the word *ubwiyunge*, which is translated into English as reconciliation. For example, the government's *Komisiyo y'Igihugu y'Ubumwe n'Ubwiyunge* is translated as the National Unity and Reconciliation (*ubwiyunge*) Commission. These concepts were used in connection and often interchangeably, reflecting the broader ethos of social harmony in the reconciliation discourse. Reconciliation typically referred to the outcome, with mediation the process of getting there with the help of a third party actor. As I illustrate, even while mediation was framed as inherently good and voluntary, sometimes it functioned as what might more accurately be called binding arbitration, in the sense of being imposed from above and demanding mandatory compliance (Gulliver 1979; Nader & Todd 1978).

Like Nader, I consider mediation discourse as a form of “cultural control,” drawing attention to the ways in which Rwandan leaders aimed to use it to reshape people's

fundamental orientation to social interactions by changing how they thought about and engaged in conflict resolution (Nader 2002:32). My use of the term discourse instead of ideology reflects a shift in emphasis away from wanting to unmask the ideology or show the arbitrariness of its naturalization, to instead exploring how power operated through the mediation discourse (Foucault 1978; 1982; see also Merry 1990). Attention to discourse highlights both language and practices, and how they structured thought and enacted realities. The mediation discourse operated not simply as political or economic control, but by shaping how people came to be constructed as subjects and citizens. It involved tension between constraint and voluntary action, in terms of how it structured people's field of possible action while requiring people to exercise choice (Foucault 1982:790; Rose 1999:4).

Rwandan authorities legitimized and justified the mediation discourse as cultural, where culture was understood as a set of traditional customs and values shared by a group of people linked to a given territory. This is consistent with how nationalist ideology in Africa has often celebrated the "Africanness" of customary law, as opposed to the foreignness of colonial law (Chanock 1985:24). Government authorities claimed that Rwandans historically had systems in place to resolve disputes, which were corrupted by colonial rule and corrupt post-independence governments. The Rwandan systems eschewed the winner-take-all basis of Western courts, instead using respected elders to solve specific disputes between individuals and families to maintain social cohesion and strengthen communal ties for the future. Authorities framed mediation in contemporary courts as a revival of this original Rwandan practice, which was best suited to solving Rwandan problems and rebuilding the social fabric. They appealed to parties' shared

Rwandan cultural identity, prioritizing national, communal, or familial obligations and collectively-supported decisions over individual rights (see also Wilson 2003:188).

In formalizing the mediation discourse within legal institutions, the government combined principles of unity, consensus, and compromise with state-backed punishment. The ability to forcibly implement judgments and apply punishments was what distinguished legally mediated decisions from informal, non-legal alternatives (e.g., Colson 1974:72). As one case participant articulated:

In the past, if a man or woman had problems, they would go see the priest. Today it is changing, people seek more the rigor of the law, because these courts have binding force. If you don't comply, then you are sanctioned for it. Going to a pastor, he will only advise you, you can either abide or decide not to. But in courts, there is administrative force.<sup>47</sup>

State-backed punishment was contained in the written laws instantiating the institutions, allowing for clear penalties according to specific guidelines. This included consequences that directly impacted people's daily survival, such as imprisonment, property seizure, or fines. The power to punish was also symbolically represented, through the physical presence of signs that indexed state power, such as the lay judges' sash or the presence of armed prison guards. The threat of punishment exerted both direct coercive power and more subtle cultural domination (Merry 1990:10).

One of the strongest, and perhaps most insidious, ways that the threat of punishment was conveyed through legal forums was by combining the cultural justification with state-backed authority, which presented the beliefs and values in the mediation discourse as compulsory. Many people felt that strident resistance to the mediation discourse risked conveying criminally divisive intentions. The presence of state laws criminalizing

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<sup>47</sup> Interview, Ndora resident. February 22, 2008. Ndora.

behaviors seen as contrary to mediation discourse, such as the genocide ideology law passed in 2008, served as a powerful suggestion that ideas of harmony and collective compromise were themselves mandatory. Given that mediation was presented as something natural to all Rwandans, then to reject overtures to “be mediated” (or to “be reconciled”) was to reject the unity and brotherhood of all Rwandans, and even to reject shared citizenship and the legitimacy of the state. People sometimes felt compelled, even coerced, to accept solutions based on communal harmony, such that individual rights were subordinated to collective cohesion (Gahamanyi 2003:267).

While the mediation discourse was intended to apply equally to all Rwandans, in practice, the institutions in which it dominated were used primarily by people who were less educated, poor, and who typically lived in rural areas. Educated Rwandans and urban dwellers, often the same people sensitizing the population into the mediation discourse, were more likely to bypass mediation attempts and move directly to the adversarial courts. Further, Rwandans did not experience the punitive dimensions of the mediation discourse uniformly; it varied depending on how they were positioned with respect to the state and its citizens. Overall, even as the public face of the grassroots legal institutions emphasized social harmony, they were not exclusively voluntary or gentle. I turn now to consider how the mediation discourse and state-backed punishment operated in each specific legal forum—*gacaca*, *comite y’abunzi*, and the legal aid clinic—in more detail.

### **Mediation Discourse and Punishment in *Gacaca* Courts**

The trial of an Ndora man named Alphonse was a quintessential example of how the mediation discourse was intended to prevail in *gacaca* Category Two murder cases.

Alphonse was 55-years old, educated through primary school, and recently converted to Seventh Day Adventist. A widower with six children, he was incarcerated in 1995 based on allegations of having participated in the massacres at Kabuye hill. He provided a written confession in 1998, during the government program of eliciting confessions, but was not part of the provisional release of prisoners. The charges against him included killing at Kabuye hill, in a church, and in a hospital, and being at a roadblock.

Alphonse confessed at length about what happened when he was taken by soldiers to Kabuye hill to kill Tutsi. He provided names of co-perpetrators, and described how and where several specific victims were killed. He described in detail looting houses, crops, and cows. Alphonse asked forgiveness for what he had done, but also underscored that he was following authorities' orders. He said that any charges against him to which he had not confessed were falsely concocted by prisoners against whom he had testified.

After his defense, eighteen witnesses and victims spoke in turn, providing additional information with regards to Alphonse's version of events. Their testimony moved quickly because they all asserted that Alphonse had already spoken about most of their allegations. Most participants said they appreciated he was forthcoming and sincere.

In the closing moments of his trial, Alphonse knelt down before the *inyangamugayo*, his bare knees pressing into the packed dirt. He clasped his hands behind his back and bowed his head towards his chest, choking back tears as he asked forgiveness of the judges, his neighbors, and all Rwandans. As Alphonse took his seat, he drew a tissue from his jacket pocket and wiped his eyes, while the prisoners on either side of him shifted uncomfortably, and looked away.<sup>48</sup>

The *inyangamugayo*, after deliberating, gave Alphonse a reduced sentence because they believed he confessed fully and spoke truthfully. He left prison within a week on time already served. In subsequent trials in the following months, the *inyangamugayo* repeatedly invoked Alphonse's name as a model for other defendants to follow. He

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<sup>48</sup> *Gacaca* session. December 2007. Ndora.

testified regularly from the general assembly, sometimes confirming defendants' versions of events, other times refuting them.



**Figure 6:** *Gacaca* session in Ndora (Author's photo).

Five months after his trial, Alphonse described what it was like returning home:

People reacted better than I expected them to. When I was first released, I thought some people would not talk to me, I thought I would have to isolate myself, that there would be places I could not go, people I could not embrace. I came and stayed at my house for two weeks. When my children would talk, I would caution them to keep their voices low. I would even draw the curtains and keep the radio volume low, so no one would know I was home. Then people came to visit, making noise and singing. They asked me why I wasn't coming out, and told me not to be afraid, to come and join the others. It's good so far.<sup>49</sup>

Alphonse's trial provided a compelling example of *gacaca*'s potential to help restore unity and harmony in the face of enormous obstacles. The process emphasized public involvement and direct interaction between victims and those accused. It hinged on compromises prioritizing the collective over the individual good, in the form of defendants receiving reduced penalty for confessions, and victims foregoing demands for harsher punishment in return for information about their loved ones. The mediation

<sup>49</sup> Interview, Alphonse. June 4, 2008. Ndora.



discourse was an explicit part of the framing rationale of *gacaca*, intended to “allow the population of the same Cell, the same Sector to work together” and therefore for *gacaca* to “become the basis of collaboration and unity.”<sup>50</sup>

In Alphonse’s case, because he internalized the mediation discourse and cooperated in his confession, the *inyangamugayo* played a comparatively minimal role. In other cases, *inyangamugayo* played a more active role directing conversations and lecturing participants (see Chapter 7). They regularly used language explicitly drawing on the mediation discourse, such as reminding people that “We need the truth in order to build unity and reconciliation.”<sup>51</sup> They urged people to make sacrifices, set aside grievances, and rebuild relationships. Most *inyangamugayo* did not limit their interactions to the evidentiary facts participants contributed to the proceedings, but also interceded to address broader social concerns, such as to resolve conflict between two victims who disagreed, or to counsel feuding witnesses to come to agreement. Many *inyangamugayo* made a point to draw in the general assembly and reason with participants, in hopes of having everyone buy into the rationale behind decisions. The processes they facilitated could help repair relationships, as in Alphonse’s case, resulting in a peaceful coexistence, or perhaps even reconciliation.

The way that *inyangamugayo* and Rwandan leaders emphasized the mediation discourse in Category Two murder cases came through equally clearly with respect to Category Three property cases. These cases proved particularly thorny to resolve because compromise involved redistribution of material goods, while most of the people who had

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<sup>50</sup> National Service of *Gacaca* Jurisdictions, <http://www.inkiko-gacaca.gov.rw>. Accessed February 2, 2011.

<sup>51</sup> *Gacaca* session. December 4, 2007. Nyanza.

looted more than a decade ago were too poor to repay items they had since consumed or lost. Authorities regularly lectured Rwandans on the ethos of compromise about property issues in a way that they hoped would help restore harmony. For example, Albert, a staff member of the National Service of *Gacaca* Jurisdictions, delivered the following comments at a community meeting in Ndora in December 2007:

In solving property problems, there should be understanding between all of you. Be considerate, come together, and give the real value of things that were destroyed. Usually in the normal courts, you would be held liable for interest. If you took a cow, now, thirteen years after genocide, the regular court would come and take a cow, two calves, milk, and add punitive and moral damages. *Gacaca* says only “give back what was destroyed,” if it was a pen, then give a pen, if it was a cow, then give a cow. So, the law is being lenient here, and people who don’t want to pay are creating unnecessary complications. If you are going to require force, it will be a problem. We ask you to work hard so that we can finish these cases. Let’s move to justice, and prepare a future for the next generation. People should come forward and ask for forgiveness. If someone comes forward and tells you his economic status and mode of payment, then you can understand. People need each other and therefore should find ways to pay and accept compromise. If someone owes you Frw500 and he gave you Frw200 and can’t afford the rest, know that he will find a way to help you later, like work for you, or take you to the hospital. I’m not saying he shouldn’t pay, but people can find compromises.<sup>52</sup>

Authorities explicitly emphasized collective cohesion over individual rights, and advocated mutual understanding, forgiveness, and unity. They juxtaposed *gacaca* and its emphasis on social harmony with the punitive emphasis of the Western court system by reminding people that *gacaca* rejected punitive damages or interest. They pushed people accused of looting to find creative ways to reimburse victims, even if they did not have the money to do so. They urged victims to be reasonable and to accept social support and cooperation in lieu of money.

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<sup>52</sup> Community meeting. December 6, 2007. Ndora.

The basis on which authorities and *inyangamugayo* urged Rwandans to accept the mediation discourse was that it was a part of their authentic cultural heritage. Educational materials, articles in the pro-government newspaper *The New Times*, radio broadcasts, and even promotional materials surrounding Rwanda's growing tourism industry described *gacaca* courts as "traditional community courts"<sup>53</sup> based on "the inspiration of the traditional context of conflict resolution"<sup>54</sup> (see also Clark 2010:135-136). They contended that as a part of Rwanda's past cultural traditions, *gacaca* was ideally suited to resolving the dilemmas of post-genocide justice and social repairs. As the National Service of *Gacaca* Jurisdictions proclaimed, *gacaca* was intended "to prove that the Rwandan society has the capacity to solve its own problems through a system of justice based on the Rwandan custom."<sup>55</sup> The emphasis on unity was twofold: Rwandans should embrace *gacaca* because they were unified by sharing the ancestral tradition, and in addition, by participating in the process itself, they would further restore harmony.

For all the emphasis on mediation discourse, *gacaca* courts were criminal courts in which the state brought charges against accused defendants, and punishment was central to its goals. In Category Two cases, *inyangamugayo* had authority to put defendants in prison for up to 30 years, to require them to do *T.I.G* (community service work), or, simply to allow them to return home. In Category Three property cases, *inyangamugayo* had authority to require defendants to repay victims with cash or in-kind goods, or to exonerate them of financial penalty. *Inyangamugayo* could bring charges against case participants for refusing to testify, for perjury, for blackmail, or for coercion (Organic

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<sup>53</sup> Government of Rwanda. <http://www.gov.rw>. Accessed February 2, 2011.

<sup>54</sup> National Service of *Gacaca* Jurisdictions. <http://www.inkiko-gacaca.gov.rw>. Accessed February 2, 2011.

<sup>55</sup> *ibid*

Law N.16/2004 of 19/6/2004, Articles 29,30). They could issue subpoenas to forcibly summon people to testify, and could arrest people who still resisted. Participation in *gacaca* was mandatory for all Rwandans, and local leaders stamped people's identity cards after each session as proof of attendance. Authorities regularly threatened to impose fines on individuals who did not attend. Police, prison guards, and even soldiers served as a constant physical reminder of the role of forceful retribution and incarceration. Even as people like Albert encouraged the mediation discourse and expressed an optimistic view of social harmony, they always kept the idea of punishment through forceful enforcement of judgments at the forefront of people's minds. Combining the culture-based rhetoric promoting *gacaca* with the strong state presence (conveyed by police, prison guards, soldiers, or administrative authorities) conveyed the message that anyone not supporting *gacaca* must be anti-Rwandan, or worse, a *genocidaire*.

While *gacaca* was framed as an egalitarian, nationwide process which unified all Rwandans through their universal participation in a shared tradition, in practice, most people experienced *gacaca* as being imposed on them by political elites who could enforce punishment (e.g., Burnet 2010:115). *Gacaca* had jurisdiction over lower-level perpetrators (meaning rural farmers), while the primary genocide planners (meaning people who had been in positions of authority, and were typically more educated and wealthy) were tried before the domestic courts or the ICTR. This jurisdictional distinction reinforced the existing split between elites and ordinary people.<sup>56</sup> The division was further symbolized and enacted by people like Albert who lectured rural residents on how

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<sup>56</sup> In late 2008, the government amended the *gacaca* law to widen *gacaca*'s jurisdiction to include many Category One suspects, which was controversial in large part because it overcame this split. People voiced concern that it would not work to bring well-educated planners before poorly-educated *inyangamugayo*.

they should accept the mediation discourse based on notions of traditional rural harmony, without having ever lived the rural life. National authorities such as Albert arrived in villages in gleaming white land-rovers, typically dressed in suits and dust-free dress shoes. They sat in chairs rather than on the grass, and expressed frustration when people thronged forward to ask questions rather than queuing in a single line.

The boundary between elites and ordinary people was not absolute in *gacaca*, since Kigali residents attended weekly *gacaca* sessions, and even members of the national government could be called before *gacaca* in high-profile cases. Yet, these instances reinforced, rather than overturned, the norm of the “two-tier” implementation of mediation discourse. In Kigali, many participants who saw themselves as modern and cosmopolitan felt infantilized at being forced to participate in a process that reeked of rural, backwards tradition. Urban residents who found themselves at the center of a *gacaca* case often found the shame of being associated with the genocide magnified by humiliation of being compelled to participate in something otherwise intended for peasants.

People experienced *gacaca*'s threat of punishment differently depending on their social position. For most Hutu who had been in Rwanda during the genocide, *gacaca* provoked apprehension, as they worried that it imposed collective guilt, and they feared being arbitrarily accused and falsely convicted (Thomson 2009; Waldorf 2006). Because of *inyangamugayo*'s wide latitude to bring charges against participants, many Hutu felt there was no way to engage with *gacaca* that did not make them vulnerable. When *inyangamugayo* detained a witness for providing false testimony, this served as a visible warning to others about the high stakes of lying, and promoted fear that people could be

arrested for what they did—or did not—say. Most Hutu attended and participated because they felt they had no choice, and feared reprisals if they did not. People who chose to avoid *gacaca* typically stayed home out of sight, and had to cope with the consequences of having an identity card that showed their lack of civic engagement, which could impede their access to social services and rights of citizenship. A few local leaders expressed their resistance to *gacaca* by clandestinely stamping some people's identity cards even if they were not present.

For Tutsi victims (*rescapés*), or repatriated Tutsi refugees (*repatriés*), the threat of punishment did not typically inspire fear. Most attended voluntarily, or chose not to attend, but were not punished for it. They were more likely to be publicly scolded than arrested if suspected of false testimony. Yet the idea of state-backed punishment was not absent from their experience of *gacaca*. Victims often felt they were coerced into forgiving perpetrators, or pressured to accept less than they were due in property cases, for the benefit of the community and the country. They often described this by saying that they were doubly victimized, first during the genocide, now through *gacaca*.

Overall, the combination of mediation discourse with punishment led to mixed results in *gacaca* courts. Though Alphonse's case was particularly harmonious—in terms of the scope and degree of forgiveness and remorse expressed by participants—there were many other cases where *inyangamugayo* effectively mediated between smaller dyads or groups, as I show more in subsequent chapters. Through its emphasis on the mediation discourse, the *gacaca* process succeeded in restoring non-antagonistic social relations in many situations.

At the same time, the pervasive threat of punishment was a crucial component of how people experienced *gacaca*, and in some cases this undermined the mediation discourse. Often, people came into the trials with polarized positions and left the process with those positions intact. Victims typically said that defendants' confessions were strategic and partial rather than genuine, and that they felt perpetrators were given sentences that were too lenient. Defendants claimed that victims treated them as scapegoats, asking them to accept full responsibility for all the killings while the real perpetrators had fled the country or died. Defendants' families felt victims did not understand how much they, too, suffered, trying to scrape by with no idea of when their husbands, father, or brothers, who had been detained in prison for five or ten years (or more), would return home. After the meeting with Albert about resolving property disputes, dozens of victims and perpetrators lined up for hours to raise questions and concerns about the unfairness of the process.

Clearly the intensity and ubiquity of the mediation discourse in the public sphere did not mirror its acceptance among the population at large. Most Hutu perceived *gacaca* overall as politically divisive, not unifying, because of the one-sided, coercive way it was implemented (Burnet 2010; Reyntjens & Vandeginste 2005; Thomson & Nagy 2010; Waldorf 2006). People shaped their social relationships through participation in the *gacaca* process, but as often in ways that were divisive as harmonious, as I discuss further in Chapter 5.

### **Mediation Discourse and Punishment in *Comite y'Abunzi***

The law instantiating the mediation committees explicitly acknowledged the mediation discourse, stating that *comite y'abunzi* were developed to "provid[e] a

framework of obligatory mediation,” where mediators would “seek first to conciliate the two parties” (Organic Law N.31/2006 of 14/08/2006, Articles 3,20). An example of a *comite y’abunzi* case in Ndora shows how this occurred in practice. A woman named Joselyne filed a case against a neighbor named Beata for defamation and an unpaid fine. The women had previously taken their dispute to a local women’s committee, which reprimanded Beata and told her to pay a Frw3000 (US \$6) fine. Unable to pay, Beata agreed to farm for Joselyne, and spent one afternoon fetching water and tilling Joselyne’s garden. Beata did not go again, claiming it was too much hardship after her child fell sick, especially since her husband was doing twice-weekly *T.I.G* as part of his *gacaca* sentence. Joselyne felt the debt had not been paid and filed a case with *comite y’abunzi*. The *abunzi* summoned Beata repeatedly before she finally attended. During the case discussion, the *abunzi* concluded that because Beata already accepted guilt for Joselyne’s defamation accusation, the issue at stake was the unpaid fine.

The president of the mediators proposed that Beata should simply pay the fine imposed by the women’s committee. Beata agreed. Joselyne repeatedly rejected this solution. She complained it was unfair that Beata had been so insulting to her, and then showed more contempt by repeatedly refusing to pay, and most recently by not responding to the *abunzi* summons, which wasted Joselyne’s time and prevented her from farming. She wanted Beata to have to pay more than the original fine. She added explicitly, “I do not want to forgive Beata. I want you to punish her.”

The mediators reasoned with Joselyne, explaining repeatedly that their job was not to punish, but to mediate and reconcile. One reminded Joselyne that if she was not content with their decision, she could appeal it. Another tried to convince Joselyne of the benefits of Beata’s willingness to farm for her. Another mediator likened Joselyne to a parent, noting that if an errant child does something wrong, the parent punishes, but then ultimately forgives her. Joselyne kept reiterating that Beata should be punished. After an hour of discussion, the *abunzi* concluded the case hearing, saying they would issue a verdict the following week after



deliberating. Joselyne departed without looking at Beata, who waited a few minutes, then left, taking the opposite direction.<sup>57</sup>

As the example showed, *comite y'abunzi*'s procedures were designed to enable the elected mediators to reason with the parties to the conflict—and with others implicated, whether family or neighbors—so that everyone could together come to a voluntary solution that would end feelings of animosity and provide closure to the dispute at hand. They appealed to common sense rather than legal rules, and tried to solve the case without escalating, typically avoiding punitive damages even when plaintiffs like Joselyne specifically requested them. They asked frequent questions, explained their ongoing interpretation of the case, raised counter-examples, described similar situations they had been in or witnessed, and suggested possible compromise resolutions. They emphasized unity over individual desires, asking people to understand the other's position and make sacrifices in the interest of collective harmony. Here, even though the *abunzi* were critical of Beata during much of the case discussion, they nonetheless pushed Joselyne to forgive her.

Rwandan leaders justified and legitimized *comite y'abunzi* as being part of Rwandan cultural practices, as they did with *gacaca*, suggesting people should accept the process because it was part of their natural cultural heritage. Authorities described *abunzi* alongside *gacaca* as a “home-grown reconciliation approach.”<sup>58</sup> Ndayisaba, a mediator in Ndora, described the approved narrative about *comite y'abunzi* and *gacaca*'s roles in Rwanda's past, and how they linked to development in the present:

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<sup>57</sup> *Comite y'abunzi* session. May 2008. Ndora.

<sup>58</sup> See, for example, National Unity and Reconciliation Commission, <http://www.nurc.gov.rw>. Accessed January 30, 2011.

When I was born in 1928, *gacaca* and *abunzi* were in place as the only judicial system. The goal of these institutions in the past was to unite and to reconcile people. They gave messages of love, coming together, socializing. In the past, there were not any of the current kind of regular courts; those only came with the colonial rule of the Belgians. There were the king's courts, but even those were just a last resort in the hierarchy beginning with *gacaca* and *abunzi*. It was the duty of *abunzi* to follow up and make sure the two parties reconciled. People used to bring beer to share, or exchange cows, or even intermarry, and these exchanges created strong bonds. *Gacaca* and *abunzi* now are pillars for development. You must have judicial systems like that in place to reconcile and develop.<sup>59</sup>

Ndayisaba took our conversation as an opportunity to educate me and my Rwandan research assistant about the history and benefits of these institutions. The interview itself thus reflected the goals of decentralization and government-through-community, showing how *abunzi* themselves internalized the mediation discourse and propagated it to others.



**Figure 7:** *Abunzi* in Ndora (Author's photo).

The emphasis on cultural practices was explicitly written into the *comite y'abunzi* law, which drew a distinction between culture (custom) and law, emphasizing culture as

<sup>59</sup> Interview, Ndayisaba. January 25, 2007. Ndora.

more desirable. *Abunzi* judgments had to be consistent with, though not dictated by, formal law. In the event of “non-conciliation,” the mediators should make a decision “in all honesty and in accordance with the laws and *place’s customs*, provided it is not contrary to the written law” (Organic Law N.31/2006 of 14/08/2006, Article 21, my emphasis). (I discuss the implications of this more fully in Chapter 6.) Because of the emphasis on culture, *abunzi’s* local knowledge was privileged over objective knowledge of legal procedures. For example, Ndayisaba said he was selected not only because people knew that he would be impartial and consider evidence carefully, but because they valued that given his age, he was “familiar with the culture” and “knew how things were done in the past.”

Alongside the emphasis on mediation discourse, the threat of binding state-backed punishment was written into the law instantiating the mediation committees. When the guilty party “does not conform to the decision of the Mediation Committee or shows a delay in the execution, *the victim may seize the Judicial Police for pursuing his or her case*” (Organic Law N.31/2006 of 14/08/2006, Article 24, my emphasis). “Forced execution” (i.e., enforcement) could be carried out if anyone obstructed implementation (Organic Law N.31/2006 of 14/08/2006, Article 24). Based on *comite y’abunzi* judgments, authorities could seize land, livestock, crops, and other personal property.

The threat of state-backed punishment was crucial to why plaintiffs brought their cases to *abunzi*. People like Joselyne often filed cases with *comite y’abunzi* not because they wanted help repairing their social relationships, but because they hoped a third party authority would compel their adversary to do something (see also Merry 1990:17). When one side resisted complying with an *abunzi* settlement, the other side typically demanded

help enforcing the judgment rather than trying to come to a new compromise. People often only participated because they felt they had to, and they protested losing land or property in judgments.



**Figure 8:** Parties await the start of *comite y'abunzi* proceedings (Author's photo).

The mediation discourse combined with the warning of formal punishment could make people feel coerced into judgments they did not support, or which they felt were legally invalid. This effect was particularly strong in regards to land disputes, which were a key source of tension and made up the vast majority of disputes before *comite y'abunzi* (see Chapter 6). In a typical example, a man from Ruhengeri described to me that he recently purchased land in the north of the country, but then a family of *repatriés* returned and claimed that the land was in fact their great-grandfather's, though they had no documentation or other proof. He said, "You are asked to give up land that you have purchased. You need to do so because there is an understanding that you are supposed to,

for the benefit of the country. And the local authorities are on the side of the people making the claim. You just have to say okay. You don't have a choice."<sup>60</sup>

Though *comite y'abunzi* was intended to exist nationwide, in practice, it was unevenly implemented, primarily used for farmers and land disputes. *Comite y'abunzi* sessions occurred most regularly in rural communities across Rwanda, and less so in larger towns and cities. While mediators met regularly in Ndora, I went to Nyanza for planned *comite y'abunzi* sessions for months only to find they had been cancelled or postponed for a variety of reasons. Educated elites in Kigali and Butare told me they were skeptical about *comite y'abunzi*. If someone stole their car, for example, they were much more inclined to use the police and lawyers to solve disputes in courts, and used *comite y'abunzi* only as a last resort.<sup>61</sup> This reinforced the broader practice, noted earlier, where systems based on mediation discourse were used for rural and less-educated people, while systems based on Western law were used for urban political and economic elites, reinforcing class divisions.

The threat of punishment behind *abunzi* was conveyed less pervasively than in *gacaca*, and people perceived there to be a relatively loose linkage between *abunzi* and the state. Sessions were markedly more relaxed than *gacaca* sessions. There was no police presence at *comite y'abunzi* sessions, no weapons, no prison uniforms, and no public examples of detaining citizens. Defendants and key witnesses often ignored summons multiple times, with impunity. People who disagreed with the *comite y'abunzi* judgment regularly stalled before complying, typically because they elicited few

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<sup>60</sup> Interview, Ruhengeri resident. May 5, 2008. Butare.

<sup>61</sup> Interview, *umwunzi*. May 9, 2008. Nyanza.

sanctions in doing so. The government seemed to relegate enforcement of *comite y'abunzi* regulations to a low priority status, particularly as compared with *gacaca*. Individuals, not the state, served as plaintiff, so *comite y'abunzi* was not seen as targeting one group for criminal prosecution, which meant it invoked less overarching fear.

On the surface, the *comite y'abunzi* process seemed to work. A local authority in Ndora estimated that 70 percent of cases closed at the *comite y'abunzi* level, which was consistent with the Ministry of Justice's claim that mediation should, and did, work to resolve local disputes.<sup>62</sup> Even if Beata and Joselyne did not become friends as a result of the mediation, conflict did not escalate further between them. In other cases, similar *abunzi* verdicts successfully halted rising tensions or even restored civility among participants.

Yet, we cannot understand the existence of mediated judgments, or people's compliance to them, as transparently reflecting restored relationships. While walking around Ndora, participants whose cases I attended would routinely stop me to complain about verdicts that had gone against them. Even if they did not ultimately contest the judgment, people publically expressed dissatisfaction and claimed the process was not fair. Often people did not escalate to ordinary courts either because they did not have faith in the system, or simply because they missed the deadline to do so. There were clear disjunctions between the desires of participants and the socializing goals of the institution, such that the resulting impacts on social relationships took a variety of forms, as I discuss more in subsequent chapters.

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<sup>62</sup> Interview, Chargé d'Etat Civil. July 7, 2008. Ndora. In addition, the Ministry of Justice estimated that 73% of cases were not referred to ordinary courts, based on research conducted in two sectors during a trial phase in 2004/2005. See Ministry of Justice. <http://www.minijust.gov.rw>. Accessed August 12, 2010.

### **Mediation Discourse and Punishment in the Legal Aid Clinic**

The mediation discourse was perhaps most readily recognized and explicit in *gacaca* and *comite y'abunzi*. The legal aid clinic at the National University of Rwanda, on the other hand, was not directly linked to the government's decentralization plan, and was explicitly modeled not on restorative justice principles and customary law, which emphasized the collective, but on universal human rights discourses which emphasized the individual (Goodale 2009). Its goal was to "promote human rights," specifically to "help the population know their rights, claim them and to facilitate them to easily access justice" (Havugiyaremye 2008). It was a surprise to me, therefore, to find that the mediation discourse was pervasive in how the staff members carried out this mission.

Based on my observations over a twelve-month period, clients who typically came to the legal aid clinic for help either filing a case against someone or defending themselves against a claim were more likely to end up participating in a mediation than being directed to the ordinary Western-style courts. Whether it was a divorce, land dispute, breach of contract, or insurance claim, staff would usually begin by getting the details of the complaint, then would try to bring the parties together—either on-site at the clinic or visiting the parties where they lived—to work out their differences, sitting with them for hours over repeated visits. As the head of the legal aid clinic described, "Very often clients are advised about the option of mediation and when both parties agree with the idea then it is the privilege of the legal clinic to re-establish the broken social fabric" (Havugiyaremye 2008). Some staff described the work they did as "social work," as much as giving legal advice.

Supervising faculty explicitly taught the law students who worked at the clinic about the importance of the mediation approach. They claimed it produced better outcomes for clients—saving them time and money, as compared to the ordinary courts. Mediation would help most of them achieve a better final solution than if they (typically poor, semi-literate farmers) tried to negotiate the often winner-take-all, adversarial legal system on their own, without legal representation, especially against more powerful opponents. They saw the conventional courts as a last resort.



**Figure 9:** Legal aid clinic staff consulting with clients (Author's photo).

Consider the case of Antoinette, a middle-aged woman seeking a divorce from her husband, Patrice, on the grounds of adultery. She claimed he cheated on her after they fled to the DRC after the genocide, and also after they returned to Rwanda. The students advised Antoinette that she fulfilled the conditions for filing for divorce, but they thought it would be best not to rush into court, but rather to try mediation.

When Antoinette returned to the clinic for the second week, she brought letters from Patrice in which he admitted his adultery and asked her forgiveness. With this written proof in hand, the students nonetheless reiterated that they wanted to bring her together with Patrice for mediation. Antoinette repeatedly explained that it would not make a difference. She had already forgiven him several times, and yet he



continued to lie to her and cheat, so she would not forgive him again. The students continued reasoning with her, telling her to visit Patrice in prison and give him another chance. She said she had made a decision to get a divorce, and that they would not be able to convince her to change her mind. They asked if she had taken the problem to other non-legal avenues, like family or her church. Antoinette said yes, but that none of them would help her end her marriage, which is why she came to the clinic.

David, the clinic director, eventually joined the discussion. He too advocated mediation. He chided Antoinette that she and Patrice should stay together for the benefit of their four children. Antoinette continued to push back against David's exhortations, and David lectured her more and more assertively about the need to maintain a strong family and support her husband. After over an hour, Antoinette finally agreed to go to the prison with someone from the clinic for an attempted mediation with Patrice.<sup>63</sup>

This example shows how, pursuant to the mediation discourse, the clinic staff aimed to restore the social relationship and avoid going to court, even while participants were not always open to the idea of mediation. The clinic staff in this example focused on saving the marriage, emphasizing the social importance of the stable family unit over Antoinette's particular desires. David explained to me in an aside that he thought the real issue motivating Antoinette was not Patrice's infidelity, but shame that she was associated with a *genocidaire*, along with a desire to protect her children's inheritance over that of the illegitimate children. He maintained that it was better for all the children for the couple to stay together—that is, he emphasized the collective interests of the greater family unit over the individual interests of Antoinette and her own children. He was confident that once Antoinette went to the prison and saw the man she had been with for 21 years, and saw his current situation, then she would be open to his apology.

In intra-family disputes like Antoinette and Patrice's, where people had pre-existing intimate relationships, mediation was virtually always a first step. The legal aid clinic

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<sup>63</sup> Legal Aid Clinic case. May 15, 2008. Butare.

staff also conducted mediations among non-family members, for example, between individuals and local authorities or between colleagues, such as in the following example:

A man named Louis came to the legal aid clinic for help filing a case against the nuns at a Catholic health center where he had worked as a watchman, claiming he did not receive severance pay when his contract was terminated a few months previously. David told Louis that they would start with mediation to try to figure out the problem, rather than immediately filing a case. A week later, David sat down with Louis and the two nuns. The nuns explained to David that the reason they fired Louis was because he stole several blankets. Louis told David that there was no proof he stole anything because they never notified the police, and therefore the nuns owed him the remaining months of payment due in his contract. The discussion took about an hour. Ultimately, the parties agreed that Louis should apologize and the nuns would repay two months' salary to Louis. They all reiterated that they preferred to solve the issue amongst themselves, without interference from the police.<sup>64</sup>

This was a typical case where the clinic staff mediated a solution that did not escalate the charges but solved them to the satisfaction of both parties. The parties complied voluntarily with the solution. This case in fact fell under the jurisdiction of *comite y'abunzi*, as a breach of contract less than Frw100,000 (US \$200) (Organic Law N.31/2006 of 14/08/2006, Article 8), showing the overlap between the legal aid clinic and the mediation committees in everyday practice.

Even though the primary legitimacy of the legal aid clinic was rooted in universal legal principles and rights to justice, the legal aid clinic staff used the idea of participants' pre-existing shared culture to justify the basis for unity and compromise in the mediation discourse. Staff routinely talked to clients about Rwandan customs and norms, saying that in "our" culture, they were supposed to act in certain ways depending on their social position. Marriages should stay together, men should accept paternity, and families should not seek to benefit financially at the expense of extended kin because of how

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<sup>64</sup> Legal Aid Clinic case. January 29, 2008. Butare.

Rwandans valued “strong family ties” (Havugiyaremye 2008). Neighbors should forgive one another’s transgressions or accept to share land because that was the Rwandan way, and how it was done in the past.



**Figure 10:** Legal aid clinic clients waiting for consultations (Author’s photo).

The legal aid clinic was not a state-backed “commanding institution” (Havugiyaremye 2008) and staff members did not have police or military authority to enforce their negotiated settlements or sanctions. Nonetheless several symbolic dimensions conveyed the idea of state-power and punishment that “remind[ed] [people] of what they [we]re required to do by the law” (Havugiyaremye 2008). Clinic staff members had high social and cultural capital, indicated by their style of dress, fluency in English and French, and access to material possessions, such as laptop computers and cars. The clinic’s affiliation with the National University of Rwanda (NUR) reflected proximity to state power, since, for example, many current and rising members of national government graduated from NUR. Clinic staff members therefore communicated power and authority that often appeared indistinguishable from state-backed government,

such that the symbolic power to punish actually eclipsed the legal jurisdiction to do so.

The clients who sought the clinic's help did so because they thought the clinic carried legal authority to enforce sanctions, and they and their disputing parties typically complied with judgments. People believed the staff could enforce judgments, or, if not, could turn them over to other authorities who would.

Like *gacaca* and *comite y'abunzi*, the legal aid clinic was another forum in which the typical clients—poor, uneducated, rural farmers—were more likely to be subjected to the mediation discourse than to be helped into adversarial disputes in the ordinary courts. Some clients were frustrated to be distracted from, rather than directed to, the courts. Whether or not clients bought into the mediation discourse, sometimes one or both parties felt forced into accepting the compromise-based solution.

Yet, because the clinic only pursued cases that people brought to them, they were not seen to be persecuting or threatening. Clients mostly felt the mediation discourse at the legal aid clinic was either helpful, or a relatively benign distraction. For example, in Antoinette's case, though she agreed to try mediation, it was unsuccessful, and the following week students at the clinic helped her to file a claim in court to proceed with the divorce.

Sometimes the legal aid clinic enabled an inversion of *status quo* power relations that led to clients feeling empowered rather than coerced. The clinic specifically saw its mission as helping “indigents”, or the “vulnerable population” to have more access to justice, which meant that when clients came to the clinic needing help with a problem with someone more powerful, the staff did not hesitate to call the other party for

mediation, whether he was a local authority, businessman, or university employee.

Consider the paternity case of Yvette and Lucian:

In May 2008, a 20-year-old woman, Yvette, came to the legal aid clinic to ask the staff's help in securing paternal recognition for her baby, who was swaddled to her back with a bright cloth. Yvette explained that she had briefly dated Lucian, who was a local leader in her cell, and was still together with him when she became pregnant. She claimed he took her to get a pregnancy test and even suggested she get an abortion, but then as her pregnancy progressed, he denied fathering the child. Over the next four weeks, through a series of phone and in-person conversations, the clinic staff convinced Lucian to come to the clinic to sit down with Yvette. When he finally came, one of the clinic staff spoke with him and Yvette for several hours. Lucian began the conversation hostilely opposed to any agreement. His defense included accusations that Yvette was in fact a prostitute and he had paid her for sex, as well as that she had potentially given him HIV. Gradually, as the clinic staff reasoned with him, he quieted, then began to change his mind. Ultimately he agreed to recognize that he was the father of Yvette's baby, and to enroll the child on his health insurance (a clear sign of paternal recognition). In return, the clinic staff asked Yvette to agree to say nothing publicly about Lucian's capitulation, so that he would not lose face.<sup>65</sup>

In this situation, Yvette was eager to have the legal aid clinic staff mediate between her and Lucian. She had little tangible proof of Lucian's paternity, and was in a relatively low-status position, as an unmarried woman (Jefremovas 2002:102), while he was male, older, had a job at the hospital lab, and was even a leader at the lowest administrative level (*imidugudu*). She probably would have lost in court and it was unlikely she would have been able to compel him to take responsibility for the child without others' help. Lucian, in turn, resisted mediation, and basically had to be forced to accept paternity. He was angry at being summoned, repeatedly refused to appear, and when he did, he was antagonistic during the process. He eventually agreed to the staff's proposed solution because of the components of threatened punishment mentioned above.

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<sup>65</sup> Legal Aid Clinic case. May 2008. Butare.

Yvette's case is a clear example where the staff thought their mediation helped Yvette achieve a fair solution that she would not have obtained in ordinary court, thus providing justice to the less powerful—student staff members commented that the child looked just like Lucian, even while he was denying paternity. Many welcomed how the mediation discourse at the legal aid clinic could transcend common power dynamics, providing more favorable solutions for low-status people, often poor rural women, while the people likely to feel coerced or punished by the mediation discourse were actually people who were more powerful, such as Lucian, or male local authorities with comparatively high economic, social, and political capital. Word of mouth spread that the clinic could help people obtain solutions like Yvette's, and many of the clients were women who wanted help with paternity or inheritance cases.

### **Legalized Re-Mediation**

I illustrated in this chapter the “Re-Mediation” of Rwanda: how the process of remediating Rwanda's social ills occurred through revitalizing the traditional practice of mediation, now legalized. Overall, the majority of Rwandans experienced the increased emphasis on law in the aftermath of genocide through the mediation discourse. The government's emphasis on Western-style rule of law and development led to new court buildings being erected across the country, new lawyers and judges being trained in policies compliant with international human rights laws, and ordinary citizens being socialized to be legal subjects through learning their rights, what constituted evidence, and how to formalize a legal complaint. But most ordinary Rwandans in fact did not end up in these Western-style courts. Their social disputes on a variety of topics—some

directly related to the genocide, others influenced by the consequences of political violence and upheaval over the past decades—were handled by a variety of actors who aimed to resolve the issues through reasoned negotiation and compromise rather than application of formal national laws. Thus, despite the proliferation of the rule of law in Rwanda, people were still directed to take to the courts only as a very last resort.

Values of compromise, unity, and harmony in the mediation discourse were presented as shared cultural principles and practices that were self-evidently better than conflict and fighting. These examples showed how the political authorities, lay judges, and legal aid clinic staff told people that the mediation discourse was deeply engrained in who they, and their fellow Rwandans, really were. These values had been obscured by division and poor governance for several decades, and their rediscovery and revival would restore the social fabric based on its original strength. Therefore, people were expected to accept and comply with them voluntarily. Mediation discourse was intended to foster collective cohesion at the national level and at more intimate local levels, such as the family or village. *Inyangamugayo*, *abunzi*, and legal aid clinic staff worked to rebuild social relationships, by resolving disputes through mutually beneficial compromise solutions. This was consistent with the national reconciliation discourse, and led to traceable examples of peaceful reintegration of prisoners, contained escalation of local hostilities, strengthened family units, and restored relationships damaged by the violence.

At the same time, I demonstrated that the threat of state-backed punishment was central to people's experience of the mediation discourse in legal forums. Mediation discourse operated through a balance of harmony and force, consent and sanction. We cannot take mediated solutions at face value as representing restored social relationships,

and sometimes, the mediation discourse obscured existing divisions or even created new ones. People often participated in mediations and followed mediated judgments because they felt they had to, not because they subscribed to the mediation discourse.

The threat of punishment was often conveyed explicitly. Authorities told people they could be sanctioned for not complying, threatening them with fines or incarceration. *Gacaca* was the clearest example of state-backed punitive force behind the mediation discourse, with its weekly sessions displaying uniformed prisoners, guards, and judicial authority.

Other aspects of state-backed punishment were more covert, such as when mediation discourse was justified as being cultural. The cultural justification was a technique leaders used to try to get people to accept voluntarily the values, beliefs, and practices in the mediation discourse, consistent with the government-through-community approach, in which the aim was for people to take on active practices of self-management (Rose 1999). The cultural justification, however, omitted reference to inequalities, sanctions, and coercive elements that influenced compliance in the past, suggesting that mediation was voluntary and natural in its earlier form and should be as well in the present. As outlined in Chapter 3, in its seemingly oldest and purest form in pre-colonial *gacaca*, mediated solutions were enforced by social sanctions and often exchange of goods, overseen by people with high social capital, particularly older male lineage heads. Mediation in the *mwami*'s tribunals during the colonial period was mandatory, and existed in a hierarchical socio-political structure in which people with greater political and economic capital (cattle, land, chief status) could compel others to follow their will



(Newbury 1988; Reyntjens 1985). Erasure of these dynamics masked the use of punitive force, and sanitized the mediation discourse's operation in the present.

In practice, combining the mediation discourse so intimately with state-backed punishment amounted to making the beliefs and values mandatory in and of themselves. The way the mediation discourse emphasized the communal over the individual must be understood as potentially coercive. People often felt compelled to accept the ideas of compromise and unity (at least at face value), and to sacrifice their own needs on behalf of the communal good, "or else. . . ." That "or else" carried a thinly veiled threat—"or else" risk being punished by the state as someone who did not value unity, and therefore who probably embraced divisionism as a propagator of genocide ideology and an enemy of other Rwandans and the state. This voluntary-yet-mandatory control was often experienced as coercive, as in the example of the man with the land claim who felt he was being manipulated, but did not think he had any room to disagree.

The tradeoff between collective versus individual rights is at the heart of legal doctrine and the social contract more broadly (Moore 2005; Nader 2002). The indigenous rights movement has drawn attention to how collective rights to (non-Western) cultural beliefs and practices (such as, perhaps, *gacaca* or *comite y'abunzi*) can be a beneficial and empowering counter-balance to Western-derived individually-based human rights (Goodale 2009). Further, there are a variety of reasonable positions about when and how collective interests should be prioritized over individual desires in order to rebuild after mass violence (Abu-Nimer 2001; Brown & Poremski 2005; Minow 1998; Skaar et al 2005). At the same time, there is as much research showing how cultural practices justified as collectively beneficial in the name of "indigenous rights" can dis-empower,

oppress, or coerce members of those groups (Gahamanyi 2003:267; Merry 2006a; Speed 2008). Justifying unity on the basis of culture can aggregate people in ways that ignore power differences, serving to reinforce the *status quo* and buttress underlying forms of internal structural violence (Farmer 2005; Scheper-Hughes & Bourgois 2004).

Finally, the examples in this chapter showed that people experienced the combination of mediation discourse and punishment differently depending on their social position, particularly with respect to class status and genocide status (victim, perpetrator, *repatrié*). Mediation discourse in legal forums was by and large imposed on the portion of the population that was rural, poor, and less educated (e.g., Mamdani 1996). With less economic, social, and cultural capital to negotiate post-genocide Rwanda's multi-faceted and shifting legal terrain, these people typically had little option other than to comply with mediation, whether or not they wanted to.

Certain groups were most likely to feel threatened or coerced. Most Rwandans felt that genocide victims (*rescapés*) were more likely to be given the benefit of the doubt by everyone from *abunzi* to *inyangamugayo* to national prosecutors, and that they were therefore less likely to be prosecuted or to have judgments enforced against them. Many *repatriés* were involved in implementing and directing the institutions, and other *repatriés* often could avoid participating with impunity. By contrast, most Rwandans agreed that Hutu who had been in Rwanda during the genocide were much more likely to face suspicion, even in non-genocide-related disputes—more likely to be accused, convicted, and punished, whether rightly or falsely—and they therefore experienced state-backed authority in legal institutions as more threatening.

People experienced the combination of mediation and punishment differently across *gacaca*, *comite y'abunzi*, and the legal aid clinic. In *gacaca*, the force was perceived by many as threatening, while in *abunzi* and the legal aid clinic it was less so, largely because the latter two were not seen to target specific groups or risk abusing power. At the same time, its presence across institutions amplified the effects. The forceful, punishment-backed mediation discourse in *gacaca* colored how the mediation discourse in *comite y'abunzi* or the legal aid clinic was experienced. Recognizing the threat of punishment and the consequent mandatory nature of mediation discourse in the daily operation of these legal forums helps us to understand why even when people did not buy into the principles of unity and compromise, as shown by how they resisted or complained about it, they nonetheless followed them (see also Scott 1985:317).

### **Comparative Harmony Models**

Legalized mediation is not unique to Rwanda. In this section, I compare the mediation discourse with other harmony models in order to denaturalize how it operated in Rwanda. Comparative analysis underscores three points central to how the Rwandan government instrumentally used the mediation discourse, and how people experienced the combination of harmony and punishment within it. First, the mediation discourse had global, not only local, roots. Second, the government used it as a counter-hegemonic strategy. Third, we need to take seriously that despite its seemingly irreproachable goal of unity, it risked restricting access to justice for many people.

### *Global influences*

Harmony models are at the basis of restorative justice models and customary law systems around the world (Greenhouse et al 1994; Merry 1990; Merry & Milner 1993; Nader 1990), including in many parts of Africa (Bohannan 1957; Gibbs 1967; Gluckman 1955b; Gulliver 1969; Wilson 2001). Looking at harmony models in broader global-historical context illustrates that while they often derive from local customary practices, they are, as Nader notes, simultaneously “part of systems of control that have diffused across the world along with colonialism, Christianity, and other macroscale systems of cultural control such as psychotherapy ” (Nader 2002:32). What may be labeled a traditional practice was also shaped by broader global practices over centuries, consistent with the adaptations of customary law under colonial rule and post-colonial regimes, as discussed in Chapter 3 (Chanock 1985; Colson 1974; Mann & Roberts 1991).

This global influence continues. Today, harmony models, often in the form of “alternative dispute resolution,” are a part of the package of the Americanization of law being exported around the world, alongside the more retributive, adversarial dimensions (Mattei & Nader 2008; Nader 2002). The World Bank, which supports programs in Rwanda, mandates the use of mediation to solve conflicts with many assisted countries (Nader 2002:54).

Further, harmony models are tightly linked to, and consistent with, Christian principles (Nader 1990). Rwanda has been predominantly Christian for a century, due to the missionary influence under colonial rule (Longman 2010). Though churches were not formally involved in the legal process, Christianity served as a broader part of the socio-political context that reinforced the mediation discourse. Post-genocide Rwanda saw a

resurgence in transnational forms of Christianity, particularly evangelical churches brought in from East and Central Africa by returning diaspora, as well as by church congregants on missions from churches in Europe and the United States. In a notable example, beginning in 2005, President Kagame enlisted the help of American evangelical Pastor Rick Warren, author of the best-selling *Purpose Driven Life* (2002), to collaborate in a five-year project aimed to turn Rwanda into the first “purpose driven nation” (Morgan 2005; Van Biema 2005).<sup>66</sup> In addition to meeting with government officials and visiting the hospitals his project supported, Pastor Warren held large revival meetings attended by thousands of Rwandans across the country in which he preached about the importance of unity and forgiveness to restoring Rwanda (Musoni 2008b). Rwandan pastors regularly advocated for the mediation discourse from the pulpit, encouraging parishioners to confess and forgive, and even served as *inyangamugayo* or *abunzi*. In the legal aid clinic example discussed above with Louis the watchman and the nuns, Louis told David that the reason he knew the nuns would come to an agreement was that they were “good Christians” and therefore would not want to go to the courts. This was a clear (and common) conflation of Christianity and the mediation discourse, and a juxtaposition between people who wanted unity and harmony, in contrast to court-seeking litigators who wanted to create division and problems (see, for example, Greenhouse et al 1994).

Overall, while the Rwandan government justified mediation discourse as a traditional cultural practice, it in fact derived from, and was reinforced by, multiple sources inside and outside Rwanda, in the past and present, including from internationally-circulating ideas such as Christianity and neoliberal economic policies. Mediation discourse in its

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<sup>66</sup> Pastor Warren gave the invocation at President Obama’s inauguration in January 2009.

contemporary use was best understood not as a static relic of Rwanda's past but as a re-invention of tradition for particular uses in the present (Chanock 1985; Hobsbawm & Ranger 1983). Recognizing the global dimensions of mediation discourse underscores how the cultural justification was another example of the government's instrumental use of tradition and history to validate authority and socially engineer unity, overlaid atop differences and fractures. It problematizes uncritical acceptance of how mediation discourse and customary law prioritized the communal over the individual rights-bearer as a more naturally Rwandan or African philosophy, and therefore as a purer basis on which to repair the social fabric. It reminds us to pay attention to the effects of these instrumental uses of mediation discourse, as I discussed here and pursue further in the next three chapters.

### *Counter-hegemonic strategy*

Comparison with other harmony models sheds light on how the Rwandan government used the cultural justification for mediation discourse as a counter-hegemonic strategy. This comes out particularly clearly in comparison with the Talea Zapotec, an indigenous group in Mexico, who, as Nader described, used harmony ideology as a counter-hegemonic strategy of resisting state control (Nader 1990). The Talea Zapotec operated on the premise that if they were not living peacefully, the state would intervene in their affairs. By self-consciously differentiating their courts from state courts, based on the harmony ideology, they fended off state control and interference—even as the harmony ideology was itself not isolated from this hegemonic state, but a product of 500 years of colonial encounter.

We see a similar phenomenon in Rwanda, not between an indigenous group and a state government, but between an autonomous national government and the international community. Much like the Talea Zapotec, the Rwandan government used the mediation discourse, justified as cultural, as an intentional means of self-differentiation and a tool to fend off dominant external legal models. This was consistent with how under colonial rule, African chiefs often used tradition—“this is what we have always done in the past”—to justify certain ruling practices, and in so doing, to insulate themselves from colonial interference in specific realms (Colson 1974:77-78). For example, Rwandan chiefs successfully justified *uburetwa* to Belgian authorities as a long-standing cultural practice with which the colonizers should not interfere (Newbury 1980a:98).

The cultural justification for the mediation discourse thus served as a counter-hegemonic strategy to avoid international interference in, and critique of, Rwandan governance. It was a deliberate way of saying, “We are doing it our way, you don’t have the authority to comment on it,” particularly to protect themselves from external interference and contentions that Rwanda’s legal forums did not meet international legal and human rights standards (Amnesty International 2002; Lemarchand 2009:95; Reyntjens 2005:32; Waldorf 2006). Justifying mediation through culture was a means of suggesting that Rwandan leaders did not need to rely on foreigners, but could rebuild Rwanda on their own, based on shared principles of unity, harmony, and compromise (Clark 2010:136; Prunier 2009:10-12). Use of the mediation discourse in this way is consistent with how, as I noted with respect to the dominant narrative in Chapter 2, the Rwandan government used a particular version of history and the genocide to justify its

moral authority to govern and to insulate itself from external critique (Lemarchand 2009; Pottier 2002; Reyntjens & Vandeginste 2005).

### ***Risk of restricting access to justice***

Comparison with other harmony models suggests that while the decentralized legal forums in Rwanda were intended to increase people's access to justice (Ministry of Local Government 2008b), the mediation discourse perhaps operated as a restriction. The logic of efficiency and cost-savings invoked in Rwanda, which was deliberately intended to steer people away from the Western-style courts, is echoed in the rise of the alternative dispute resolution (ADR) movement in the United States (Nader 2002).

As I described in Chapter 3, the idea behind both *gacaca* and *comite y'abunzi* was that lower-level cases were simple enough to handle without burdening the national courts. Likewise, at the legal aid clinic, staff operated on the view that clients would be better served by solving their problems without entering the courts. The ADR movement, which began in the mid-1970s in the United States, was similarly based on the perceived need to "remedy the 'excesses' of litigation" (Mattei & Nader 2008:18). The rhetoric supporting ADR noted that the courts were overburdened with "garbage" cases that could more efficiently be solved through other channels such as mediation, which would help build a more harmonious society (Greenhouse et al 1994:121,187; Merry 1990:14-16). Advocates of ADR framed "harmony" as in opposition to "conflict," where the former was self-evidently better than the latter, casting doubt on the search for justice through litigation. Many states made ADR mandatory in the mid-1990s, much as *gacaca* and *comite y'abunzi* were made obligatory a few years later.



Yet, the harmony and efficiency rhetoric served to mask the fact that the ADR movement in the United States actually restricted certain people's access to justice, deflecting those cases away from courts that threatened to challenge the *status quo* by using law as a tool of social transformation (Greenhouse et al 1994:130,141; Merry 1990:177-180; Nader 2002). It is not an accident that ADR arose in the wake of the civil rights era, which opened access to justice to previously disenfranchised, excluded groups (Nader 2002:3-5). By this logic, ADR served as an anti-legal pacification plan, undermining the rule of law and dispossessing the weak (Mattei & Nader 2008:168-172; Nader 2002). Nader argues that this is a characteristic of harmony ideologies more broadly, which "may be used to suppress people's resistance, by socializing them towards conformity by means of consensus-building mechanisms, by valorizing consensus, cooperation, passivity, and docility, and by silencing people who speak out angrily" (Mattei & Nader 2008:77; see also Wilson 2003:189).

Nader's caution is important to consider here, given that harmony models and ADR were part of the globally-circulating discourses shaping the form, transmission, and acceptance of mediation discourse in Rwanda. In practice, the mediation discourse did exclude most Rwandans—typically poor, uneducated farmers—from having access to adversarial law. Exclusion from the adversarial system was framed as beneficial in helping reduce unnecessary conflict and promote unity. But given the distribution of political, economic, and social capital in Rwanda, this exclusion had problematic implications.

In practice, the governing authorities—predominantly Anglophone, educated diaspora from Uganda—imposed on uneducated Hutu and poor Tutsi survivors re-

socialization through the mediation discourse. Unity of Rwanda, and maintaining the *status quo* of the current distribution of power, took priority over the individual human, civil, or political rights of the individual. People typically did not feel they had a choice to challenge assertively the ethos of unity and compromise because of the powerful combined effects of cultural justification, top-down implementation, and state-backed punishment. This resonates with the critique that harmony ideologies socialize people towards conformity and silence people who speak out, and therefore serve as a means of pacification. Since mediation discourse was the primary means through which ordinary people interacted with legal institutions, rather than law serving as a means to ensure people's access to the rights of citizenship and justice, mediation discourse in some cases undermined the rule of law, so that law actually was actually serving to dispossess people, particular the majority of rural Hutu.

Yet, I do not claim that the mediation discourse in Rwanda served exclusively to rob people of their legal rights and pacify them. *Gacaca* was not used unequivocally to persecute people, but rather operated differently across contexts, as lay judges exercised authority in different ways (see Chapter 7), and it often enabled participants to have much more voice than they would in ordinary courts. Punishments before *gacaca* were lower than in the ordinary penal code (Amnesty International 2002:13-14). The *comite y'abunzi* examples showed how people could resist being mediated with fairly innocuous consequences, and could appeal their way to the ordinary courts, if they so chose. The examples from the legal aid clinic showed that people sometimes could subvert the use of law as a pacification strategy and invert typical power dynamics.

Even as the mediation discourse in grassroots legal institutions risked being coercive and disempowering, it could be better than the alternative. Reyntjens (1990) made this observation about informal *gacaca* in the late 1980s, noting it increased people's access to timely, cost-effective justice in a context where increased professionalism and standardization of the legal system in the decades after Independence inhibited ordinary people's access to legal remedies. In post-genocide Rwanda, without these decentralized institutions based on the mediation discourse, rural Rwandans would have likely fared even worse in ordinary courts, ending up even more disenfranchised and exploited.

### **Conclusion**

It is important both to take seriously the mediation discourse in Rwanda's decentralized legal forums and the importance given to restoring social relationships, while also not presenting an overly romanticized view of compromise justice in Rwanda. I illustrated how power operated through the mediation discourse, and its effects on participants. There were many compelling examples of how mediation restored some degree of harmony in the face of enormous obstacles. At the same time, mediation discourse was implemented from the top down, and was not universally accepted by all Rwandans. The threat of state-backed punishment was central to the way the mediation discourse operated in legal institutions, and it was often coercive, especially when combined with cultural justification, and differential application depending on class status and position with respect to the genocide. Mediation discourse risked provoking fear, sidelining individual rights in the name of collective harmony, and silencing dissent.

No one disputed that it was positive when people could solve issues voluntarily through mediation. At the same time, imposing the mediation discourse seemed to undermine the goal of the process in rebuilding collective belonging. In practice, the implementation of mediation did not necessarily foster positive relations. Many of the attempted mediations failed to reach a solution, at least the first time. The data suggest that enforced punishment backing the mediation discourse could make mediation not only simply ineffective or innocuous, but actually could risk exacerbating some divisions.

In the next two chapters, I turn to *gacaca* courts and *comite y'abunzi* in turn, to explore in more detail how people shaped social relationships and solidarities in these institutions. I demonstrate how in *gacaca*, people negotiated citizenship through disputes over genocide, and how, in *comite y'abunzi*, through disputes over land and property, people negotiated collective belonging at the proximate level of “family” and “community.”

## Chapter 5: *Gacaca Courts: Genocide Disputes, Victims, and Perpetrators*

### Introduction

In the previous chapter, I discussed how people experienced the mix of harmony and punishment in the mediation discourse that pervaded grassroots legal institutions in post-genocide Rwanda. In this chapter, I turn specifically to *gacaca* courts, in which people participated weekly in their neighbors' genocide trials before locally-elected lay judges. How did people's engagement with this legal process of confronting the past influence their ongoing efforts to rebuild the social fabric?

I show how the launch of *gacaca* brought the past unavoidably into everyday life as a palpable presence. People had to evaluate one another with respect to official categories of "genocide victim" or "genocide perpetrator," which were defined by the versions of causality, guilt, and innocence in the dominant narrative. Yet, given the format of *gacaca*, rather than simply assign criminal responsibility, people actually used the process to shape the meaning of the categories themselves.

The participatory, public format emphasized oral testimony. Sessions were heated debates in which people discussed their and others' experiences during the genocide, and how they did or did not fit into predefined categories. In doing so, people fought against the simplification and amnesia in the master narrative and contested the meaning of categories of citizenship. The negotiation of social relationships and moral community through *gacaca* occurred along complex lines of connection and fracture, and revealed ongoing debates over collective belonging in contemporary Rwanda.

I begin by describing the format and dynamics of *gacaca* sessions. I then show how people shaped social relationships through discussion about the past, not only in ways that reified preexisting ethnic divisions. In the final section, I provide examples to show how people used these debates to negotiate the meaning of the categories of “victim” and “perpetrator.”

### **Legal Format of *Gacaca***

The legal format of *gacaca* shaped the ways people interacted with one another and confronted the past. The premise behind *gacaca* was that perpetrators had obligations to the state and to victims for what they had done in the past. The *gacaca* process was intended to formally categorize people in relation to the genocide as perpetrators or victims, with duties, rights, and obligations associated with these positions. At the same time, consistent with the mediation discourse, *gacaca* sessions emphasized process as well as outcome, reshaping relationships as much as determining guilt according to specific legal principles.

Beginning in 2005, people in Rwanda gathered for *gacaca* sessions one day a week. On *gacaca* day, cases began mid-morning, continuing without a break through the afternoon, often not closing until the sun set. Each session was extremely intense and fatiguing, from the emotional tenor of the discussions, to the hours seated without food or drink, often in hot sun or rain. Participation was high in the early phases but tapered off over the years.

The following typical example, from a case in Ndora against a man named Claude, illustrates several key aspects of the format of *gacaca* sessions that I discuss in more detail below.

Claude, a farmer and accused mid-level perpetrator in Ndora, was charged with killing the children of a woman named Mukatagazwa, who was his godfather's wife and lived next door. The two witnesses who provided evidence implicating Claude in killing Mukatagazwa's children were both Claude's sisters. They each said they saw him killing two of her children with a club, and then he left with the third, who was never seen again. Claude admitted that Mukatagazwa's children had been at his house before they died, but claimed his sisters were accusing him simply to take the blame off their own sons (his nephews), who he said were the guilty ones along with Mukatagazwa's brother, Yohanni.

Mukatagazwa testified that during the genocide, she and her children fled to Claude's house one night for safety. Claude later came with a group of killers. He killed two of her children and then they disappeared with a third, and she still did not know where his remains were. She said she recently heard Claude say he would never admit to the deaths of her children because he heard that victims were given cows, and he did not want her to get any. Claude responded that Mukatagazwa was accusing him simply to take the blame off her own brother, Yohanni. Mukatagazwa retorted that Claude was simply blaming Yohanni and his nephews because they were dead and therefore could not defend themselves.<sup>67</sup>

As this example shows, during *gacaca* sessions, in sites across Rwanda, people openly and heatedly debated facts about specific individuals' participation in the genocide, at the location where events had occurred, with their neighbors and family. *Gacaca* relied on open-ended oral testimony in public, participatory discussions which connected with daily life. People corroborated or refuted one another's testimony, including accusing people of manipulating evidence. Very little was written. I discuss each of these facets in turn.

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<sup>67</sup> *Gacaca* session. January 17, 2008. Ndora.



**Figure 11:** *Gacaca* session in Ndora (Author’s photo).

### ***Oral testimony about death and property***

*Gacaca* cases relied exclusively on oral evidence, such as that provided in Claude’s case. The law provided few constraints and allowed a great deal of latitude with oral testimony, both in terms of who could speak and what they could say. *Gacaca* sessions, therefore, unfolded as broad-based communal conversations.

The law regulating *gacaca* procedures laid out a general approach to trial sessions (Organic Law N.16/2004 of 19/6/2004). It provided the order in which participants should take turns providing their version of events, ensuring that the defendant had the opportunity to reply to all charges and testimony against him or her. The law allowed “any interested person” to “testify in favor or against the defendant” (Article 64). This broad inclusiveness was based on the idea that communal participation in *gacaca* was an antidote to the communal participation in the genocide (Clark 2010:132-168). People



testifying had to take an oath to tell the truth (Article 64). Participants were required to be calm and polite to the *inyangamugayo*, and to testify about crimes under the temporal and subject matter jurisdiction of the court—that is, genocide crimes from October 1, 1990 through December 31, 1994, which occurred in the administrative unit of the court (Articles 3, 4, 71).

Other than these general guidelines, the law included no other specific regulations on what could be provided as evidence. This wide latitude for evidence was consistent with other restorative justice systems, which sought to address a breach of deeply embedded relationships and practices rather than a narrowly-defined point of law (Colson 1974:73). There were no rigid constraints on the form or content of what people said, or limitations on what was considered relevant or irrelevant. Testimony was typically open-ended and unstructured, especially given that there were no lawyers present. People could testify on what “he or she knows or witnessed” (Organic Law N16/2004 of 19/6/2004, Article 64), so people testified about things they saw with their own eyes (i.e., eye-witness), as well as things they had heard about from other people (i.e., hearsay). Overall, the evidence presented was what people said aloud, based on memories strengthened or distilled, clarified or diluted, with the passage of time.

Stories did not come out in an organized, linear narrative, but rather, in fits and starts, with sidetracks, extraneous details, and accidental omissions. People returned to details, jumped forward, and circled back again. Judges and people in the general assembly asked clarifying questions and added their own input or corrections when they agreed or disagreed with others’ testimony. Often testimony was confusing, and everyone present had to work together to figure out how it related to the charges at hand. There remained

ongoing uncertainty about which charges stemmed from which particular incident, and even the precise identity of specific victims, because of the logistics of how defendants' dossiers had been compiled.

In these public conversations, people discussed death in meticulous, graphic, personal detail. They accused or defended one another, and named names. They talked not about what happened in aggregate to anonymous, faceless Rwandans, but about what happened to people they knew (or knew of), and about things that they saw or did. As the following quotes show, discussions involved eye witness testimony and hearsay from witnesses, victims, and co-perpetrators:

“I saw Francois hit the girl with a club, then Esperance continued dragging her while blood oozed out of her head.”<sup>68</sup>

“Vincent killed Beatrice, who was pregnant and carried a baby on her back. Then Innocent and others split open her womb to kill even the unborn baby.”<sup>69</sup>

“Gakwaya told me he was no longer afraid of killing, because he had just killed Kalisa, cut off his hands, and dumped him down a latrine.”<sup>70</sup>

“Emmanueli came to the roadblock with an old man, and asked us to kill him. Fidelis hit the old man with a club and he died.”<sup>71</sup>

“Alfred grabbed and beat me, then took my child from my arms and threw him down the latrine to die.”<sup>72</sup>

“I heard that the killers blocked the door to the house where my father was hiding, and set it on fire. When it was burning, he ran out, and then they killed him.”<sup>73</sup>

These detailed, vivid, painful observations, occurring in weekly unavoidable public conversations, emblazoned the past onto the present.

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<sup>68</sup> *Gacaca* session. January 3, 2008. Ndora.

<sup>69</sup> *Gacaca* session. September 24, 2007. Ndora.

<sup>70</sup> *Gacaca* session. January 10, 2008. Ndora.

<sup>71</sup> *Gacaca* session. December 4, 2007. Nyanza.

<sup>72</sup> *Gacaca* session. November 8, 2007. Ndora.

<sup>73</sup> *Gacaca* session. December 20, 2007. Ndora.

In addition to death, in *gacaca* sessions people discussed property that had been stolen during the genocide. Discussions about property were in some ways even more contentious than murder charges, because victims sought specific reparations for items that had been taken or destroyed. Approximately 54 percent of total nationwide *gacaca* cases were Category Three disputes over property, heard before cell-level courts. (See Appendix 3 for a breakdown of *gacaca* cases.) Discussions about property permeated Category Two murder cases, too. There were often extended debates over destroyed houses, cows, fields, cups of beans, individual items of clothing, and kitchen utensils. Sometimes people used these debates in an effort to seek reparations for the property taken. Other times, they used the discussion about material items as part of their evidence in support or against the defendant. For example, a widow might claim that she saw the defendant later wearing the pair of trousers that her husband was wearing when he was killed.

Descriptions of specific acts of theft, injury, or killing were embedded in broader stories that provided context about other dynamics of the genocide. People testified about making lists of Tutsi to be killed and checking them against survivors, and described revealing people's identities as Tutsi. They talked about manning roadblocks, demanding identity cards, and detaining people who passed by or killing them. People talked about how they managed to survive: they sought refuge among dead bodies, or in pit latrines, or hid for days in banana plantations in driving rain, or sought refuge at home after home, only to continue to be pursued by different groups of killers. People also described everyday details of the time-period—drinking homebrew, slaughtering cows to eat at roadblocks, harvesting crops, trying to get medicines for sick relatives.

The information that emerged during *gacaca* trials generated situated versions of the past, including localized details such as which days massacres occurred, on which hillsides, to which victims, by which aggressors. Cases linked together week after week, and people stitched together composite stories of how genocide occurred in the area. People developed mental pictures of how the cases connected, and details fit together piece by piece, slowly over time. Across weeks, months, and years that the process unfolded, people linked together the emergent details to fill in a rich tapestry of what had occurred on site.

As important as what people did say was what they did *not* say. A frequent testifier in Ndora described a common view that, “People are still not revealing the whole truth about what happened. There are still some things they keep secret.”<sup>74</sup> Refusals to speak or provide information were frequent, whether out of desire to hide something or actual lack of knowledge. Witnesses or defendants would say, “There is nothing that I saw,” “There is nothing I can say about that,” or, “I know nothing about what he did during the genocide.” Often the *inyangamugayo* asked people in the general assembly to chime in about a contested point, and no one spoke.

Overall, sessions involved oral evidence about details of murder and theft, in stories directed mostly by the speaker. Discussions over complicity in genocide could occur through grisly details of killing or mundane observations about a pair of pants. These emotional, often wrenching, narratives about the past told the story of how the genocide had played out in particular areas around the country.

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<sup>74</sup> Interview, Ndora resident. May 5, 2008. Ndora.

### *Oral testimony as corroborating evidence*

The key form of corroboration in *gacaca* sessions was oral testimony. As we saw in Claude's case, his two sisters and his neighbor provided testimony that reinforced their version of what occurred as the truthful one. There was virtually no other evidence available to support or disprove oral testimony. This format meant that in *gacaca* sessions, people positioned themselves through their testimony or silence, forming alliances and divisions based on agreeing or disagreeing with one another's versions of the past.

Because of the widespread destruction of physical property during the violence, people could not rely on documentary evidence or paper trails to substantiate or refute alibis or allegations. No one could, for example, show a photo of the crime scene with the defendant's footprints or clothing visible. Murder weapons were long gone, or were too ubiquitous to prove anything—for example, everyone owned a *panga*, a common farming machete.

The exception was when testimony led to the recovery of physical remains of victims, who by this point had been missing for over a decade. This happened fairly often in the early stages of the *gacaca* process, and was one of the government's goals of *gacaca*, in helping people to identify and properly bury their loved ones' remains. After a witness or perpetrator provided testimony about where someone died or was buried, neighbors, often including the accused, would then go dig for the remains in the noted location, whether a pit latrine, someone's plantation, or in the forest. If successful, they would carefully exhume, clean, and rebury the remains (e.g., Metcalfe 2006). Physical remains

could serve as very concrete evidence, corroborating that a perpetrator's confession was full and accurate.

But often, even physical remains did not remove debate. Unlike some other notorious massacre sites (e.g., Wagner 2008), there was no scientific technology available or provided to identify remains, so no one could say, for example, that dental records confirmed the victim's identity, or that DNA trace evidence of the perpetrator provided 99.9 percent certainty of guilt in that specific situation. A defendant in whose yard human remains were found would often argue that it was not his fault, claiming that he must have been away when the bodies were placed there. Sometimes, if the remains were in poor condition, defendants would contest that they were not actually from the genocide, but those of a family member who had died of natural causes. If remains were not found at all, the defendant would often argue that proved his innocence while accusers would search for other plausible explanations. Physical remains, then, proved inconsistent corroboration of other oral testimony, and could serve as additional fodder for debate.

Overall, oral testimony was the only real form of corroboration for evidence to gain credibility. There was no independent, incontrovertible means of assessing truth value in people's statements. Defendants needed others to attest to whether or not their alibis were legitimate, such as, "I was out grazing my cattle," "The property was gone when I got there," "Someone else took that cow," or "A different guy killed that person." Similarly, witnesses and victims needed confirmation from others about their statements, either that people had seen similar things, or that the statements were plausible—that yard was visible from that doorway, or it was reasonable to graze cattle that time of day—or that the speaker was credible. This meant that sessions were performances in which people

had to speak for or against one another to substantiate testimony and convince others of truth or falsity of statements, and therefore guilt or innocence of participants.

### *Connections with neighbors and ordinary life*

People's involvement with *gacaca* was not separated from, but connected with, ordinary life. As Claude's case demonstrated, social links within *gacaca* cases were intimate. Acquaintances, neighbors, even family members, in-laws, and godparents offered competing recollections. Each session was one episode of a set of conversations and knowledge claims that had started earlier, and would continue after, among people with tight interconnections.

*Gacaca* sessions quickly became a regular part of people's weekly routine and their regular interactions with neighbors, since participation was mandatory. Sessions were convened in places familiar to people, typically outdoors, near the center of town—people might sit in the same courtyard for *gacaca* on Tuesday and for a community meeting about a new local development project on Thursday. The participants would mingle together informally before the official start of proceedings. *Inyangamugayo* would chat with friends or defendants while waiting to begin. Prisoners, loosely guarded as they waited in a central courtyard, would visit with their families. They held babies on their hips, hugged wives, children, and family, and chatted with neighbors.

During sessions, moments both monotonous and heated were punctuated by the rhythms of everyday life. People sat closely together, occasionally leaning on one another's shoulders, pressing elbows tightly. All day long, small children wove through the crowd enjoying the sound of their own voices. Toddlers played with the judges' toes

or gnawed on roasted sweet potato, or gathered flowers from the grass, dropping petals on the dusty feet of people in the crowd. A woman providing testimony with a squirming baby on her hip would quickly open a button to nurse the baby without interrupting her comments. An *inyangamugayo* might step aside briefly to take her fussing infant from a friend's arms, then continue nursing behind the bench. A goat might wander in the sun. A local woman, affectionately known as mad, likely would pass by yelling unintelligible comments into the crowd, alternately ignored and tolerated. Shops and businesses were obligatorily closed on *gacaca* day, but each noontime, a stream of blue uniformed school children would flow past on the way to and from lunch, skipping, gossiping, clasping each others' hands, kicking banana-leaf soccer balls. Often, dozens of children would fill in around the assembled crowd, standing quietly for an hour or two until someone gently shooed them back to class.

People had close ties with other participants, and these links suffused their testimony. In Claude's case, for example, one victim began her testimony by noting, "My husband was close with Claude, they shared everything and even used to drink together." Another explained, "We were neighbors, even our chickens used to run around together." Claude, in turn, defended himself with the claim that "I would not have killed Mukatagazwa's children because their father was my godfather." Later, in reference to another charge, he explained, "Our fathers used to exchange cows," meaning the families were connected and he therefore could not possibly have harmed the man's children.

Participants had intimate knowledge about one another, because they lived in mutual interdependence in a densely populated area. Rural Rwandans knew if their neighbor owned one mattress or ten, or when he had put on a new roof or obtained new livestock.



People knew who owned a bike and who did not, and which bike belonged to whom.

They knew who lived with whom, who liked one another, what grudges people held.

People were further linked through their participation in trials. Many people testified again and again across different trials. Sometimes they were in the same roles, such as victims who testified repeatedly as victims, while other times they shifted roles, from witness to defendant, or vice versa. Often prisoners returned after their own trials, sitting in plain clothes in the general assembly to testify, sometimes in support of defendants, other times incriminating them. *Inyangamugayo* sometimes missed a session to provide testimony in a *gacaca* session in another jurisdiction.

People who participated together in *gacaca* one day a week saw one another the rest of the week. Participants bought goods from each other at the market, or tilled their adjacent fields. One of the *inyangamugayo* preached every Sunday before his congregation at a local Pentecostal church. A prisoner who was released during the early months of my research was a moto-taxi driver who occasionally gave me a ride back to Butare after providing testimony during sessions. They were members of the same business cooperatives, financial associations, and women's groups, or taught one another's children in school, or sewed clothes, or repaired bicycles for one another.

Discussions that originated in *gacaca* trials spilled over the boundaries of the proceedings into other moments and conversations. Even those who did not attend inevitably heard about what happened, whether by directly discussing it with a friend while wandering arm and arm over hard-packed dirt roads or while working in the fields, or overhearing a discussion while drinking beer at a local bar. Radio programs and the national English and Kinyarwanda newspapers regularly covered stories of high profile

cases across the country. These discussions outside of *gacaca* ultimately fed information back into the process, over the many years it was ongoing. By the time trials were underway in 2006, people knew the bulk of the charges and allegations against each other (based on the information provided during the documentation phase), and these had all been much discussed outside of *gacaca*.

Overall, the legal dimension of *gacaca* did not necessitate a sanitized separation, but rather, sessions were a continuous part of the familiar physical and social landscape of everyday life. Evidence presented at *gacaca* sessions was not written onto a blank canvas, but was woven into ongoing interactions with family and neighbors in daily life. The tight interconnections between trials, daily life, and participants meant that virtually no one was a disinterested party. The proceedings and outcomes of trials mattered, to varying degrees, to everyone.

### ***Contested debates and accusations of strategic misremembering***

As the example of Claude's case shows, *gacaca* sessions unfolded as churning pools of competing recollections and assertions about what occurred in the past. People held and presented different views on what happened, when, to whom. They disagreed and corrected one another over names, dates, and locations. Further, people routinely accused one another of manipulating and misrepresenting evidence (Burnet 2010:108; Clark 2010:190-215; Ndangiza 2007:5; Rettig 2008).

The contestation in *gacaca* involved the entire community, every week. Often, it seemed that everyone presented a different explanation or memory of an event. Sometimes people's stories would converge on a common version, then suddenly

someone's testimony would cast details in a new light, whether about the identity of the victim or the motives of the testifiers. Further, because there were no lawyers, and people were face to face with few intervening technologies, during trials people directly and publicly confronted one another. For example, they asked, "Are you the one who killed my son and wrapped his body in a blanket, then showed it to his sister?"<sup>75</sup> Or demanded, "Explain your responsibility or show the good things you did."<sup>76</sup> This immediacy often heightened the adversarial nature of sessions.

During sessions, people constantly accused one another of speaking falsely, either through mis-remembering or deliberate lying. They used the term "*arabeshya!*", translated as both "(s)he is lying!" or, "(s)he is mistaken!" After fourteen years, people's recall of the chaotic events was imperfect. There were many reasons, deliberate or unintentional, for inaccuracies or differences in people's testimony. In Claude's case, like many others, people were very clear that how they publicly remembered the past had stakes for the present, and impacted their social relationships.

People saw false accusations as directly linked to one another's efforts to improve their own economic and social positions, or to settle scores. In one case in Ndora, for example, a young man was acquitted after it became clear through the trial testimony that the key witness, his mother's co-wife, only accused him as a strategy to prevent him from inheriting family land.<sup>77</sup> People claimed that threats, blackmail and bribes commonly influenced people's testimony. It was quite common after a judgment for anyone who

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<sup>75</sup> *Gacaca* session. September 24, 2007. Ndora.

<sup>76</sup> *Gacaca* session. November 8, 2007. Ndora.

<sup>77</sup> *Gacaca* session. November 22, 2007. Ndora.

disagreed with it to offhandedly note, “They must have bribed the *inyangamugayo*,” or, “He must have paid the witnesses.”

This concern about testimony being fabricated for strategic reasons came from people on all sides of the process. It was commonly accepted that perpetrators engaged in a variety of tactics to avoid responsibility. As in Claude’s case, people complained that defendants deflected blame to people who had died, had fled the country, or had already been convicted of maximum sentences. I was told repeatedly that prisoners engaged in conspiracies of silence, agreeing to band together and claim they knew nothing about a specific event (see also Clark 2010:66). It was widely believed that prisoners shifted responsibility amongst themselves, where one person would claim responsibility for others’ actions, and in return, the people released would help support the families of the men still in prison.

Prisoners, in turn, claimed that witnesses layered guilt onto the people who were already incarcerated to deflect suspicion from themselves or their loved ones. Defendants regularly said that all the negative accusations came from, for example, “a clique who wants to destroy my family,” or “a group of people intent on doing my family harm,” or said more specifically, “The witness is only accusing me because she hates my husband.”

People suspected victims of dishonesty as well, either deliberate or unintentional. Many people believed that victims would accuse everyone just because they were upset and traumatized at having lost their family members. Or, people regularly said, victims would falsely increase property claims for their own benefit, first claiming one cow was taken, then adding cows, or inflating claims for crops bigger than the possible yield of their fields. As one defendant testified, “I am surprised the victims are lying. They say

that I had a gun, but I have never owned one and do not even know how to shoot. How will Rwandan society change if people keep falsely accusing each other?"<sup>78</sup>

Accusations of lying fit into a wider context of beliefs about Rwandans' predilections to manipulate evidence for personal gain (e.g., Gourevitch 1998:259, 273-274). The official narrative identified the "institutionalization of lies," cultivated by the colonizers and the genocidal regime, as one of the "causes of disunity" among Rwandans (Rutayisira 2004:34). For example, a government-issued primary school civics text book, which had been revised after the genocide as part of a new history curriculum, captured the prevailing perception by teaching children that in the years leading up to the genocide, "Rwandans developed the practice of lying on an individual scale. It became a virtue and anyone who could lie without being discovered was praised as being more intelligent than others" (Rutayisira 2004:34). Many Rwandans believed that their countrymen, from elite politicians to ordinary people, often misrepresented the truth. As one university law student said, "Rwandans are good at lying and making false claims."<sup>79</sup> To be clear, the truth or falsity of these claims is not what is at issue. What is at issue is that many people believed this stereotype about one another.

Overall, trials were a hotbed of contested truth claims about the past. *Gacaca*, a system entirely based on oral testimony about events that occurred over a decade earlier, was put in place in a context where people believed that others were quick to manipulate evidence to their own advantage. No one believed that the oral testimony provided in *gacaca* was inherently factual. Rather, testimony was all open to interpretation and

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<sup>78</sup> *Gacaca* session. October 8, 2007. Ndora.

<sup>79</sup> Interview, law student. November 22, 2007. Butare.

subject to allegiances and factions. Concerns about lying reflected the suspicion, distrust, and even fragility that pervaded much of everyday life and social interactions among Rwandans.

### ***Minimal written documentation***

Though the *gacaca* process produced a paper trail accessible to government officials and *inyangamugayo*, most participants did not have access to the written documents. The transcribed proceedings were not comprehensive, and were not easily accessible. Though the *gacaca* law stipulated that a trial transcript be read aloud at the end of each case hearing, in many cases, including Claude's, this procedure was not followed (Organic Law N16/2004 of 19/6/2004, Articles 64, 65). *Gacaca* proceedings therefore existed for people as part of ongoing oral memory.

The written dimension of *gacaca* as a legal process was imperfect. During sessions, the designated secretary among the *inyangamugayo* carefully recorded participants' testimony longhand with a ballpoint pen into a hardcover notebook—what filmmaker Anne Aghion (2009) called the “Notebooks of Memory.” The degree of detail in transcripts varied depending on who was writing, who was speaking, and who was presiding. The occasional participant seemed aware of being recorded, making a clear effort to speak slowly, pausing after each phrase. Occasionally, the presiding judge or secretary would ask a speaker to slow down, but that was the exception that underscored the norm. Usually, people spoke quickly, without accommodation for the transcriber, who wrote slowly.

The transcripts were necessarily partial. The *gacaca* proceedings were written only once, in the process. Typically a few pages captured hours of trial proceedings. Often not all debated points were included. Other than the *inyangamugayo* who served as secretary, virtually no one else wrote anything during trials. In fact, there were strong prohibitions against writing without permission (Reyntjens & Vandeginste 2005:120).

The practice of publicly reading transcripts at the close of trials varied. In one court, the secretary read it 10 percent of the time, in another, closer to 25 percent. This variance appeared to be at least partly a function of time constraints. Reading through the transcript was time consuming, and at the end of an eight hour day of hearing testimony, everyone was tired, hungry, uncomfortable, and wanted to leave. In general, both during and after trials, the transcripts were tightly controlled. To avoid concerns of tampering with the documents, *inyangamugayo* could only access the notebooks with approval and accompanied by other officials. I was rarely permitted access to the notebooks, and never to copy, to photograph, or otherwise to transcribe them. This tight control, echoed at the national *gacaca* office, was consistent with the broader control over the production of knowledge in Rwanda (Ingelaere 2010; Pottier 2002).

Overall, with the exception of *inyangamugayo* who consulted the transcripts during deliberations, virtually everyone relied on the oral testimony, and word of mouth that revisited it, in their interpretations of what occurred. The fact that *gacaca* was, for all practical purposes, entirely oral meant that it was unfixed. Sessions themselves fed into ongoing discussions and debates, as sessions became part of people's memories of what occurred.

### ***Summary***

Overall, people experienced the law through *gacaca* not as a set of abstract principles but as a lived, embodied, and interactive process. *Gacaca* sessions were contentious public debates among people who knew one another, over details of what occurred to specific individuals during the genocide. These discussions were held on-site where events occurred, between people whose lives were connected, in continuity with other dimensions of regular life. People could not avoid participating. Corroborating evidence was entirely based on what people remembered, and very little was written. People accused one another of fabricating testimony and using trials for strategic gain. *Gacaca* proceedings were messy, incomplete, ever-changing performances of the past in terms of the present. Yet they had very real impacts on people's lives.

### **Shaping Relationships through the Medium of the Past**

In what follows, I emphasize the ways in which people used *gacaca* sessions to negotiate relationships through discussions about the past. *Gacaca* forced people to engage with the genocide period, and to consider their neighbors and family in relation to government-defined categories of victim and perpetrator, innocent and guilty, that derived from the official version of the genocide. This discussion creates a platform for the remainder of the chapter, in which I use examples to discuss more specifically how people debated the government-defined categories.

### ***Confronting the past***

The kind of conversations occurring everyday across Rwanda during *gacaca* sessions were in stark contrast to the years leading up to the launch of *gacaca*, when there was an



unspoken convention not to discuss specific details of people's experiences with the recent violence outside of private, intimate settings (Burnet 2005:215). Public mention of past violence prior to *gacaca* was dominated by the official narrative, which included macro-level events that addressed the wide sweep of the genocide, supplemented by witness testimonials. Amidst the nationwide sensitization for the start of *gacaca* in 2003-2005, people continually talked about how this new legal process would force the genocide to become front and center. Some were anxious, noting that it was traumatic enough to live through, so they did not want to revisit it. Many preferred not to know what their colleagues or neighbors had actually done during that time. Others were more positive, eager for a forum specifically designed to ask about details that had long been left unspoken, perhaps speculated about but not confirmed. They wanted to have a chance to explain their actions, or to exonerate themselves, or were impatient to learn long sought-after information such as how a certain relative had died, or where someone had been buried.

Once *gacaca* began, testimony brought the past to life weekly in public settings, so it infused daily life in concrete ways. Information circulated and insinuated itself into close relationships and routine encounters. An elderly woman in Ndora, Agathe, provided a clear example of how there was no escaping the assault of details about the genocide period that *gacaca* unleashed. She said:

I had an old friend, we used to talk about everything. But there was something she kept a secret until recently. During *gacaca*, she testified that my second born was taken by the killers from her house. I was not even at *gacaca* that day, but some neighbors came to tell me. The whole time, my friend and I had continued socializing, but she never told me about the fate of my son. I wondered, why hadn't she told me? Maybe she feared if she revealed it they would hold her responsible for having handed

over the child to be killed, or people would think it was her husband who killed him.<sup>80</sup>

Agathe's experience was a microcosm of events occurring across the country. *Gacaca* provided a forum in which people provided information they had withheld, or spoke publicly things that had previously only been discussed privately. Suddenly, people had no choice but to consider their friends and neighbors based on how they acted in the past and how they positioned themselves in relation to the legal process of reckoning with the past. What had they done during the genocide? How did they explain or justify their actions? Were they cooperative and forthcoming with information or resistant and reticent in *gacaca*? Did they try to implicate or exonerate other family, neighbors, and acquaintances? People had to reevaluate their relationships, considering, as Agathe did, how her friend could or should have acted differently during the genocide, what it meant that she acted as she did, and what it meant that she was now providing information. Agathe had to decide if she thought her friend was guilty, or a bystander, or herself a victim.

Further, because the *gacaca* process was public and participatory, and because oral corroboration was central, people did not passively learn information, but had to act in ways that impacted others. Agathe had to make a choice, given the information and how her friend handled it, about how to respond to the information, which would influence how her friend would be treated in *gacaca*. Would Agathe pursue additional allegations against her or her husband for complicity? Would she provide information in support of her friend, or information that cast doubt on her motives? If someone else spoke up against her friend, would Agathe defend her or remain silent?

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<sup>80</sup> Interview, Agathe. May 5, 2008. Ndora.

Encounters such as those between Agathe and her friend took on added significance, given that they were situated within a nationwide legal process that defined categories in relation to the broader understandings of causality in the dominant narrative (who was innocent or guilty) and that had effects on people's rights. *Gacaca* was not just about providing information and speaking the truth, as in the model of truth commissions that offer amnesty to perpetrators. The *gacaca* process established criminal accountability for genocide, so there were high stakes in how people confronted the past. A neighbor's version of the past could imprison a loved one for up to 30 years, or allow him to commute his sentence to community service work, or let him come home. Or it could require a neighbor to repay looted items.

In this situation, Agathe's friend came to her after testifying, and asked her forgiveness. She explained that she did not mention this information earlier because she feared it would cause Agathe pain, and was better left unsaid. Now, with *gacaca* underway, Agathe's friend felt obligated to cooperate and speak what she knew rather than withhold information. No charges were filed against the friend or her husband. Agathe ultimately forgave her, and during later trials, she interjected in support of her friend's positive motivations.

### ***Creating fractures and connections***

My emphasis on how people were able to use *gacaca* sessions to negotiate relationships might seem counter to recent studies that show the very real constraints and often the fear that surrounded *gacaca*, and the ways that *gacaca* often served to criminalize Hutu on the basis of collective guilt and therefore to reify the former lines of

conflict and help consolidate government power (Chakravarty 2009; Lemarchand 2009:73; Rettig 2008; Thomson & Nagy 2010). Against a backdrop of the government's enforced one-sided memory of the genocide, combined with clamp-downs on freedom of speech and criminalization of "divisionism" and "revisionism," the proceedings of *gacaca* trials could serve as regular performances where people played roles related to the past political violence: Hutu were cast as defendants or witnesses, and Tutsi as victims. This was particularly the case closer to the center of power in Kigali, where suspicions of divisionism ran highest.<sup>81</sup>

However, other dynamics were also at work. *Gacaca* sessions did not simply play out nationwide according to the script included in the government's official version of history (see also Clark 2010). Rather, *gacaca* sessions often served as spaces in which people made competing claims about what constituted truth about the past. Many Rwandans told me that *gacaca* helped to relieve, rather than affirm, the burden of collective guilt against Hutu by identifying who actually did what (see also Clark 2010). People voiced alternative views when discussing individual cases, so *gacaca* sessions involved much more robust conversations about guilt and innocence than occurred about causality in broader debates about genocide.

If we understand *gacaca* sessions merely as predetermined performances scripted by ethnicity, we miss the more creative and varied ways that people engaged with the process. For example, the terms of defendant, victim, and witness were not ethnic, and people used this openness to their advantage. The category for defendants, *uregwa*, literally meant "accused." The term used to designate witnesses—*abatangabuhamya*, or

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<sup>81</sup> Personal Communication, international researcher. July 2008. Kigali.

“those who give proof of culpability”—was the same term used in Western-style courts such as the International Criminal Tribunal for Rwanda. The term for victim, *abahohotewe*, literally means “those who were victimized,” and was specified as anyone who was persecuted “because of his or her ethnic background or opinion against the genocide ideology” (Organic Law N16/2004 of 19/6/2004: Article 34). This linked victimhood to ethnicity but was broader than the word used to describe genocide survivors in other contexts, *abakikacumu*, or “those who escaped the spear,” which more specifically designated Tutsi, since they were the ones by definition targeted during the genocide.

Even against an unspoken assumption that Hutu were defendants or witnesses and Tutsi were victims, during trials people regularly muddied the lines between these categories. An *inyangamugayo* would ask if a man was testifying as a victim or a witness, and he would say “both.” A woman testifying as a witness would take the oath, give testimony about what she saw, and then also explain how the defendant victimized her. Sometimes a person who registered as a victim would talk about what the defendant did to her and then suddenly raise her right hand and repeat the oath that witnesses took, before testifying about things she saw. Defendants brought accusations against victims or witnesses. People made accusations against Tutsi as defendants.

Further, during *gacaca* proceedings, people created alliances and divisions through their oral testimony which followed more complex patterns than simply Tutsi victim versus Hutu perpetrator. For example, there was a young man in Nyanza who repeatedly testified in support of defendants, drawing the *inyangamugayo*'s attention to inconsistencies in testimony or to violations of procedure. He was a Tutsi survivor who

escaped the genocide at a local orphanage, but lost over a hundred members of his extended family. An elderly man who provided damning testimony against defendant after defendant was a former prisoner who was released after his trial and now pushed his co-conspirators to provide information. An *inyangamugayo* in Ndora who survived the genocide provided testimony both implicating and exonerating Hutu defendants, often doing both to the same individual over the course of a given trial.

As these examples show, people did not simply testify based on ethnicity, and people's experiences during the genocide could not be inferred simply from how they aligned themselves through testimony in trials. During sessions, people created shifting alliances and divisions that complicated one-to-one understandings of Hutu as perpetrators and Tutsi as victims. Further, they discussed situated details of the past that could not always be simply mapped onto the official version of history, with its corresponding categories of guilt and innocence.

### ***Summary***

The *gacaca* process brought the past into public discussion, on a nationwide scale that touched virtually all Rwandans, with very real material and emotional impacts on their lives. During *gacaca* sessions, people negotiated relationships with family, friends, and neighbors, in relation to the government-defined categories, in ways that sometimes reinforced and sometimes complicated ethnic lines.

### **Negotiating Citizenship Categories: Perpetrators and Victims**

People used *gacaca* sessions not simply to place one another in predetermined groups of guilt or innocence, but also to debate the categories of perpetrator and victim

themselves. By considering how people fit into scripted roles of perpetrator or victim, they voiced the ways those categories did not capture the nuances of local dynamics. They argued for richer understandings of guilt and innocence in relation to situated versions of the past.

The official narrative saw all Hutu as potential perpetrators, and all Tutsi as innocent victims (see Chapter 2). Case discussions showed that “victims” and “perpetrators” were not internally unified and externally opposed to one another. People used individual examples to dispute publicly over what it meant to be a perpetrator, and how wide the net of complicity should spread. They argued for a category of innocent Hutu (for which there was no word, given the prohibition against using ethnic terms), and combated the perception of collective guilt. Further, they debated who should rightfully count as a victim, established hierarchies of victimhood, and even accused victims of being complicit.

In Chapter 1, we saw these designations were linked to forms of citizenship, insofar as membership in these groups, defined by the state based on the genocide, led to access to state resources or restrictions on certain rights in the present. Thus, people negotiated citizenship as a form of collective belonging through disputes over the genocide.

### ***Perpetrator***

*Gacaca* case discussions showed that the category of “perpetrator” was fractious. During *gacaca* proceedings, people on the “same side” of the conflict debated varying degrees of guilt or innocence, adding nuance to a simplistic, homogeneous definition of perpetrator. They distanced themselves from one another, or talked about how

perpetrators could have also felt victimized, and could have tried to protect people. That is, they fought assumptions of guilt, and ultimately, debated what it meant to be Hutu in post-genocide Rwanda.

Consider, by way of example, a later portion of the previous case against Claude, where he was accused of being an accomplice in killing a woman named Mukamurara, who was the godmother of one of his children.

A young woman with a baby swaddled on her back testified that she was with Mukamurara, her maternal uncle's wife, during the genocide, and she asked Claude to explain his actions surrounding Mukamurara's death. Claude explained how Mukamurara came to his place with several children seeking safety, and he agreed to protect them, and gave them food. Then the next morning a group of killers came to his father's place, which was adjacent to his own. His father authorized them to search, and soon the killers came to Claude's house. They kicked out the door and searched the house, where they found Mukamurara and the children. The killers, including Alphonse,<sup>82</sup> beat up Claude and his wife, then took Mukamurara out. Claude said that he too was afraid to protest. Alphonse asked him who had authorized him to hide, rather than kill, Tutsis? The killers demanded money from Claude, threatening to turn him over to the authorities if he did not pay. They demanded Frw10,000, but he bargained them down to Frw3000. When Claude gave the money, Alphonse told him that they would let him live because they had gotten the person they wanted. The killers left with Mukamurara.

The young woman with the baby said that Claude's story was not completely true. She agreed that Mukamurara and the other children came from the bush to seek refuge at Claude's house, but added that he gave them work to do, insisting that they grind sorghum. She suggested this might mean Claude had bad intentions, and maybe he was in league with the killers. Another woman then stood to testify that Claude left shortly after Mukamurara arrived, and therefore perhaps he was the one who called the killers. Claude's niece then testified, agreeing that Claude asked the refugees to grind sorghum, but also adding that he was trying to protect so many people hiding at his house at that time.<sup>83</sup>

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<sup>82</sup> See Chapter 4 for a discussion of Alphonse's trial.

<sup>83</sup> *Gacaca* session. January 17, 2008. Ndora.



As this testimony shows, many of the discussions in *gacaca* involved people trying to avoid or establish complicity. In this case, two men had already been convicted of killing Mukamurara in different *gacaca* trials, yet the victim and *inyangamugayo* wanted to find out about Claude's involvement. *Gacaca* sought to establish individuals' responsibility for participating in collective violence, and so defendants could be convicted as accomplices or collaborators. This was based on the premise that if, for example, a dozen people participated in getting someone out of hiding, threatening him, and beating him, then they all should bear responsibility, not just the person who delivered the final death blow. Much of the debate within *gacaca* sessions, then, was on how wide that net of guilt and liability should spread: to which people and for which actions. As I discuss below, people sought to draw clear lines between themselves and others to avoid being seen as guilty by association. They contested what constituted being a perpetrator in more nuanced ways, differentiating kinds and levels of guilt, and discussing how ideas of protecting others or suffering fit with dominant understandings of how blame should be apportioned.

Claude's case shows how people sought to distance themselves from others who were guilty and to shift blame. Claude clearly sought to differentiate between himself and his father, noting that the killers came first to his father's house—which, he emphasized, was a distinct building on a separate piece of property. His father, not he, was the one who authorized the killers to search for people. In typical cases, a defendant might clarify, for example, that a victim died on the portion of family land owned by his father, not himself, or he would say that his accused brother was living with his father at the time,

not with himself. This kind of positioning, which often created fractures among parents, children, and siblings, was common.

By separating themselves from those assumed to be guilty, people sought to avoid the duties and obligations of punishment. These attempts to avoid collective guilt often led people to disconnect themselves from close family and friends, and to seek alliances across ethnic lines with victims, to boost their moral credibility. For example, Claude's sisters testified against him, positioning themselves as aligned with Mukatagazwa, the victim, and in opposition to their brother, the prisoner. In the same case against Claude, his brother, who was also accused before *gacaca*, sought to differentiate his own actions from Claude's and testified against him. The brother aligned himself with his god-daughter, a victim who made property claims against Claude.

Property claims prompted particularly heated efforts for people to separate themselves from accused perpetrators, because guilt in property cases was more expansive than in murder cases, and repayment was a heavy burden in the context of rural poverty. For example, if a man was found guilty of murder, his children would not have to go to prison on his behalf, but they would be liable to repay his debts, on the premise that the children had benefitted from the stolen goods. In the case against Claude, several victims included extensive property claims against him, specifically for several cows, goats, and crops. The financial implications of these claims were part of the context in which Claude's sisters and brother attempted to create distance between themselves and Claude through their testimony against him.

In 2008, the government implemented a new provision, intended to resolve property claims in which no one admitted liability, which further broadened the designation of

perpetrator. If, for example, a victim's house had been destroyed and no one admitted to looting it, then everyone who was living in the adjacent area at the time would now be required to share in the repayment.<sup>84</sup> The law pulled more and more people into the category of perpetrator, expanding the net beyond people currently detained to include their families and neighbors. People redoubled their efforts to demarcate lines between themselves and guilty parties. On the other hand, many of those who were convicted were glad others were being forced to bear some of the guilt. Alphonse, who implicated Claude in several counts of looting but exonerated him in others, described:

The individual people who are being asked to repay aren't the only ones who looted the property. At the time, so many people died, everyone took things. If a person didn't take a tile, he took a chicken, or at least he ate some of the meat. Everyone took things that belonged to someone else, or purchased property that had been stolen, such as blankets or saucepans or beer or rice. So everyone participated somehow.<sup>85</sup>

Claude's example shows that debates in *gacaca* were about how broadly complicity should be defined, in relation to what actions, with what mitigating factors. What did it mean that Claude accepted refugees into his home, but then asked them to grind sorghum? What did it mean that he turned Mukamurara over to the killers, but not others (such as the victim with the baby on her back)? Should Claude be punished for turning Mukamurara over to the killers, given the circumstances? As in the example with Agathe, should her friend be responsible for not having successfully protected the child when the killers came?

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<sup>84</sup> *Gacaca* meetings with staff of National Service of *Gacaca* Jurisdictions. December 2007. Butare, Ndora, Nyanza.; Interview with *inyangamugayo*. May 5, 2008. Ndora.; Interview with *gacaca* coordinator. May 22, 2008. Butare.

<sup>85</sup> Interview, Alphonse. June 4, 2008. Ndora.

The official charges against defendants classified in Category Two were: a) killing, b) going in groups, c) going “to work” at roadblocks, d) intending to kill even if it was not carried out; e) doing other bad acts even without the intention to kill; f) other.<sup>86</sup> People’s testimony involved extended discussions about the circumstances and motivations of their actions, which sought more specific differences than these designations.

Through the specific allegations people made in their testimony against others or defending themselves, distinctions emerged, for example, between refusing refuge to someone, versus failing to successfully protect someone when the killers came, versus actively flushing people out of their hiding places or sounding an alarm, versus overtly turning people over to the killers. Some people claimed that they were caught up in the frenzied energy at the time and perhaps ran after people, but stopped themselves before hurting anyone.

In areas where government soldiers with modern weapons committed most of the killings, cases involved particularly intricate discussions around distinctions of complicity for local people. For example, in Butare, a month-long case about genocide in the town hospital involved debates over what standard of care doctors and nurses should have provided to victims during the genocide.<sup>87</sup> Hospital staff members repeatedly explained how they did their best with what little medication or supplies they had at the time, even as victims were seized by the soldiers and killed over night. In another example, in a typical case in Kigali, alleging that a woman failed to protect a neighbor’s baby, discussion centered on whether the defendant should have reasonably been

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<sup>86</sup> *Gacaca* charge sheet, obtained from *inyangamugayo* in Ndora, and through the Ministry of Justice, Author’s files.

<sup>87</sup> *Gacaca* sessions. August - September 2007. Butare.

expected to help someone on the path in front of her house, eliciting a detailed discussion of local understandings of private and public space.<sup>88</sup>

These nuances were more specific than, and not captured by, the official categories. The distinctions emerging everyday in *gacaca* cases gave shape to the concrete forms of violence and complicity, and complicated a monolithic picture of all Hutu as uniformly guilty or evil. Consider how different these portrayals were from those in Kagame's speech in April 2004, in which he described that perpetrators "chose to do evil because they were swayed by hate or hope of profit," and they killed "without remorse, and inflicted pain and agony and enjoyed doing so" (see Chapter 2).<sup>89</sup>

Further, in their testimony people sought to open up an idea of protection and even victimhood among Hutu perpetrators, using the same verb of "victimization" from which the category of "victim" in *gacaca* derived. Testimony provided clear examples of how Hutu had suffered during the genocide. For example, Claude claimed that he felt victimized at times by killers such as Alphonse, who harassed him verbally, threatened to turn him over to higher authorities, and took money from him. This was typical of testimony by other defendants and witnesses, who described their own fear at the time, as, in an often-repeated explanation, "The world went crazy, and people ran around killing." People explained how they had been forced to kill, or had to pay money to be allowed free. They described how they were required to go to roadblocks by men wielding guns or *pangas*, but did their best to avoid actively killing. Witnesses testified that men with Tutsi wives were particularly vulnerable, and often had to cooperate to

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<sup>88</sup> *Gacaca* session. August 2007. Kigali.

<sup>89</sup> President Paul Kagame. April 7, 2004. Kigali.

protect their families. In a typical example, in one case a witness testified that the defendant forced him to kill his Tutsi father-in-law, and pulled at his tee-shirt to show the wound on his shoulder that the defendant had caused.<sup>90</sup>

Some defendants dared to mention their own fear of the RPF, such as one man who explained, “I was fleeing the Tutsi who were persecuting us. I was running like everyone was running”<sup>91</sup> (see also Clark 2010:211). Hutu women talked about how they had cowered together at night, sleeping in groups for safety, only returning hurriedly to their homes during the day. Together, these testimonies gave voice to the idea that Hutu had themselves been terrified.

Claude’s example further showed how accused perpetrators and witnesses used case sessions to explain how they had tried to protect people. Claude claimed he protected (or tried to) people such as Mukamurara, even as he participated in the killing of others. His niece underscored that even if Mukamurara had been taken away, many others, such as the victim who testified with the baby on her back, had not. Many people claimed they tried to protect people, only to lose courage for fear of having their own loved ones slaughtered in retaliation. As one defendant voiced, “I’m not saying I rescued her, but I did an act that contributed to her survival.”<sup>92</sup> These kinds of comments did not only come from defendants themselves. During Alphonse’s trial, for example, after he confessed to participating in dozens of murders, many of the victims made positive comments about things he had done during the genocide, such as: “Some people survived only because of

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<sup>90</sup> *Gacaca* session. September 20, 2007. Ndora.

<sup>91</sup> *Gacaca* session. November 8, 2007. Ndora.

<sup>92</sup> *Gacaca* session. November 8, 2007. Ndora.

him,” “He got people from pit latrines and took them to the hospital, he brought antibiotics to treat injured people,” and, “He even saved a person from being raped.”<sup>93</sup>

I draw attention to these portions of testimony, which were representative of case sessions occurring every day across Rwanda, because the constant voicing of these details, in case after case, week after week, challenged assertions that all Hutu were always killing, or that all were equally guilty. The variations people spoke were not necessarily included in the written transcripts; they did not necessarily lead to exoneration. People made these explanations as strategic efforts to convince *inyangamugayo* to mitigate defendants’ sentences. Victims did not necessarily believe defendants’ rationalizations, and sometimes their views of perpetrators were hardened by what they saw as flimsy excuses.

But it is important not to discount that many people—not only those who had been discredited as liars or notorious killers—regularly voiced these views. Taken together, these statements show people did not all simply buy into the government’s version of guilt and innocence. They challenged it without simply negating genocide or denying the basic premise of the violence, but rather by providing detailed counter-examples, empirical evidence to back up their claims. The sum of these statements was illustrative of the broadly existing public dissent about the master narrative and its classifications.

Overall, these examples show that people used *gacaca* sessions not simply to put people in or out of the category of perpetrator, but to argue what it should mean to be a perpetrator. In *gacaca* sessions, people challenged the amnesia in the official version of the genocide, and argued for more nuanced versions of the position of Hutu, countering

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<sup>93</sup> *Gacaca* session. December 13, 2007. Ndora.

the idea of collective guilt. Hutu who made claims of being victimized or suffering could also be seen as arguing for a category of “innocent Hutu”, or arguing to broaden the definition of “victim.” This was a means of debating the way “perpetrator” operated as a citizenship category, with the additional duties and restricted rights associated with it.

### *Victim*

Being a “victim” brought access to government supports, so the designation invited debate. As noted above, defendants and witnesses regularly explained ways they believed they had been victimized. Case discussions further showed that not all victims were immune to suspicion, nor were they fully allied in solidarity. In their testimony, people identified differences and hierarchy among those seen as victims. They disagreed over the links between past injury and present status as a victim, and on what kind of treatment and resources victims deserved in the present.



**Figure 12:** Defendants at *gacaca* session in Nyanza (Author’s photo).



An example from a *gacaca* session in Nyanza illustrates how people contested the notion of victimhood. The defendant, Jean, a medical technician, was charged with being involved in actions leading to the death a man called Sebijisho at the Nyanza hospital.

A doctor from the hospital implicated Jean, saying they were together when Sebijisho was taken to be killed. Jean denied the charges, saying that he was at the hospital with his family seeking refuge from the killings since he was among those being targeted, and was merely trying to help people and stay alive. Towards the end of the trial, Jean's son Serge testified, explaining how his family suffered so much and barely survived during the genocide. Serge argued that people should not be accused just because they survived. He explained that his family was facing aggression from neighbors because of the allegations, and people had even thrown stones at their house the previous week.

The final testimony was from Sebijisho's mother, Jean's neighbor. She said that during another trial, her son's killer confessed, and said that he was with Jean when Sebijisho died. She asked why people protected Jean from being killed but not Sebijisho? She said she believed that Jean should have done something to protect her son. She suggested that Serge was being dishonest, saying that as their neighbor, she had not heard anything about stones being thrown at their house. She pleaded, should the ones (like herself) with no families who survived become victims again, as those guilty were not punished?<sup>94</sup>

Though only a small percentage of cases I attended were against Tutsi defendants, this example is illustrative of wider-reaching dissent over the category of victim. In this discussion as in others, people challenged what it meant to be a victim, and whether their neighbors deserved to be considered as such. Here, people within the category of victim openly disagreed on what it meant to be a victim, though the debate often included participants in many positions.

Sebijisho's mother's testimony revealed broader-reaching disagreements about who were the rightful "victims," suggesting a hierarchy of suffering. This reflected a wider debate over who had suffered most and therefore who was most deserving of support.

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<sup>94</sup> *Gacaca* session. September 18, 2007. Nyanza.

She claimed her rights to victimhood were higher than Jean's, since she was the one who really lost her family, while Jean and his wife and sons had survived. Further, she dismissed Jean's son's claims that the family was suffering further as a result of this *gacaca* trial.

Going further, Sebijisho's mother's testimony claimed not only that Jean was a less deserving victim than she, but that he also might be complicit in genocide. She allied with a convicted perpetrator to argue that if Jean and Sebijisho had been together and Jean had survived while Sebijisho had not, that must mean Jean had been complicit in the latter's death. That she would accuse a fellow survivor and neighbor underscores the fallacy of assuming a cohesive moral community among victims. Jean's son's testimony voiced anger, felt by his mother and siblings as well, over the allegations of complicity and the dismissal of the family's suffering, underscoring the deep rifts between these families of victims.

Sebijisho's mother's allegation revealed a common point of contention among victims: how those who had survived had managed to do so. Victims were often suspected of being collaborators, especially by repatriated Tutsi who returned to Rwanda after the genocide to find their extended families killed (Reyntjens 1995). Women in particular were suspect of having prostituted themselves. The stakes of this question were amplified by *gacaca*'s search for criminal responsibility, and resulting accusations of complicity.

Jean defended his own position as a victim, claiming he spent the genocide desperately trying to survive, and lost his entire extended family. In his testimony, he explained that he fled with his wife and children to the hospital where he worked. In the

ensuing weeks, he did his best to take care of people in hopes that his medical services would make him valuable, and therefore that the killers would be less likely to target him. He explained that he tried to help victims such as Sebijisho, along with his own family, but could not protect everyone. He believed the accusations against him were in retaliation for testifying in other trials. In an interview eight months after his trial, Jean said:

I was in many, many, many *gacaca* sessions to speak the truth and to counter people's lies. I myself accused the one who killed Sebijisho, and then that one turned around and said that I was with him, as if we were accomplices, even though in reality, he also wanted to kill me. So the accusation was to distort facts and humiliate me.<sup>95</sup>

Jean was deeply embarrassed by being accused before *gacaca*, and found the trial extremely stressful, even though he was ultimately exonerated. Months later, he still showed visible signs of anxiety and shame when talking about the case, and feared many still perceived him as complicit in genocide.

As this example shows, people who saw themselves as victims could be drawn into the webs of accusations created by *gacaca*. In another case in Nyanza, an *inyangamugayo* did not trust a genocide victim's assertion that he had nothing to testify about regarding the defendant, and instead accused the victim of withholding evidence. Victims were regularly accused of falsifying property claims for their own benefit. Many examples showed that victims could incur suspicion or feel insecure based on how they engaged with *gacaca*.

Discussions in *gacaca* were not always, or mostly, about casting suspicion on victims or survivors so explicitly. In most cases, *inyangamugayo* and other victims created an

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<sup>95</sup> Interview, Jean. May 20, 2008. Nyanza.

inclusive climate towards people who claimed they had been victimized because of their ethnicity. *Inyangamugayo* often chastised defendants who spoke disparagingly of victims, reminding everyone of victims' special status. This was consistent with the dominant understanding of victimhood. But as I have shown, this special status did not go untested.

Case discussions over property often served as forums to debate what it meant to be a victim, in terms of how broadly or narrowly the link could be made between present circumstances and past injury, and how directly the past injury had to relate to the genocide. In a typical example, in another portion of the case against Claude, a young woman in her early twenties made a property claim against Claude for taking her family's cow and its calf.<sup>96</sup> Claude claimed he knew nothing about her charges, and no witnesses provided testimony about the allegation. The judges and assembled crowd nonetheless devoted nearly an hour to understanding the young woman's social position and circumstances, more than just trying to identify Claude's guilt or innocence. People discussed her mentally ill mother, her parents' divorce, her new step-mother, and how after her father's death in the genocide, the step-mother had taken everything so now she had nothing. Claude seemed to think this information was irrelevant and that he was not responsible for her well-being, while others seemed to think that given the victim's poor living conditions, it was particularly important that she be reimbursed for her cow. This discussion was a means of debating who was liable for supporting her now.

Discussions in *gacaca* occurred against a backdrop of broader arguments about the category of victim at the national level, and the rights and privileges associated with it.

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<sup>96</sup> *Gacaca* session. January 17, 2008. Ndora.

Being designated a victim brought access to resources that, though minimal and not enough to make someone wealthy, were nonetheless heavily sought after, given the poverty in which most survivors (and rural Rwandans more broadly) lived. Victims could be beneficiaries of national funds and programs to support victims, such as the *Fonds National pour l'Assistance aux Rescapés du Génocide* (F.A.R.G.), or could benefit from convicted perpetrators' community service work, such as having their homes rebuilt. They could bury their loved ones in genocide memorials, which saved them burial costs and symbolically recognized their suffering. Survivors, typically living in rural areas, often felt disenfranchised in comparison with the government elites, mostly repatriated Tutsi who ruled in their name but lived vastly different lives (Clark 2010; Reyntjens 2005:17).

Both within and outside *gacaca* sessions, rumors abounded about who had access to victim-designated funds, and who did not, generating jealousy, competition, and debates over who were the rightful victims, and how the government should be supporting them (see also Clark 2010:119,252). There was confusion over what the reality was, as well as what it should be. Consider Mukatagazwa's quote from the Claude case, that Claude thought the government would give her cows if he confessed to killing her children. This kind of misguided belief was common. In another example, a genocide victim told me that he heard that Tutsi widows whose husbands had been Hutu were ineligible for the government support fund for survivors, because of assumption that their husbands had been perpetrators.<sup>97</sup> Similarly, many claimed that children of Hutu killed during the

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<sup>97</sup> Interview, Nyanza resident. December 28, 2007. Nyanza.

genocide were not eligible for F.A.R.G., since they were not seen as proper victims.<sup>98</sup>

Whether or not any of these assertions were true, what is significant is that there was discussion and confusion over perceived government favoritism for survivors, and who was eligible for what resources, based on being afforded victim status (see also Clark 2010:252). *Gacaca* sessions fed into these debates.

Overall, *gacaca* discussions showed that the category of “victim” on which the whole idea of *gacaca* was based was subject to debate. Tutsi survivors were not immune to allegations of complicity, and concerns of guilt by association could pervade victims’ families and neighbors. People contested who deserved to be considered a victim, and with what effects. Again, the sum of these discussions meant that people challenged the view of victims in the government narrative as all being innocent and equally deserving of support from government programs and perpetrators’ repayments and labor. Further, these dissents did not come only from convicted perpetrators but from a range of participants.

### ***Summary***

*Gacaca* proceedings fundamentally involved discussions about what it meant to be victims and perpetrators. People argued over who fit into these socio-political categories, and voiced alternatives to dominant understandings of the classifications themselves. Since the groups were defined by the government in relation to the genocide, and had impacts on people’s material realities in the present in terms of rights and punishment, these discussions can be understood as debates over forms of citizenship. The discussions

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<sup>98</sup> Interview, Nyanza resident. November 27, 2007. Nyanza.

that occurred through *gacaca* testimony between specific individuals were situated within, and ultimately fed back into, broader nationwide debates over moral community. (People also debated the meaning and boundary of family belonging, which I discuss in more detail in Chapter 6.)

In these discussions, people blurred the boundaries between perpetrator and victim, showing that they were not diametrically opposed in all situations. Just as people tried to open the category of victim to include innocent Hutu, people also tried to show that some victims could be accused of complicity. Perpetrators could also have been victimized. Victims could also have victimized others. Everyone suffered. Despite their very different positions with respect to the genocide, there were parallels, for example, between Jean's claims that he tried to protect Sebijisho, Agathe's friend's shame that she could not protect Agathe's child, and Claude's claim that he had tried to protect Mukamurara. Jean and Claude both argued that many accusations against them were strategic and retaliatory.

*Gacaca* sessions did not represent an ideal-type public sphere in which people felt free to say anything and could deliberate rationally (Habermas 1974). Rather, debates occurred in a highly politicized and circumscribed context, with censures on public speech that constrained people's testimony and silenced many people's experiences of the past violence (Lemarchand 2009; Reyntjens 2005; Thomson 2009; Umutesi 2000; Vidal 2001). At the same time, it is insufficient to see *gacaca* sessions as entirely devoid of alternative viewpoints. When people discussed individual incidents about the genocide in *gacaca* cases, they were willing to disagree with one another publicly. People used *gacaca* sessions to debate the past, and in so doing, they offered alternate interpretations

of cause and culpability, and of people's resulting social positions and categories of citizenship. The *gacaca* proceedings thus, as some had hoped, "create[d] a forum to deal with the past and to tell the truth at the very local level", though there was no such similar forum at the national level (Reyntjens & Vandeginste 2005:121). This is consistent with how some scholars have pointed to the ways that Rwandans over time expressed alternative views in public under seemingly coercive regimes, even while the stakes were high in challenging the historical interpretations of power-holders (Longman 2000; Newbury & Newbury 2000).

Though much attention on *gacaca* focuses on murder cases, property cases were equally problematic (see also Clark 2010:126), consistent with how restorative justice models often falter in resolving disputes over scarce resources (Nader & Todd 1978:18). Property cases were at the heart of at least three questions: how deep were perpetrator's obligations to victims as individuals and as a category; how should obligations be shared among perpetrators with varying degrees of guilt and complicity; and what were the enduring alliance effects, if any, of exchanging goods or labor.

By mid-2008, as the *gacaca* process was drawing to a close, Category Three property cases made up 80 percent of all remaining cases (see Appendix 3). Over 90 percent of the total property cases had already been judged, but very few had been enforced. Given the economic struggles and pervasive poverty facing the majority of Rwandans, the redistribution required by property case judgments was contested and difficult to enforce. Further, in a context where exchange of goods, particularly cattle, had historically created and solidified alliances such as marriage or patron-client ties (De Lame 2005:353,373; Maquet 1970:107-108; Newbury 1988:118; Vansina 2004:47,69), the question remained



what future obligations between giver and receiver were implied by transferring property. Repayment in the form of work, such as farming for someone or even *T.I.G.*, was similarly fraught, given the history of state-backed mandatory labor that discriminated on the basis of ethnicity, such as *uburetwa* and other *corvée* practices (Newbury 1980a; Vansina 2004). As Agathe, who was an *inyangamugayo* at the cell level, described, “When we finish the cases, we have not really come up with a solution. Of the over 200 cases our cell has decided, I can think of only one or two where people have actually paid back. We wonder how this will work out.”<sup>99</sup>

## Conclusion

In order to understand the effects the *gacaca* process had on social relationships, we need to look beyond the final judgments of guilt and innocence, to the details of the discussions. The ways people confronted the past in these forums shaped their social relationships in the present. The emphasis on oral evidence, with its inherent malleability, meant that discussions turned into performances wherein through deliberate acts of remembering the past, people agreed and disagreed with one another. People were equally, if not more, concerned with demonstrating loyalty than with truth-telling (Waldorf 2010:195). They expressed social alliances or divisions, at one-on-one and group levels, and argued over the meaning of categories of political citizenship. People’s discussions of the past in *gacaca* shaped their relationships with intimate family, friends, and neighbors, as well as with Rwandans across the country, in terms of shaping broader understandings of socio-political categories in relation to the violence.

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<sup>99</sup> Interview, Agathe. May 5, 2008. Ndora.

*Gacaca* sessions revealed a more complex character of social fractures and connections than those that mimicked the lines demarcated by the conflict (between Hutu and Tutsi). Some disputes reinforced the ethnic lines, while others were within families, among perpetrators, or among survivors. People crossed previous conflict lines to forge connections, evanescent or enduring. Overall, *gacaca* sessions did not simply create restorative harmony, nor did they simply deepen a single division between Hutu and Tutsi. The depth of fractures revealed the ongoing anger, pain, and frustration on all sides that the mediation discourse struggled to accommodate and overcome.

*Gacaca* proceedings occurred in the context of a restrictive public sphere. The best way to understand *gacaca* is not as achieving “a collective remembering” or “truth” in the face of the restrictive dominant narrative of history in Rwanda, but rather, as a fight against forgetting and a reminder of constant contestation. In their testimonies, people gave voice again and again to other sides of every story. They reminded one another in a variety of ways, through gaps and silences, that the government’s narrative and its resulting definition of guilt and innocence was not the only one, inserting alternative views and counter-arguments, even if they did not address the most contentious issue of RPF atrocities. *Gacaca* did not result in indoctrination but rather served as a constant reminder that definitions of victim and perpetrator, guilt and innocence, were still being debated.

In the next chapter, I turn to *comite y’abunzi* to consider how through disputes over land and property, people negotiated collective belonging at the proximate level of “family” and “community.”

## Chapter 6: *Comite y'Abunzi*: Ordinary Disputes, Family, and Community

### Introduction

In the previous chapter, I demonstrated how people shaped their social relationships and forms of belonging in *gacaca* courts, specifically how they negotiated their citizenship status through disputes over the genocide. In this chapter, I consider how people engaged in similar processes in *comite y'abunzi*, the decentralized grassroots legal forums aimed at addressing ordinary disputes. Disagreements over quotidian events and property, often related to the consequences of genocide, were handled in a legal forum based on institutional principles and style similar to *gacaca* courts.

People used *comite y'abunzi* to negotiate collective belonging at the proximate level of “family” and “community,” which were seen as the basic elements to restoring the social fabric in Rwanda. During mediation sessions, people participated in contested debates over items crucial to their livelihoods, in a forum that emphasized not the formal application of rules, but an evolving balance of custom and law. These discussions served as a forum for broader negotiations of group membership, and the rights, duties, and obligations that came with it.

I begin by describing the format of *comite y'abunzi* and underscoring the key dynamics shaping disputes. I then provide an example from Ndora to illustrate these themes in detail. This example serves as a platform for the final section, in which I discuss how people negotiated family and community belonging through these cases. Overall, I show that despite the emphasis on mediation discourse, *comite y'abunzi* cases were highly contested. The often adversarial debates in these forums revealed the

tensions placed on localized levels of collective belonging. Further, cases showed that while some disputes reflected the lines of the political violence, disputes occurred as often within families as outside of them, drawing attention away from an exclusive focus on Hutu versus Tutsi as the only, or most important, ongoing tension in contemporary Rwanda.

### ***Comite y'Abunzi: Contested Debates over Land and Property***

The institutional format of *comite y'abunzi* as a legal dispute resolution forum, including its formal rules and everyday practices, shaped how people interacted with one another. I discuss several elements of this format. First, people disputed over land and personal property, items crucial to everyday survival. The forum emphasized oral testimony, and therefore sessions were contentious debates among neighbors and family. The guiding philosophy valued custom and emphasized compromise, and therefore invited negotiation of norms and values. *Comite y'abunzi* was one step in a longer system of attempts at resolution, reflecting how disputes were not isolated but connected to everyday life. Finally, cases overlapped with *gacaca*, confronting the past in a similar institutional format.

#### ***Disputes over land and personal property***

“Ninety-eight percent of our cases are about land,” the president of the mediators in Ndora informed me during one of my initial visits to his *comite y'abunzi* session.<sup>100</sup>

While my data later suggested it was closer to 50 to 70 percent,<sup>101</sup> his hyperbole captured

<sup>100</sup> Interview, presiding *umwunzi*. November 9, 2007. Ndora.

<sup>101</sup> Fifty percent of Ndora *comite y'abunzi* cases I attended were explicitly about land. Of the cases brought to the Legal Aid Clinic that had already been heard by *comite y'abunzi* (i.e., cases where people were

the overwhelming predominance of land cases. (See Appendix 4 for distribution of *comite y'abunzi* cases.) Even cases about crops, cattle or other livestock, or houses (other kinds of personal property) were intimately tied to the land on which people grew, grazed, or built them.

Land disputes have long been identified as both contributors to and consequences of violence in Rwanda, and access to land continued to be a source of struggle in Rwanda more than a decade after the genocide (Ansoms & Marysse 2005:80-87; Gasarasi & Musahara 2004; Pottier 2006:510; Vansina 2004:40-41). The stakes around land were high, in a country with among the highest population density in continental Africa and a nationwide reliance on subsistence agriculture (See Appendix 1). For example, in 2000, the average distribution of arable land was nine people per hectare (2.47 acres), and most rural families owned less than one hectare, too little to earn a living (Ministry of Finance 2000:7).

The national government was aware of what it described as the “acute land shortage” (Ministry of Finance 2000:15), and sought a variety of legislative remedies over the years, which generated intense debate and were closely followed by Kinyarwanda and English newspapers and radio programs. For example, during 2007 and 2008, Rwandans closely followed debates about a change in land tenure limiting the amount of land a single person could own to 25 hectares, with the aim of a more equitable distribution. They questioned whether wealthy landowners (including government elites) would

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dissatisfied with the result), 70 percent were over land. This suggests that people disproportionately appealed land cases.

comply with the new rules and why certain groups, such as *repatriés* or soldiers, were slated to benefit over others (Kimenyi & Ntagungira 2008; Musoni 2008a).

The intense human need for land in Rwanda was marked on the physical landscape itself. Virtually every square inch of hillside was cultivated, except those areas too steep to hold crops. The hillsides and valleys were divided into small plots, each cultivated by hand, forming a sweeping patchwork quilt of alternating squares across the country. Even in cities, vegetable gardens grew in small clumps along fences and road corners. Cows and goats grazed in the areas without crops, and disputes over livestock damaging gardens were common. Lawns and unplanted brush were extremely rare, even remarkable.



**Figure 13:** Typical Rwandan hillside (Author's photo).

The notable exceptions were the three protected national parks. Volcanoes National Park in the north and Nyungwe National Park in the Southwest were home to globally-valued endangered mountain gorillas and chimpanzees. Akagera National Park was a savannah game reserve in the east, roamed by standard African game. The borders of the parks were under constant dispute, demonstrating that they were susceptible to national

land pressures. For example, in 1997 nearly two-thirds of Akagera's land was turned over to the state to redistribute to the population, especially for grazing. All of the parks faced continual pressure at their borders by, for example, people hunting, grazing animals, planting, and felling trees. In efforts to balance tourism and environmental goals with people's very real needs for access to land, the national government, tourism office, and international and national NGOs pursued specific community development programs working with people living in the park's "buffer zones," attempting to redirect their land-based subsistence activities.<sup>102</sup>

Land was important to people so they could provide for their families, in terms of growing food and grazing livestock, and it was significant more broadly for acquiring and conveying status. People therefore disputed over ownership, use of, and access to land. People filed cases, for example, if someone moved a property boundary demarcation; if someone damaged land that had been tilled for planting; or if they felt they were given a plot that was too small or too infertile during land partitioning. They filed cases accusing others of trying to inherit leased land, or of harvesting trees off their property, or of wrongly terminating a long-term lease. Cases over breach of contract, inheritance, theft, leasing, or unauthorized sale of property all could relate to land.

The central role of land in providing sustenance for families was enshrined in national law, in which land was treated differently from other kinds of property. Land transferred across generations was considered a shared family asset and therefore could not be sold without the "prior consent of all other members of the family" (Organic Law N.8/2005 of 14/07/2005, Articles 35-38). This derived from a patrilineal system in which

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<sup>102</sup> Interviews, Wildlife Conservation Society staff. July 2005, 2007-2008. Kigali.

patrilineages, tracing agnatic ties back three to six generations, held common rights over land and cattle (d'Hertefeldt 1971; Newbury 1988). Even ordinary Rwandans who did not know the more intricate legislative details understood this key distinction. As one woman described, “This is land we are talking about, it is not just like potatoes you go and carry to the market and sell away. These are things that require consensus.”<sup>103</sup>

*Comite y'abunzi* cases also reflected a rising trend of women seeking access to land. This was spurred by changes to the inheritance law in 1999 that allowed women, who formerly had no clearly defined rights to land within a patriarchal system as they could not inherit directly from their fathers or brothers (Jefremovas 2002:98-99; Newbury 1998b:92), to be counted in family succession (Organic Law N.22/99 of 12/11/1999, Article 43). There remained confusion and lack of clear information among most rural Rwandans (including *abunzi*) over the precise laws and their implementation. In general, women now had the idea that they had rights to land and were more likely to try to exercise them.

The other disputes making up the vast majority of cases before *comite y'abunzi* involved other items of personal property—similar to the debates in Category Three *gacaca* cases over trousers, sacks of beans, roof tiles, or cattle, as I discussed in Chapter 5. Items under debate in *abunzi* cases typically reflected the rhythm and business of everyday life—a sack of homemade charcoal, a weighing scale used by a woman to sell flour and sugar, ten dollars-worth of chipped glass soda bottles, a cell phone, a pig, a bicycle, or parts of a house. In the context of economic scarcity, it was often worth fighting for a single animal or a few dollars.

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<sup>103</sup> Interview, Ndora resident. May 2008. Ndora.



Overall, the majority of cases people brought to *comite y'abunzi* were over land and other material possessions related to rural Rwandans' everyday efforts to earn a living and look after their families. Cases were considered high stakes because the *abunzi* had the capacity to take away or restore a plot of land, a cow, or cash. Case discussion and judgments therefore had very real impacts on how people managed in a subsistence economy.

### ***Balancing custom and law***

*Comite y'abunzi* was designed in deliberate opposition to legal forums that applied established law in a codified way to settle disputes. *Abunzi* valued custom (*umuco*) as well as written law, and sought creative compromise more than objective application of preexisting principles. These elements contributed to an environment in which people did not simply present evidence, but advocated for what they thought the evidence meant, and what the implications should be. This invited intense negotiation over social values, mutual obligations, and appropriate behaviors.

*Abunzi* were formally instructed to take custom into account, both in evaluating testimony and making decisions. In land cases, the law itself recognized equal validity in land rights acquired through written law versus custom.<sup>104</sup> In determining judgments, the mediators were instructed to be guided by an area's custom, as much as by law (Organic Law No.31/2006 of 14/08/2006, Article 21). This meant that there was not one clear yardstick against which to measure whether evidence was sufficient to meet the burden of

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<sup>104</sup> People who acquired land through custom—meaning it was inherited, acquired from competent authorities, or through “any other means recognized by national custom whether purchase, gift, exchange, and sharing”—had equal rights to those who acquired it through “written law” (Organic Law N.8/2005 of 14/7/2005, Article 7).

proof, or whether proposed solutions were legitimate. Discussions therefore existed in a messier grey area. People often justified their actions and evidence in relation to traditional practices and norms, which changed over time. The *abunzi* and the participants were put in the position of debating what the balance should be between custom and law, since the two often varied (Gahamanyi 2003:266). For example, “custom” typically implied corporate lineage-based ownership (Vansina 2004:40), while “modern” law increasingly prioritized “freedom of exchange” (Ministry of Finance 2000:16) through individual ownership rights (Reyntjens 2009). This generated particularly heated exchanges, especially over land, as I discuss more below.

Inviting additional contestation, in determining judgments, *abunzi* aimed to “conciliate” the parties, rather than simply to apply predetermined legal guidelines to their evaluation of the testimony (Organic Law No.31/2006 of 14/08/2006, Article 21). Thus, participants had to debate the very rules by which their social interactions should be guided. *Abunzi* did not remain above the debates but joined in, presenting their own stories and counter-examples as they advocated for proposed solutions and tried to convince parties of what they should do. Knowing that proposed resolutions were suggestive rather than mandatory often caused people to contest them even more.

Overall, the emphasis on compromise solutions that valued both custom and law meant that the *comite y’abunzi* process inherently involved negotiation and contestation, over not only the details of evidence but the social norms governing solutions, relationships, and authority.

***Oral testimony: Contentious debates among neighbors and family***

*Comite y'abunzi* sessions involved an open back-and-forth of contested narratives among people with tight interconnections. In an absence of other corroborating evidence, people used their own oral testimony to support or refute one another's versions of truth about the past and present. Evidence was typically open-ended, polysemous, and subject to multiple interpretations.

*Comite y'abunzi* sessions were open to the public, though participation of the general population was not mandatory (Organic Law No.31/2006 of 14/08/2006, Article 20). The parties convened in spaces contiguous with ordinary life and easily accessible, typically in the center of town, near markets, schools, central thoroughfares, and administrative buildings, within walking distance from locations and items under dispute. The mediators presiding over the case, as well as witnesses, were drawn from the local population. Case parties were typically acquaintances or family. Discussions typically extended beyond the plaintiff-defendant dyad to include broader groups of participants. The assembled crowd typically ranged from ten to 40 people in size. Most people attended only if they had an interest in a case being heard that day, though sometimes people dropped in if they were nearby. For example, there were typically a few women who sat in on sessions while waiting to visit their husbands in the jail, located in a facing building. *Inyangamugayo* often wandered through, if they were nearby for *gacaca* business. School children might drop in during their lunch break.

Oral testimony was the primary form of evidence in *comite y'abunzi* cases, as before *gacaca* courts. The only guidance provided in the law instantiating *comite y'abunzi* was that *abunzi* should hear from "each of the parties in conflict and from witnesses if any" as

well as from “any person who can shed light on the matter” (Organic Law No.31/2006 of 14/08/2006, Article 20). Like in *gacaca*, this wide allowance of evidence was consistent with the restorative- justice focus on relationships, not a specific point of law (Colson 1974:73). Without attorneys, disputing parties and witnesses directed their own testimony, with frequent interjections by *abunzi* to clarify questions or minimize digressions.

It was rare that people could produce documentation, such as a contract of sale, and yet, the absence of documents did not mean the alleged contract or transfer did not exist. There were often plausible reasons that documents would have been lost or destroyed, related to the destruction, displacement, and chaos of the waves of political violence and genocide. Further, documents were not necessarily required when people claimed customary ownership (Organic Law N.8/2005 of 14/07/2005, Article 7). When participants could in fact produce documents, others typically raised questions about authenticity and forgery, and therefore documents themselves were imbued with controversy.

Without consistent documentary evidence, then, the primary form of corroborating evidence was other people’s oral testimony. Like *gacaca* sessions, *comite y’abunzi* discussions unfolded as heated volleys of competing versions of events. In the face of contradictory evidence, people frequently accused one another of speaking falsely or misremembering. They challenged one another’s motivations for testifying, arguing that bias could cloud someone’s honesty or his capacity to accurately interpret and analyze evidence. Case discussions included debates over people’s credibility, character, and motivations as much as the specific details of the property and ownership under dispute.

Evidence before *comite y'abunzi* was inherently open-ended, as cases usually hinged on long-standing issues of ownership and transfer (often rooted in customary practices rather than in official written laws), intentions, and character, which developed over years or decades. For example, *abunzi* had to decide whether, when a man partitioned his deceased brother's land, he accidentally or deliberately omitted to give *umunani*—the small plot of land customarily provided to sons at marriage, enough for a small house, distinct from the rest of the cultivable fields (De Lame 2005:126; Vansina 2004:130), sometimes also given to an unmarried daughter—to his niece. Testimony was rarely clear cut, but instead included assertions based on witnesses' own inferences. A man might claim he knew a land parcel had been given, not leased, because he had heard the old men talking about it when he was a child. Or a witness might argue that she knew the plaintiff's request for unpaid debt was fabricated because the plaintiff had not made her claim at the debtor's funeral, as was typical.

In an effort to maximize precision, *abunzi* sometimes asked witnesses to specify how they knew what they were saying; that is, asking them to clarify if they were testifying about things that they knew for a fact, versus hearsay. Many witnesses resisted this differentiation, asking, "What is the difference? What I heard is what I know."<sup>105</sup> This epistemological discussion got at the heart of the nature of *comite y'abunzi* testimony: it was complex, contested, and open to interpretation.

Overall, sessions proceeded as debates over open-ended evidence among people with pre-existing social connections. The evidence invited multiple interpretations, and therefore was particularly contentious. The named parties had to convince friends,

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<sup>105</sup> *Comite y'abunzi* session. November 30, 2007. Ndora.

neighbors, or family to come and speak for them, so broader groups of people were drawn in, voluntarily or involuntarily.

### ***Episodes in ongoing dispute resolution process***

*Comite y'abunzi* was one among several levels of administrative hierarchy for dispute resolution. Cases brought before *abunzi* had typically already appeared before other local authorities, and might continue into the ordinary courts. *Comite y'abunzi* proceedings were episodes in ongoing social disputes and interactions that occurred in other institutional spaces.

People often tried to “forum shop,” taking their disputes to different authorities, depending on who they thought would be most sympathetic to their claims. Some people began by consulting pastors or family elders, or asking for help at the legal aid clinic or at a specialized NGO (for genocide widow’s issues, or specializing in protection of children, for example). Some people went directly to the governmental administrative hierarchy, which had a prescribed path for complaints, beginning at the *umudugudu* (smallest administrative unit), then moving to the executive secretary of the cell, then to the sector, then to the district. At any of these levels, people might be referred to *abunzi*.

People saw *comite y'abunzi* as in an ambivalent relationship to the other local government authorities who heard their complaints. Some participants felt that *abunzi* themselves were easily controlled by local authorities, and that sessions therefore were *pro forma* rather than real hearings. Some complained that *abunzi* were unprofessional and their decisions ungrounded in law. Others thought *abunzi* were more authoritative than other administrators, because they were more tightly rooted in local social and

knowledge networks, and therefore could make more accurate assessments and provide more feasible solutions than distant officials at the sector or district level. *Abunzi* and local authorities sometimes reinforced, at other times overrode, one another's judgments. In general, the legitimacy and authority of *comite y'abunzi*, both in terms of the forum and the judgments, were works-in-progress. This was particularly true because the system was new and it experienced typical institutional growing pains.

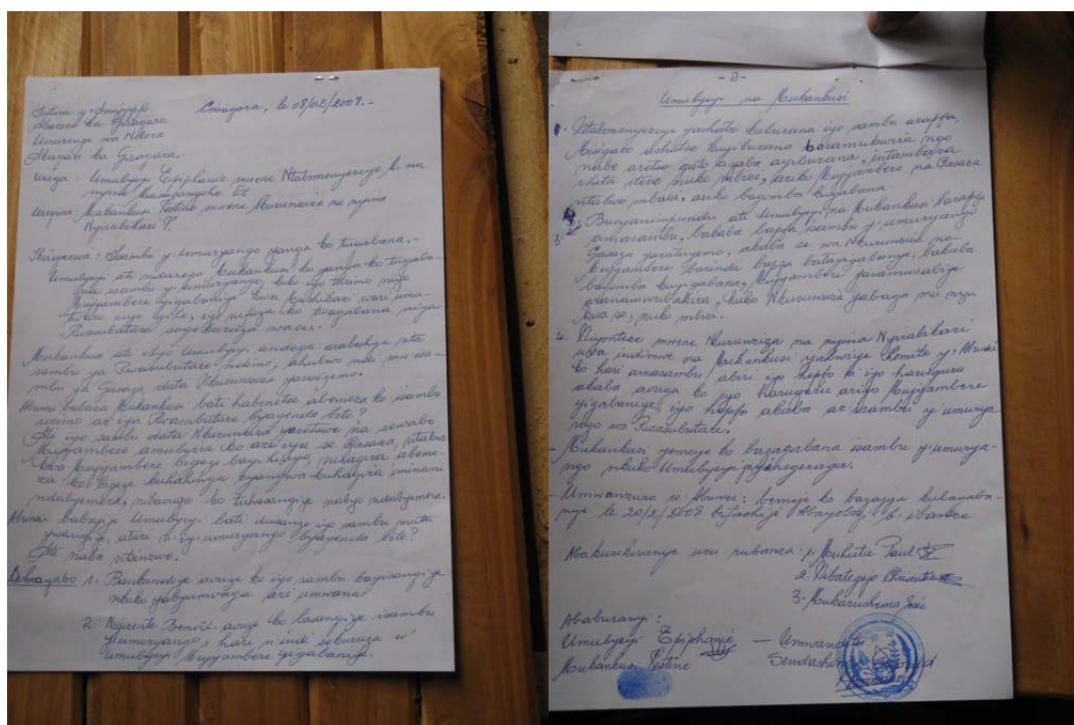


Figure 14: Sample *comite y'abunzi* judgment (Author's photos).

The *abunzi* judgments did not necessarily provide full closure to the participants' dispute. Even the documents containing the decisions were controversial, which underscored both the lack of consensus at the formal conclusion of a given case and the uncertainty surrounding written documents. The judgments included the parties' identifying information, the nature of the disputes, and minutes of the testimony heard, based on the secretary's longhand transcription during sessions (Organic Law

No.31/2006 of 14/08/2006, Article 22). Judgments were formalized with the signatures (or thumbprints) of the three *abunzi* who decided the case and the named disputants, and stamped with the mediators' seal. Parties used the signed, stamped judgment to convince the relevant authorities to enforce the mediators' decision, or to appeal the case to the ordinary courts. People complained that the judgments did not accurately summarize testimony or even omitted key details entirely. For example, often *abunzi* did not include in the transcript comments from people in the general assembly, while participants might see some of these comments as crucial evidence supporting their side of the case. The documents were an effort to introduce more professionalism, transparency, and efficiency through generating a clear paper trail, but themselves remained a point of debate.

That is not to imply that *comite y'abunzi* sessions never reached productive conclusions. In many cases, people came to accept the judgment, whether openly or begrudgingly. The decisions often helped to avoid escalation, by eschewing punitive damages. Even when people left disgruntled, they often accepted the solution. In many cases, people begrudgingly agreed to share land or take responsibility for debt after repeated refusals. The many stages of attempted administrative and legal solutions directed the vast majority of cases away from the ordinary courts, with their more expensive, time consuming, and adversarial process.

Overall, *comite y'abunzi* were one among many sequential forums to which people took disputes. Sessions served as another public performance of positions in a longer-standing dispute. The hearings before each level of authority could become additional fodder for parties' disagreements, and participants contested both the content of the dispute and the legitimacy of different levels of authority.



*Overlaps with gacaca: confronting the past*

Though *comite y'abunzi* cases were technically distinct in jurisdiction from *gacaca*—ordinary civil and criminal disputes, as opposed to criminal responsibility for genocide—in people's lived experience there was overlap between the two grassroots forums, as they had similar formats, and both dealt with consequences of political violence, albeit in different ways. While *abunzi* cases were not about criminal responsibility for genocide, they were about the implications of dealing with the consequences and surviving in its aftermath.

*Comite y'abunzi* sessions were similar in form and genre to *gacaca* sessions. For example, sessions were held in either the same or nearby spaces. Many of the people who testified or adjudicated one attended the other later in the week, or vice versa. Both sessions emphasized oral testimony, with lay judges, in public, without attorneys. Both emphasized the mediation discourse. In general, people's socialization into how to participate in *gacaca* courts shaped how they engaged with *comite y'abunzi*, and therefore how the institution developed. For example, people became accustomed to taking the oath before providing witness testimony in *gacaca* courts, and therefore often voluntarily did so, without prompting, before *comite y'abunzi* sessions. Further, people moved between the institutions, in the course of everyday life. They testified one day before *gacaca*, and perhaps the next before *abunzi*. Some alliances and identifications carried over between the two.

*Comite y'abunzi* cases often confronted the past political violence because they involved disputes arising from coping with its consequences. People brought the past into the present by, for example, framing their complaint in relation to the genocide, or by

punctuating their testimony with political history. Cases often were complicated by someone's death or disappearance in the genocide or its aftermath, or imprisonment. Land disputes most noticeably invoked the past, because confusion over land ownership was directly related to the migrations, exoduses, forced removals, dispossessions, and deaths caused by the political violence. This began most noticeably with the violence around Independence and the exodus of many Tutsi to neighboring countries, and continued through various waves of violence and political instability, including Hutu who fled as refugees during and after the genocide and subsequent wars, and including the ongoing return of prisoners released after *gacaca* trials. People were constantly returning to rural Rwanda and seeking access to land.

There were of course distinctions between the two forums, which meant overall that *comite y'abunzi* was experienced as less punitive or persecuting than *gacaca*. Most clearly, in *gacaca* sessions, the state was the plaintiff, bringing criminal charges against individuals related to actions during the genocide. By contrast, *comite y'abunzi* involved civil disputes, brought by other parties not by the state. Further, while *gacaca* sessions demanded mandatory participation, *comite y'abunzi* drew in a smaller group of participants for any given case. *Comite y'abunzi* seemed to be more flexible for participants, as they could appeal decisions to the ordinary court system, while by contrast *inyangamugayo* justified their sentences based on specific legal sentencing guidelines, and appeals were directed to other levels of *gacaca*. Overall, people saw *comite y'abunzi* as a more innocuous institution, while many saw *gacaca* courts as tightly linked to the national government's political use of genocide. There was, accordingly,

arguably more room for social maneuvering and challenging authority before *comite y'abunzi*.

The seemingly distinct cases before *gacaca* courts and *comite y'abunzi* were actually closely intertwined, and transgressed institutional boundaries, blurring a clear distinction between genocide-related disputes versus ordinary disputes in a legally plural environment. For example, the conclusion of a defendant's *gacaca* case and his release from prison often did not provide closure, but rather opened a new but related set of concerns which he pursued first through the local authorities, then before *comite y'abunzi*. The consequences of genocide and political violence continued to shape people's lives, and people confronted the details of the past in ordinary disputes. The presence of history in the public domain, for example in adjudicating disputes over boundaries between fields, is continuous with earlier time-periods in Rwanda (Newbury & Newbury 2000:855).

### ***Summary***

In *comite y'abunzi* sessions, people debated with their neighbors over ownership and access to land and property, with real impacts on their material living conditions. *Comite y'abunzi* proceedings often had a decidedly adversarial nature. The testimony and judgments were contentious, as people disputed over access to resources, truth about the past and present, and even over what the balance of law and custom should be, and therefore what social norms should govern behavior. The presence of contestation reminds us that alliances, belonging, and even authority were works-in-progress in the aftermath of genocide in Rwanda.

Even within *comite y'abunzi*, a legal institution that emphasized restoring relationships based on the mediation discourse, people created divisions as well as connections. Because of the emphasis on oral evidence, people were put in the position of taking sides in a forum that was both public and connected with daily life. Thus, by agreeing or disagreeing with one another's versions of truth, they created alliances and divisions. Particularly in land disputes, this meant that people used their versions of the past to shape social relationships in the present. The social connections and rifts performed in *comite y'abunzi* sessions were not one-off, but rather were embedded in ongoing dynamics of relationships and contesting authority. In the sections below, I explore in more detail how people used *comite y'abunzi* sessions to negotiate social relationships, including the meaning and boundaries of family and community as localized forms of collective belonging.

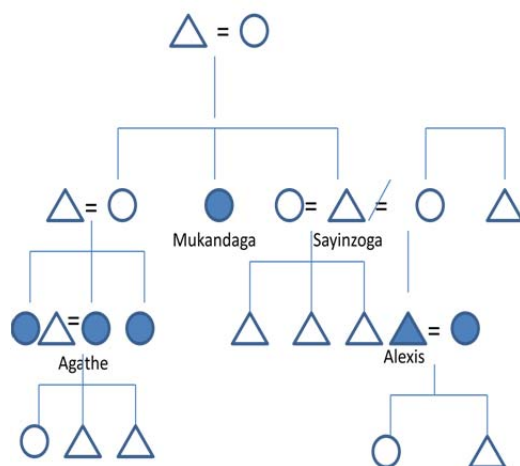
### ***Comite y'Abunzi* Example: Prosper and Alexis's Case in Ndora**

In this section, I provide an example from a case presented before *comite y'abunzi* in Ndora to illustrate the dynamics I have just outlined, and to provide a platform for discussing, in the following section, how people's debates were a means of shaping family and community as forms of belonging. Specifically, this case demonstrates how disputes before *comite y'abunzi* were both within families as well as between families.

A man called Prosper came before *comite y'abunzi* in Ndora in early 2008 with a case against a man called Alexis. Prosper claimed that he bought a piece of land in Kabuye from Alexis, but Alexis refused to register the land transference with the local authorities. Alexis admitted to having received money from Prosper, and argued that he could not

finalize the sale because his family said he did not have the right to sell the land. Several additional members of the plaintiff's and defendant's family were drawn in, including Prosper's father, Alexis's aunt Mukandaga and cousin Agathe.<sup>106</sup> Thus, what began as a dispute between two men over a breach of contract over land hinged on a dispute between a man and his own aunt over succession.

The sale's legitimacy hinged on whether Alexis owned the land individually, or if the parcel was part of jointly owned family land, as his aunt Mukandaga had claimed since 2004. The key issue came down to how Alexis's father, Sayinzoga, had acquired the land parcel. Alexis believed his father purchased the land individually, and therefore Alexis was the sole inheritor and could do with it as he wished. Mukandaga claimed that in fact Sayinzoga inherited the land from their mother (Alexis's grandmother), and it was therefore shared ancestral land which required her permission to sell, as she also had rights to it.



**Figure 15:** Partial genealogy for Alexis's family<sup>107</sup>

<sup>106</sup> Agathe was introduced in Chapter 5, the cell-level *inyangamugayo* who discussed learning news of her son's death from a friend's testimony before *gacaca* courts.

<sup>107</sup> This is not a comprehensive family tree. It identifies the key dispute parties and the relationships between them. Those in solid blue are still alive.

As in many cases, discussion quickly turned to details and consequences of the past political violence, since confusion about land ownership was directly linked to migrations and deaths during upheavals. Mukandaga fled Rwanda for Burundi in 1959, during the violence around Independence. She returned immediately after the genocide, though all but a few of her extended family had been killed. Alexis too grew up outside of Ndora, but returned after the genocide because his family had been killed and he needed a place to start fresh. Most of the family living in Ndora had been killed, with Agathe among the few survivors.

In the absence of any documentation—contracts, wills, or photographs—the entire case came down to oral testimony from the parties and witnesses, including elderly men who lived around the contested piece of land. Witnesses presented their versions of who bought the land, how he/she earned the money to do so, how the land was partitioned, and who farmed it and lived on it. Participants on all side challenged the credibility and motivation of the various witnesses, and pointed out contradictions in testimony. For example, Mukandaga and Agathe claimed that the people who really knew the truth were deceased, and those testifying were recently returned from living in exile and were ill informed, or even were bribed. Prosper, in turn, accused Alexis's family of refusing to accept the truth, in an effort to steal land that he rightfully purchased.

The parties had taken their dispute to previous levels before coming before *abunzi*. Everyone agreed that Alexis accepted money from Prosper in 2004, without the knowledge of his wife or the rest of his family. When his wife learned of it, she alerted Mukandaga, who immediately complained to the local authorities. Parties had different perspectives on what occurred next. What could have been a straight-forward

chronology—recounting which levels of authority heard the dispute, when, and to what effect—was in itself contested, made more so by the he-said, she-said nature of oral testimony, with a lack of precision on dates and no documents presented as corroboration. The previous levels of attempted resolutions themselves got folded into the dispute.

Prosper described how he felt he had been cheated from receiving land for which he legitimately paid:

When I first paid Alexis for the land, there was a local authority around, so it was official. But then Alexis learned there was a problem with the land that he had to clear up with his relatives. We went before the *abunzi* to get it resolved. They investigated in Kabuye and found that Alexis's father had bought the land, so Alexis was allowed to sell it. The second time I paid, the case had already been decided so there was nothing illegal. There was an agreement between the two of us, and even an authorized witness. I have a judgment from *abunzi* to prove that Alexis sold me the land. Yet now they are saying I bought stolen land.

Alexis explained how he was caught between his family and Prosper:

I had to sell the land because I had two children who died suddenly. I needed money, I was so desperate. When I first took money from Prosper, there happened to be local authorities in the bar, but not in their official capacity. Then, after my auntie and family started complaining, Prosper and I went together to a committee at the sector. Prosper is not speaking truthfully about taking the case to the *abunzi*. Then Mukandaga took the case up to the District level. Meanwhile, Prosper wanted to take the land and kept giving me money but I told him I still had failed to get the land from my family. Then one morning the Executive Secretary of the cell came to my house and said that the people at the District decided I should sign the contract. I said finally, it's up to my family to decide, if they return the money and take back the land, or leave the money and let Prosper have the land.

Agathe challenged Prosper's version of events, and tried to justify her family's ownership of the land:

Alexis and Prosper never pleaded before the *abunzi*, that decision is fraudulent. They went to a committee at the sector level, where Prosper

bribed witnesses and tried to trick Mukandaga into taking a smaller portion of land. Then we took the case to the district administrators, and they decided that the land was supposed to be returned to the family. That was in 2004. In 2007, Prosper started cutting down trees on the land and employed people to cultivate. Mukandaga went to the Executive Secretary at the cell level, but he told her she did not have rights over that land. Then we went to the Executive Secretary of the sector, and he wrote a note ordering Prosper to stop carrying out any activities on the land. When Prosper realized this, he decided to file a case before *abunzi*.

The contestation in this case encompassed virtually everything—the provenance of the land, the authenticity of documents, the levels of the previous disputes, and whether people could in fact have certain knowledge. There were accusations of lying, bribery, and forging documents.

This example shows how people created alliances and divisions through their testimony, which could shift over time. Agathe, Mukandaga and Alexis's wife provided testimony that reinforced one another, all aiming to retrieve the land for the family. They expressed anger at Prosper and Alexis for engaging in a business transaction behind their backs. Alexis and Prosper were initially allied, providing testimony that corroborated one another about how Alexis had the rights to sell the land. This created a division between Alexis and his family. Later, Alexis stood alone, caught between his own family and Prosper. This shows that divisions and alliances shifted over time, and in any given case could be influenced as much by dynamics such as gender or age as by ethnicity (which did not come up in this case).

Ultimately, after hearing the case in three sessions over three months, the mediators decided that Alexis should sign the contract of sale to give Prosper possession of the land. The motivating logic for their decision was that Alexis was at fault for selling land without ensuring it was his to sell, and that Prosper should not suffer as a result of



confusion amongst Alexis and Mukandaga; instead, Alexis's family should bear the burden of his debt. This decision, then, suggested that maintaining the integrity of business transactions between two men should take precedence over intra-family ownership disputes, and emphasized individual rights to land over corporate (i.e. shared and enduring) ownership. They noted that though Alexis had been with his wife for over a decade, they only officially married in 2006, two years after the initial sale to Prosper. They may have seen this as the less contentious decision, implying that Alexis's family was robust enough to absorb the internal dispute.

This decision did not provide full closure. Weary from the years of disputing with his family, Alexis was resigned, but Agathe reacted in frustration to the mediator's decision, asking, "How could you make such a decision, you're not resolving a problem but creating more conflicts?"<sup>108</sup> She and Mukandaga claimed the judgment document omitted comments they made challenging Prosper's version of events, and therefore did not include grounds for their appeal. Prosper, by contrast, signed his name enthusiastically and proceeded with plans to cultivate his land. Parties emerged from the process not collaboratively accepting the solution, but with polarized positions as to what should have happened, and who was to blame.

This case was typical of others before *comite y'abunzi* in Ndora, and illustrated the characteristics discussed above. The dispute centered on land, which participants saw as crucial to their family's daily needs. It raised tensions between customary versus written law around ownership, and defied easy compromise. The case unfolded as an adversarial debate resting on oral testimony. It was heard before multiple levels of attempted

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<sup>108</sup> Interview, Agathe. May 5, 2008. Ndora.

resolution prior to coming before *comite y'abunzi*, and reflected the consequences of genocide and surrounding political violence.

### **Negotiating Collective Belonging: Family and Community**

In this section, I draw attention to people's involvement with *comite y'abunzi* sessions as part of their ongoing processes of shaping social relationships, particularly as it related to resource allocation. They disputed over not simply circumstances of disputes, but normative paradigms and the meaning of relationships (see, for example, Comaroff & Roberts 1981; Merry 1990). As Prosper and Alexis's case showed, this occurred both within families and between them. I illustrate here that *comite y'abunzi* served as one site in which people negotiated the rights, duties, and responsibilities associated with membership in a "family" and "community."

"Family" and "community" were seen as the basic building blocks of collective belonging, a natural base for Rwandans' shared cultural identity. The framers of *comite y'abunzi* intentionally designed it to help revitalize these local forms of belonging, on the premise that disputes among people who had preexisting relationships and lived in mutual interdependence would be open to being resolved amicably, based on the mediation discourse, by local mediators. These strengthened families and communities, aided by grassroots legal institutions consistent with the mediation discourse, would accumulate across the nation to create a stronger social fabric, and a harmonious Rwandan nation.

As the case of Alexis and Prosper showed, people's allegiance to "family" and "community" were not predetermined, but rather were disputed and under negotiation.

There were as many cases within families as between neighbors, suggesting family was not a stable, homogeneous group. For example, in *comite y'abunzi* cases I attended in Ndora, seven were within a family, ten outside family, and three unspecified. In cases that people brought to the legal aid clinic after taking them to *comite y'abunzi*,<sup>75</sup> were within a family, 44 outside, and 55 unspecified. This is consistent with other periods in Rwanda's history, where conflict was as often *within* groups as between them (Newbury 1997:213). These cases showed the burden placed on family as a form of belonging, among victims as well as among perpetrators. Further, cases illustrated the tangible, practical debates people engaged in as they tried to restore what it meant to be part of a "community."

### *Negotiating "family"*

The case of Alexis and Prosper highlights that intra-family disputes over ownership and belonging were deeply problematic and contentious. The idea of "close family relations" did not mean an absence of conflict, and families were not stable or uncontested. Cases repeatedly showed that people tested the limits of what counted as family, particularly as it related to resource allocation.

Family, or *umuryango*, was considered the most basic, universal level of collective belonging for Rwandans, their primary social security net and often their most salient form of identity (De Lame 2005; Newbury 1978:18; 1988:114). Norms of daily life reflected these assumptions of mutual support and responsibility. For example, people identified themselves to one another by their family, both legally and socially, and sought to identify others the same way ("son of x", "wife of x", "mother of x"). They were

constantly aware of their own obligations to their kin, sharing the burden of school fees, medical expenses, celebrations and funerals. They shared living space, took care of their own widows and orphans, found one another spouses. They bore responsibility for relatives' debts and transgressions.

But the definition of what counted as “family” was in flux, both legally and in ordinary usage. Scholars of Rwanda have translated *umuryango* as lineage, a social institution with a deep history, characterized by patrilineal descent and internal corporate responsibilities (Newbury 1978; Newbury 2009; Vansina 2004).<sup>109</sup> Property rights were traditionally vested in *umuryango*, which contributed to internal cohesion (Vansina 2004:40). There were changes in the responsibilities of *umuryango* over time, for example, in relation to taxation (Newbury 1988:111). Scholars differentiated *umuryango* from *inzu*, or house, to refer to the family unit of residence, a localized, exogamous patrilineage (Vansina 2004:30).

Rwandan government documents, including land laws, translated *umuryango* not as lineage, but as family, which they typically defined as “spouses legally married,” and children both minor and majority age (Organic Law N.8/2005 of 14/07/2005, Article 36)<sup>110</sup>—thus reflecting a more Western, Christian view of the nuclear family. Yet, even while marking a clear shift away from lineage as an organizing principle, the land law: a) continued to prioritize family as the basic decision-making unit, b) stipulated that others beyond the nuclear family might have rights to family land, and c) included several provisions about customary (i.e., corporate) access to land, all of which reflected the

<sup>109</sup> *Ubwoko*, or clan, was a shared social identity, but not corporate. Ethnic categories historically crosscut clan status (see Chapter 2).

<sup>110</sup> The official Kinyarwanda version uses the term *umuryango*, and the official English version uses the term family.

assumption that extended families had shared identity, collective responsibilities, and vestiges of corporate status. In everyday usage of the term *umuryango*, most Rwandans similarly blurred the distinction between lineage, family of residence, or something in between. Overall, the definition of what family meant was shifting, both in legal and ordinary usage, influenced by a variety of factors, including economic pressures; Western-derived ideologies about nuclear families, monogamy, and family planning; and legal definitions.

I use the term family here, as most Rwandans do, to point to a broadly-inclusive, but imprecise, and not universally-agreed upon group of relatives, with shared responsibility for one another. The term family, then, captures the adaptive, contested definitions of kinship, rather than the more ascribed, specific definition associated with lineage (recognizing of course that lineages have always had flexibility to creatively include and exclude people). The term “family” itself meant different things to different people, and that is part of what participants were working out in *comite y’abunzi* cases.

*Comite y’abunzi* cases show that even though family was considered a basic, universal level of belonging, the urgent realities of survival placed tensions and burdens on this level of belonging, pushing people to negotiate who was in and out, and to try to negotiate what it meant to belong, in terms of what were their presumed obligations to one another. Cases showed how people tried to gain access to, or prevent others from having access to, specific resources such as land, houses, and other property. This reflected a tension between collective versus individual interests within families. This occurred both among victims and among perpetrators.

Disputes among family before *comite y'abunzi* often involved debates over who was legitimately a member of the family—that is, they involved contesting the boundaries of belonging. Technically, *comite y'abunzi* did not have jurisdiction to recognize paternity, marriage, or death—those were matters for ordinary courts (Organic Law No.31/2006 of 14/08/2006, Article 8). But often during a case before *comite y'abunzi*, one of the parties would assert that the person claiming to be a sister, or son, or wife, was in fact not a member of the family/lineage. Thus, in the course of inheritance disputes, people were really fighting about who did or did not count as family. The *abunzi* would often hear brief evidence about the nature of the relationships, and try to counsel people towards more rather than less inclusive definitions of family, consistent with the mediation discourse. Some mediators chose to rule as if they could determine family lines conclusively, while others referred the cases to the ordinary courts. So *abunzi* cases revealed, or brought to a head, people's questions of who belonged in their family and who did not, and caused people to take sides in public performances.

Knowing who did or did not count as family was complicated by pervasive informal family practices that did not align with formal legal definitions. People often cohabitated as husband and wife for years, perhaps with a church ceremony but without ever formally marrying in a process recognized by the state. Some men practiced polygamy, though with only one legal marriage according to state law, and had children with each of several informal wives. Many widows married their late husbands' younger brothers, in traditional levirate practices, typically without a formal marriage. Adults often raised children who were not biologically theirs—whether a niece or nephew whose parents could not provide, or the child of a friend—without formalizing the relationship through

legal adoption. These types of family relationships were common, and were not always solidified in law. The waves of political violence affected these shifting family relationships, as parents died, disappeared, or went to prison, which led people to take responsibility for extended family and neighbors in response to material needs, and to adapt their families in creative and shifting ways. These informal practices all left space for questions regarding for which child or woman a man was responsible, both in providing school fees or medical bills in the present, and who could inherit from him after his death.

The case between Alexis and Prosper involved a typical example of contention over who qualified as family. Prior to Alexis's controversial sale of the land, there had been a question of whether or not he belonged to Mukandaga's family at all (see diagram).

Alexis grew up outside of Kabuye, in the Eastern part of Rwanda, with his mother and his maternal uncle. As a child, Alexis's mother brought him to Kabuye claiming that he was a child of Mukandaga's brother, Sayinzoga, and that he should therefore have access to land on which Sayinzoga was living. Sayinzoga refused to recognize Alexis as his child, saying he divorced Alexis's mother before they had any children. But Sayinzoga's mother insisted that Alexis did belong to the family because Alexis's mother was in her third trimester of pregnancy when she left. Later, after losing most of his relatives during the genocide, Alexis returned to Kabuye and settled on the piece of land from his now-deceased father. Agathe, who had lived her entire life in Kabuye, described the family's willingness to let Alexis settle on the family land, noting, "We said fine, let's let him enjoy the fruits of that land because he belongs to the family."

From Mukandaga's perspective, after she and her mother embraced Alexis and drew him into the family, he repaid them by selling land—which he claimed to have inherited from a father who denied him—that belonged to the family, in an effort to benefit individually at the expense of others. From Alexis's perspective, he believed he owned the land individually, having inherited it solely after the death of his father, step-mother, and half-siblings. His own children were deceased, and he was not formally married, so he believed he could sell it as he wished.

This case shows how, even among a family of genocide survivors, there were debates about who belonged and how to look after one another. On one hand, in the wake of the massive extermination faced by Tutsi families, many genocide survivors embraced inclusive interpretations of family and lineage, reestablishing connections with distant cousins as close kin. They recreated complex genealogies to determine who was related and how, and sought out information by word of mouth on who had survived. In the years after the genocide, people would travel for days to show up on the doorstep of someone they heard was a surviving relative, even if they had only the vaguest prior notion of having been members of the same “family.” In the wake of such widespread killing, people clung tightly to, and tried to reconstitute, a sense of family and lineage. At the same time, given the destitution faced by most rural genocide survivors, competition over resource allocation amongst families could be particularly fraught, increasing divisiveness.

Families of alleged and convicted perpetrators confronted similar disputes about who belonged, and to what that meant they were entitled or for what they were responsible. This was exacerbated by *gacaca* property cases, as I noted in Chapter 5, where people



had to bear responsibility for their father's, husband's, or son's looting debts. The return of prisoners to their families associated with the *gacaca* process intensified many of these concerns (Clark 2010:181). Men returned home to find that their families had taken over their land, or sold off portions of it, in their absence. Many found that their wives had children with other men, or took in orphans. Men who fled genocide prosecution returned to find their house, land or property had been sold. As one Rwandan woman who served as a counselor in her village explained, "People need to identify these issues among prisoners' families as equally important [as issues between perpetrators and survivors] so these problems can be resolved. If it is not seen as a real concern, then it will cause additional problems."<sup>111</sup>

A typical example illustrates what these cases could look like. A man called Aloys brought a case before the mediators against his own brothers and sisters-in-law, hoping the mediators would compel them to give him access to a house or piece of land.<sup>112</sup> He spent twelve years in prison for genocide crimes. Following his *gacaca* trial in early 2007 he was released, sentenced to the time he already served plus *T.I.G.*. Now out of prison, he was forced to rent a small room in the center of town because he could not live on his family's land. He had built his own house, but while incarcerated, the wives of his elder brothers (who were also in jail for genocide crimes) were living on the land, and, on the advice of the brothers, tore down his house to build their own.

Many women who came before *abunzi* were wives, daughters, or sisters of men in prison for genocide crimes, who sought to gain access to means to support their children.

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<sup>111</sup> Interview, Kibungo family counselor. October 4, 2007. Kibungo.

<sup>112</sup> *Comite y'abunzi* case. November 2007. Ndora.

Many lived through the genocide, then fled into exile in neighboring DRC or Burundi, before returning home to Rwanda. Their husbands often were either dead or imprisoned for genocide crimes. The women had to bring food to jail for brothers or fathers or husbands, and participate once a week in *gacaca* sessions, while trying to support their children. They brought cases against their husbands' brothers over land, or their brothers' wives. Or they filed cases to protect their own children's inheritance from illegitimate children their husbands fathered while in exile.

Overall, the case of Prosper and Alexis, and others like it, showed that a significant percentage of the disputes ongoing in contemporary Rwanda were not between former parties to the conflict, but rather were within families who were on the "same" side. Collective belonging at even this very intimate level was shaped by contestation over what material rights and responsibilities came along with being a member of the family. People typically came before the *comite y'abunzi* when it became a question of access to resources—inheritance, partitioning of land and property, selling family land, or child support—because legal forums could reify membership or exclusion and formalize distribution. In case after case, people contested who counted as family, trying to demarcate lines between who was in and who was out. They also debated what it meant to belong, and how much responsibility they had for one another.

This negotiation of family belonging appears to be an extension of historically-deep processes in Rwanda from pre-colonial times through the present, wherein people have negotiated membership in social institutions of collective belonging—whether clan, ethnic group, or lineage—over time and in relation to state expansion and shifting economic circumstances (d'Hertefelt 1971; Newbury 1988; Newbury & Newbury 1999;

Newbury 2009; Vansina 2004). I do not aim here to delineate how precisely lineage, clan, or ethnicity operate and interrelate in contemporary Rwanda. Rather, I want to move beyond an exclusive focus on Hutu and Tutsi as the key dimensions of allegiance that needed to be addressed and redefined. I underscore both the creative potential of family as a form of belonging in Rwanda, and also the pressures it faced, and show the role legal institutions such as *comite y'abunzi* served as sites for negotiating these tensions and adaptive possibilities.

### *Negotiating “community”*

The case between Alexis and Prosper further showed that people were negotiating what it meant to live together in tight economic, physical, and social proximity and interdependence. The idea of “local community” did not translate into an absence of disputes. At the same time, the conflicts that did occur were not only scripted by the former lines of political violence. Cases showed the kinds of pragmatic micro-negotiations that people engaged in over the duties, rights, and obligations to the people among whom they lived.

Like the imprecision around the term *umuryango*, there was not one agreed-upon term for describing Rwandans’ local “community.” While people agreed that the term “village” did not accurately describe the physical and economic networks in which Rwandans lived—partly due to the continuity of settlement across the country—there was debate over what term did. For most rural Rwandans, the hill (*umusizi*) was historically the fundamental unit of settlement (De Lame 2005:112-115; Newbury 2009:300; Vansina 2004:15,39). Scholars and government officials referred alternately to the grouping as communities, hillsides (*imisozi*), housing settlements (*imidugudu*), or

cells (*akagare*) (e.g., Ministry of Local Government 2008a; van Leeuwen 2001). The terms meant different things to different people, and brought different assumptions about the nature of this unit in terms of its size, scale, and reason for connection.

I use the term “community”—which was used by the government, international donors, and national and international non-governmental organizations, particularly in reference to the decentralized legal institutions—to refer to the groupings of people who were linked together by function of location, shared economic networks, and face to face social interactions. I use this term to capture that this unit was the site of extensive top-down community-building efforts (government-through-community), all aiming to engender the sense of group identity and shared mutual responsibility and duty associated with collective belonging (Ministry of Local Government 2008a; b). The government’s community development policy was aimed at the *umudugudu* as the “core formal community” and the focus of the policy (Ministry of Local Government 2008a:3). Rural Rwandans’ local community thus involved people with whom they lived in close proximity, and with whom they voluntarily chose to participate in shared networks, such as voluntary associations (e.g., churches or financial associations), as well as people to whom they were indifferent, or whom they preferred to avoid.

Cases before *comite y’abunzi* demonstrated the mutual interdependence and tight interconnections of people in rural areas. The predominance of breach of contract cases showed that there were, in fact, prior agreements with varying degrees of formality between people, and therefore prior relationships (see Appendix 4). Pooling resources with neighbors to build a house, or sharing land to graze livestock, or selling goods on credit, was normal. *Comite y’abunzi* cases were a means of discussing when

transgressions occurred, and how they should be resolved. Thus, in cases before *comite y'abunzi*, people debated the rights, duties, and obligations associated with living together, whether or not they felt a sense of shared identity.

In case after case, people negotiated what responsibilities neighbors had to one another. For example, should Prosper have had a duty to Alexis's wife to ensure she knew about the sale of the land, and therefore to ensure it was a legitimate transaction? Although Prosper was the plaintiff, quickly he came on the defensive, needing to show that he did not knowingly purchase stolen property. How honest did people need to be about the quality of products they sold to neighbors, whether charcoal or used cell phones? And what were the appropriate sanctions for transgressions? When mediators tried to restore property without assessing damages or interest, in the interest of limiting escalation, some feared this created a climate of impunity about harming people.

People debated whether or not obligations to honor contracts between neighbors took precedence over obligations to family. This came out, for example, in the case between Alexis and Prosper. The mediators decided that the contract between Alexis and Prosper was of primary need of external protection, while the family should find a way to handle their internal debts without third party oversight. Alexis's wife, aunt, and cousin felt it was an additional burden for them to bear the weight of Alexis's debt to Prosper, since they did not benefit from the money he obtained. The mediators' emphasis on inherent family solidarity was consistent with the mediation discourse, and the naturalized understanding of family cohesion it advocated. Similarly, in many other cases mediators found that families should bear the debts of their members, in the interest of maintaining the integrity of transactions between individuals.

Obligations among neighbors came up in relation to land cases when people returning from exile tried to reclaim land on which others were living. What was the responsibility of the person who was living on the land to the person from whom it was taken decades earlier, especially in the absence of clear documents to trace ownership or land transference? Land issues among “old caseload refugees,” i.e., Tutsi returnees who fled beginning at Independence through the 1980s, and returned after the RPF took power in 1995, raised this question particularly clearly and frequently (Burnet 2010:113; Prunier 2009:5).

These returnee land cases could be particularly contentious, and often carried over the divisions from the political conflict. For example, in one typical case, a man who fled with his family in the 1970s returned in 2002 to find another family on his land. He brought a claim against the woman who was the head of household, claiming that she obtained the land illegally, because her husband was friends with the commune leader, and therefore the transaction should not stand. She claimed that her family bought the land in 1980 from the commune leader at the time, and the paperwork was lost during the war. This kind of dispute was common. Returning refugees needed access to land, and wanted to resettle where their family lived originally. Meanwhile, the family who paid for the land and used it for decades typically resisted losing it. The land law left this open, saying only that the state had responsibility to give land to persons who were denied their rights of ownership, which could include the “sharing of owned land” (Organic Law N.8/2005 of 14/07/2005, Article 87). In *comite y’abunzi* sessions, then, people debated the grey area between custom and law to determine how the land should be reallocated.

Participants debated over not only land or property ownership but also over the nature of authority itself in a shifting legal and governmental landscape. Alexis and Prosper's case showed how there was confusion over which levels of authority had jurisdiction over what. This kind of confusion was common, given the periodic restructurings of administrative levels and government positions, with the multi-year implementation of nationwide decentralization programs which shifted who was responsible for what.

Overall, *comite y'abunzi* cases illustrated people negotiating over the rules of interaction, what they owed one another and could expect in return. This was a means of determining what kind of community existed among the people with whom they interacted on a daily basis, and what responsibilities and privileges went along with the shared social networks of which they were a part. Cases shed light on the kinds of practical negotiations that went into rebuilding the social fabric, and showed the pressures caused by poverty and struggles to survive.

### ***Summary***

Cases before *comite y'abunzi* show that disputes occurred both within families as well as between them. Case discussions over land and other property served as a proxy for negotiating proximate forms of collective belonging, including "family" and "community." They further showed the tensions on local forms of belonging, when membership was about more than just shared identity but about access to scarce resources and obligations for mutual responsibility. Collective belonging was intimately bound up with land and other assets, continuous with earlier time-periods (De Lame 2005:165).

The mediation discourse faced hurdles, as restorative justice models often do, in the face of scarce resources (Nader & Todd 1978:18).

Further, cases underscored that disputes were not just predetermined by the lines of the conflict. People who were positioned very differently with regard to the genocide and to the state faced similar concerns, largely linked to their shared structural position with respect to economic and political power, as in earlier time-periods (see also Newbury 1978:25; 1988:208). Families of survivors and families of convicted perpetrators engaged in many of the same disputes. People coming home after a long time away, whether old caseload refugees (i.e., repatriated Tutsi), new caseload refugees (i.e., Hutu who fled during or after the genocide), or prisoners (i.e., Hutu defendants or convicted perpetrators) confronted similar problems when they returned home, trying to fit back into family, find networks of support, and earn a living.

## **Conclusion**

Overall, *comite y'abunzi* sessions were more contentious than harmonious, and the debates can be understood as part of a process of negotiating rules and practices of local belonging. Aspects of *comite y'abunzi*'s format meant that it invited negotiation more so than most legal forums. Disputes were over property, particularly land, at the heart of people's economic survival. Further, the forum did not have specific, binding rules on how to adjudicate cases, but rather legitimated discretionary judgments about how to balance custom and written law, corporate and individual interests. They prioritized oral testimony, as the key form of evidence and corroboration. Thus, sessions became



contested public debates over the evidence, as well as over solutions, i.e., over relationships and obligations and norms.

People used *comite y'abunzi* as one site for negotiating family and community as the most proximate and concrete forms of collective belonging. These debates hinged on resource allocation, who had access to what, when, and how. Discussions about duties, obligations, rights, and access to resources among relatives and neighbors paralleled debates over citizenship. The cases showed that family and community as levels of belonging were contested, in the process of being built and rebuilt.

Finally, by considering *comite y'abunzi* alongside *gacaca* courts, I showed how though the institutional boundaries were clear from the outside, in people's lived experience, they were more connected. That is, ordinary disputes could not be looked at separately from genocide disputes. Perhaps with the conclusion of the *gacaca* process, *comite y'abunzi* may become a more robust institution as people channel their familiarity with regular engagement in grassroots courts into this ongoing forum.

In the next chapter, I turn to the lay judges at the heart of these decentralized legal forums.

## Chapter 7: Lay Judges: Insiders as Arbiters and Mediators

### Introduction

In this chapter, I turn to the lay judges who were at the center of *gacaca* courts and *comite y'abunzi*. How, in everyday practice, did *inyangamugayo* and *abunzi* facilitate the social deliberations occurring in these courts? How did they negotiate the mixture of harmony and punishment in the mediation discourse?

Lay judges were embedded in local social and knowledge networks and had no formal training in law, while serving as representatives of the state with authoritative force to imprison people or remove their property. *Inyangamugayo*'s and *abunzi*'s central roles in rebuilding Rwanda were consistent with the government's position which privileged local, cultural knowledge for rebuilding Rwanda. I show how, in this dual community-state role, lay judges actively used their insider status, rather than attempted to overcome it. Consistent with the mediation discourse, they saw rebuilding the social fabric as equally important to, and intertwined with, adjudicating truth. I suggest that what positive effect they had on rebuilding the social fabric was due to their dual status, though at the same time, their local position limited their ability to alter the structural causes at the root of disputes.

Attention to lay judges shows the specifics of how government-through-community operated, and sheds light on the multiple ways the mediation discourse manifested within court processes. Specifically, lay judges blurred the boundaries between community and state. They revealed how community was contested, and showed that state power was

exercised heterogeneously, as the government both extended and ceded power by decentralizing.

I begin by showing how *inyangamugayo* and *abunzi* came to their dual position through election and training, using an example from a *gacaca* case in Ndora to provide a snapshot of how lay judges operated during weekly trials. I then discuss how lay judges used their roots in local networks to conduct their state-backed role to evaluate contested testimony and restore relationships. Finally, I discuss how lay judges shed light on the nature of community and state in Rwanda.

### **Becoming Lay Judges: Dual Community-State Position**

Ordinary people became *inyangamugayo* or *abunzi* through elections and training, thus taking on a dual community-state position.<sup>113</sup> The role of lay judges had several specific characteristics. They were not professionals, but were untrained in formal law and unpaid. They were residents of the local jurisdiction, meaning they were embedded in local social and knowledge networks. In addition, *inyangamugayo* and *abunzi* were inquisitorial judges. Unlike judges whose role is restricted to deciding issues of law and making decisions based on information presented in court, as is typically found in common-law system, lay judges played an active role conducting investigations and questioning, during and outside trials, much as the prosecution, defense, or even police do in other legal systems (see, for example, Terrio 2009:43-44).<sup>114</sup>

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<sup>113</sup> For more on elections and training of lay judges, see Amnesty International 2002, Clark 2010.

<sup>114</sup> *Inyangamugayo* could make “investigations on testimony” provided in trials (Organic Law N.16/2004 of 19/6/2004, Article 36). *Abunzi* could hear testimony from “any person who can shed light on the matter” (Organic Law N.31/2006 of 14/08/2006, Article 20).

I begin with an example from a *gacaca* session in Ndora. The presiding judge named Laurence was a returnee who arrived in Ndora a few months after the genocide. Two of the other four judges on the panel, Faustin and Vincent, were born in Ndora and survived the genocide there.

The first defendant, a man named Nshimye, was accused of planning genocide, being in a group of killers, and being at a roadblock. Nshimye accepted some of the charges and refuted others. During testimony, Faustin asked Nshimye to provide more information about the planning of the genocide, saying that he frequently saw Nshimye in the company of a notorious genocide leader. Later Faustin refuted a witness's testimony that Nshimye had participated in a certain person's death by noting that he saw Nshimye at the time, and that he was not involved.

Vincent also questioned Nshimye's version of events several times, and pushed Nshimye to accept responsibility for certain charges. After one victim insisted that Nshimye must have information about her brother's death, Vincent admonished her to stop asking, noting that several people just said Nshimye was not responsible. Vincent later corroborated Faustin's support of the defendant, noting that he and Faustin were trying to escape together and Nshimye directed them where they could avoid being caught.

In the closing moments of Nshimye's trial, the female victim whom Vincent admonished spoke up to criticize Vincent for appearing biased in favor of Nshimye. Laurence, the presiding judge, responded by reminding everyone that the *inyangamugayo* should not take sides, but just testify as to what they saw or heard. Vincent countered that if anyone thought he was partial, then he would step aside. He put his head in his hands for several minutes and rubbed his eyes, seeming chastised.<sup>115</sup>

### ***Elections***

How did people like Laurence, Vincent, and Faustin come to serve such a central role in formalized dispute resolution? People selected their neighbors as *inyangamugayo* and *abunzi* in special elections that were organized by the National Service of *Gacaca* Jurisdictions and the National Electoral Commission, respectively. The legal

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<sup>115</sup> *Gacaca* session. December 13, 2007, Ndora.

requirements stipulated that the lay judges be residents in their jurisdiction, meaning they were embedded in local relationships and circuits of knowledge. The premise was that ordinary Rwandans identified by their neighbors inherently had the knowledge of local context and the ability to make reasoned decisions necessary to become capable adjudicators in *gacaca* courts and *comite y'abunzi*. The key requirements for eligibility for both positions were related to moral character—as “persons of integrity,” “acknowledged for their mediating skills,” “free from the spirit of sectarianism . . . of high morals and conduct . . . [and] characterized by a spirit of speech sharing”—rather than specific professional training. In an attempt to depoliticize the legal process and cement the judges’ lay status, staff of administrative entities or judicial organs were ineligible, including soldiers, policemen, career judges, and active political leaders (Organic Law N.16/2004 of 19/6/2004, Articles 14, 15; Organic Law N.31/2006 of 14/08/2006, Article 4).

Elections for both courts were based at the cell level. Protracted election campaigns and speeches were unnecessary, as people were supposed to know the nominees. These were people with whom their lives were intertwined—they lived nearby one another, shopped in the same markets, attended the same churches, walked the same paths to and from daily activities. They were members of the same business cooperatives, women’s groups, or financial institutions, and overlapped at weddings, funerals, harvests, and other celebrations.

The elections of *inyangamugayo* and *abunzi* were intended to formalize the role of informal opinion-leaders who were trusted by their peers and known to make carefully reasoned decisions. Their experiences reflected the local social dynamics of livelihoods,

education levels, and displacement caused by decades of recurring political violence, and as a group, their experiences were expected to complement and balance one another.

*Inyangamugayo* panels were made up of seven people, plus two substitutes, requiring a quorum of five to convene any session (Organic Law N.16/2004 of 19/6/2004, Articles 8,23). *Abunzi* panels were made up of twelve mediators plus three alternates, from whom participants would select three to preside over and deliberate on any given case (Organic Law N.31/2006 of 14/08/2006, Articles 4,18). Typically, as was the case in Ndora and Nyanza, panels included both men and women of a wide range of ages, some as young as 21, others in their 80s. *Abunzi* panels were required to be 30 percent women (Organic Law N.31/2006 of 14/08/2006, Article 4). Most rural judges were farmers, not educated beyond primary school. Urban judges were more likely to have been educated through some or all of secondary school, and to work for local businesses or in administrative or non-governmental organization offices.

The lay judges in Ndora were typical of panels elsewhere (Clark 2010:76). Laurence, the presiding judge, was a pastor in his early forties. He was born in Burundi and grew up there, and returned to Ndora in October 1994, resettling on land his family had abandoned decades earlier. He was educated through Primary Six. He engaged in small commerce for a living, to support his wife and eight children. Faustin was in his mid-forties, and served as a soldier with the RPF from 1995-2003. His first wife died in the genocide. He remarried and lived with his wife and four children, farmed for a living, and was in charge of security for the commune. He was educated through Primary Four. Both Laurence and Faustin were elected at the beginning of the *gacaca* process. Vincent, in his early fifties, was elected as a judge in mid-2007, to replace a judge who had been

dismissed. He was educated through Primary Six. He lived with his one son who had survived the genocide, and farmed. Another Ndora *inyangamugayo* was a *repatrié* who fled Rwanda in 1959 at the age of three and returned to Rwanda with her husband, who was originally from Ndora, in 1995. Another was a woman in her late twenties who survived the genocide in Ndora.

As in Ndora, panels of *inyangamugayo* were often heavily *rescapé-* or *repatrié-* dominated, given that many Hutu were disqualified by accusations before *gacaca*.<sup>116</sup> On the other hand, some complained that in areas where virtually no Tutsi had survived, panels were Hutu-dominated. There was more experiential diversity among *abunzi*, because they were not barred from serving if they had been accused (and acquitted) of genocide.

Panels of judges were not static. *Abunzi* served for two year terms, while *inyangamugayo* served for the duration of the *gacaca* process. Some judges held other local positions before, for example as cell leaders or youth leaders, while for many this was their first elected leadership position. Some judges shifted roles between the courts, serving first as *inyangamugayo* and later as *abunzi*. Some of the original *inyangamugayo* were dismissed because they were accused of genocide, or for misconduct, such as inconsistent attendance or revealing secrets of the court. New *inyangamugayo* were elected to replace people, or to build new panels—for example, in Ndora initially had only one sector-level court but two more were quickly added to operate in parallel, in order to more efficiently try cases. Sometimes the composition of the panel changed

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<sup>116</sup> *Inyangamugayo* cannot have been found to have participated in genocide or to have been sentenced to more than six months in prison (Organic Law N.16/2004 of 19/6/2004, Article 14).

between weeks as alternates sat in, while *inyangamugayo* were absent, perhaps sick or testifying in a separate trial. *Abunzi* benches were comparatively consistent over the two year period of election, but shifted more between cases, because only three of the twelve presided over any given case.

Most lay judges elected were thrust into the judicial role in the newly-formed legal institutions quite unexpectedly. They described approaching their selection with a combination of patriotism, humility, and even uncertainty. They juggled their judicial responsibilities alongside however else they made a living, perhaps farming, running a business, or working in an office. This meant that some were doubly dedicated to the core mission of their task, while others were distracted or overworked. Yet they did not see the position as one they could turn down. Many people selected as *inyangamugayo* were apprehensive about reentering the details of genocide and taking on such a weighty task. Others were eager to participate, framing it in terms of a desire to help rebuild Rwanda. In a comment echoed by many other lay judges in Ndora, one said, “I was glad to be elected, I had an obligation to serve my country.”<sup>117</sup> Elaste, the presiding *inyangamugayo* in Nyanza, similarly reflected, “Given the magnitude of the situation in this country and the problems it created, I was glad to be among the people providing solutions.”<sup>118</sup>

### ***Training***

How did Laurence, Faustin, and Vincent transform from their civilian role to state-backed adjudicators? People selected did not have training in law or analytic reasoning, nor professional adjudication experience, on the premise that knowledge of context and

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<sup>117</sup> Interview, *inyangamugayo*. February 22, 2008. Ndora.

<sup>118</sup> Interview, Elaste. November 20, 2007. Nyanza.



culture was paramount, and specifics of the legal process could be overlaid. Before beginning to fulfill their duties, judges participated in mandatory specialized trainings designed to familiarize them with the rules and procedures of the courts, and to prepare them to serve as representatives of the state. Staff members from the national *gacaca* office, the local *gacaca* coordinator, and sometimes staff members of international NGOs such as Human Rights Watch, led the trainings for *inyangamugayo*, which typically lasted three or four days. Representatives of the Ministry of Justice, and often teams from NGOs and the National University of Rwanda's Faculty of Law, held similar trainings for *abunzi*.

First and foremost, these trainings instructed *inyangamugayo* and *abunzi* in the rules and procedures of the respective courts. They were taught to demarcate the boundaries of their authority by each court's geographic, temporal, and subject-matter jurisdictions. They were taught the technologies of organizing and recording information. For example, *inyangamugayo* were instructed in how to properly compile dossiers with charges and judgments, and *abunzi* were instructed in how to record proper minutes and write judgments.

Further, lay judges were trained in the regulations and guidelines on how to make decisions and allocate sentences in accordance with the law—that is, how to use their state-backed authority to punish and award damages. *Inyangamugayo* could impose prison sentences of up to 30 years, or alternatively, could release a prisoner immediately, based on sentencing regulations, and they could bring charges against participants for refusing to testify, for perjury, blackmail, or coercion (Organic Law N.16/2004 of 19/6/2004, Articles 29,30,73). *Abunzi* could make legally-binding judgments, which

would be enforced by the local authorities or the judicial police (Organic Law N.31/2006 of 14/08/2006, Articles 11,14,24). Since the *gacaca* process was under constant evaluation and modification, *inyangamugayo* attended another brief training whenever there was a subsequent amendment in the *gacaca* law<sup>119</sup>—for example on changing the way punishment would be served, or how confessions should be handled.

Even with the clear legal guidelines, judges had discretion, so trainings emphasized how the lay judges should consider these more subjective aspects of their role. For example, the *inyangamugayo* could accept a defendant's confession, in which case they could transmute half his sentence to community service work, or they could reject the confession as partial or dishonest, in which case the defendant would serve the full sentence in prison (Organic Law N.16/2004 of 19/6/2004, Article 73). *Abunzi* had leeway to devise solutions not dictated by, though consistent with, formal law (Organic Law N.31/2006 of 14/08/2006, Article 21). Deliberations over these flexible points were confidential; revealing information about them could be grounds for a judge's dismissal.

In addition to procedures, the trainings emphasized the philosophy of reconciliatory justice, consistent with the mediation discourse. As one *umwunzi* remembered, "We were taught how we were supposed to help the population, to discourage tendencies of genocide ideology, and reminded that we should love our nation."<sup>120</sup> The trainings aimed to indoctrinate *inyangamugayo* and *abunzi* in values of unity and collective harmony, which they were supposed to model for, and pass on to, their neighbors through their judicial role. This was at the heart of the government-through-community approach.

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<sup>119</sup> Organic Law N.16/2004 of 19.6.2004 was amended on June 27, 2006, March 1, 2007, and June 1, 2008.

<sup>120</sup> Interview, *umwunzi*. February 22, 2008. Ndora.

Finally, trainings emphasized the need for lay judges to maintain integrity and impartiality, avoiding making decisions based on emotions or prior relationships. The *gacaca* law included a specific provision intended to keep this in check. Article 10 provided that judges should recuse themselves from any case involving a close family member, someone with whom they had a preexisting relationship (either positive or negative), or “any other relation considered incompatible with the honest persons independence.” Judges were expected to read this at the beginning of each trial, and ask the assembled witnesses, victims, and defendant if they knew of any concerns of partiality among the empanelled judges. In the case above, Laurence followed this procedure, and no one objected to Faustin or Vincent’s presence. *Abunzi* similarly were instructed to remain neutral, though there was not a corresponding article in the law. That is likely because, unlike in *gacaca*, where defendants had no choice in which judges heard their trial, participants could select their mediators in *comite y’abunzi*, and typically did not select mediators they feared would be partial.

Both *abunzi* and *inyangamugayo* took an oath of office before beginning their work, underscoring their transition to becoming representatives of the state. The oath emphasized the rule of law and international language of human rights. It also emphasized impartiality and national unity, consistent with the mediation discourse. The oath stated:

I solemnly swear to the Nation that I shall: 1, diligently fulfill the responsibilities entrusted to me; 2, remain loyal to the Republic of Rwanda; 3, observe the Constitution and the other laws; 4, work for the consolidation of national unity; 5, conscientiously fulfill my duties of representing the Rwandan people without any discrimination whatsoever; 6, never use the powers conferred on me for personal ends; 7, promote respect for the freedoms and fundamental rights of human being and

safeguard the interests of the Rwandan people. Should I fail to honour this oath, may I face the rigours of the law. So help me God (Organic Law N.16/2004 of 19/6/2004, Article 9; Organic Law N.31/2006 of 14/08/2006, Article 7).

As the oath demonstrates, while *inyangamugayo* and *abunzi* served as lay judges in ostensibly customary-style courts, they took a thoroughly modern, Western-style oath of office which linked their authority and loyalty to the nation-state.



**Figure 16:** *Abunzi* before the official start of a session (Author’s photo).

Once trained, *inyangamugayo* and *abunzi* wore sashes that represented their official role when they presided over court sessions. In a context with few other technologies—no fancy courtroom or dais, rarely even a microphone, no black robes, minimal differentiation among people’s clothes—the sash stood out as a significant social marker. It resembled the Rwandan flag, comprised of three parallel bands of blue, green, and yellow, with a single yellow sun. The front was marked with *INYANGAMUGAYO* or *UMWUNZI*, and the back with “*INKIKO GACACA*” (*gacaca* courts) or “*COMITE*

*Y'ABUNZI'*. The presence of the sashes, properly worn, signaled and enacted the start of the trial sessions, and their removal marked closure.



**Figure 17:** *Inyangamugayo* recessing to deliberate (Author's photo).

The trainings transformed people from individual citizens with idiosyncratic allegiances into official representatives of the state. *Inyangamugayo* and *abunzi* were not just elders gathered informally under a tree. At the culmination of training, by taking the oath and donning the sash, *inyangamugayo* and *abunzi* stepped into a specific state-backed role with duties and obligations, including to preside over sessions, investigate, sift through contested facts, decide on the truth or falsity of the charges, determine guilt or innocence, issue judgments, and allocate punishments.

### ***Dual community-state position***

As the Ndora example above shows, *inyangamugayo* and *abunzi* had a dual role, embodying both the community and the state. On one hand, they were legitimate representatives of the national government. As I showed across previous chapters, *gacaca*

courts and *comite y'abunzi* were fully codified in state law. There was nothing partial or quasi-legal about lay judges' ability to put people in prison, or, conversely, to allow them to come home. Those who wore the sash therefore had state-backed authority to punish with immediate practical consequences for people's daily lives.

At the same time, a crucial component of their authority was that they were deeply entrenched in local social circles and circuits of knowledge. Lay judges' lives were intertwined with those of the people who participated in the trials. They brought prior knowledge into case sessions, about people, places, and events over which they were adjudicating. Some information was based on personal experience, some based on more general hearsay and contextual knowledge. As well, they knew, or knew of, many of the case participants. This insider status both heightened their authority and brought concerns of bias. Many Rwandans feared judges' close connections with participants might cause them to have a stake in the outcome of a particular trial, whether financial or emotional, so judges' authority was often challenged.

Lay judges' dual position was in stark contrast with other representatives of the state in Rwanda, such as administrative authorities and professional judges, who were not so intimately connected to people and knowledge in their jurisdiction. This distinction was particularly clear in rural areas, but also manifested itself in towns and cities. Professional judges and local administrative authorities—such as mayors, *gacaca* coordinators, executive secretaries at the cell or sector level, or civil affairs administrators—were predominantly university-educated urban residents. They served in short-term appointments throughout the country, and therefore most maintained their personal connections in Kigali or otherwise outside the cell in which they worked, and most hoped

to move into more prestigious positions in more central (i.e., urban) locations. They spoke a differently-accented Kinyarwanda and typically left the area on weekends, all markers of their outside status. They were not farmers themselves, and had rarely grown up in the immediate area. Many were *repatriés* who had been raised and educated outside Rwanda, returning after RPF gained power. Most were only superficially familiar with the mundane concerns of daily life in rural Rwanda, such as crop-schedules or norms of boundary disputes.

### ***Summary***

Overall, lay judges' dual position meant that they were embedded in the local context, while carrying state authority to evaluate "truth" and impose punishment in legal forums that were at the center of rebuilding Rwanda. They were not professional or extensively trained, but rather were ordinary people, with a diversity of experiences. They were representatives of the community, but not uncontested ones. They were delegates of the state, but seen as separate from the state's professional actors. While most rural Rwandans perceived the national government to be distant from them, they saw *inyangamugayo* and *abunzi* as proximate to them in terms of educational status, economic status, and lifestyle.

### **Serving as Lay Judges: Using Insider Status**

Lay judges' dual community-state position shaped how *inyangamugayo* and *abunzi* conducted their judicial work. Specifically, lay judges relied heavily on their position within local social and knowledge networks to evaluate contested testimony, and to repair relationships (e.g., Yngvesson 1994). Their reliance on their insider position comes

through particularly in comparison with other judges adjudicating cases about events in Rwanda, such as professional domestic judges and judges at the International Criminal Tribunal for Rwanda (ICTR).

### *Assessing contested facts*

Faustin and Vincent served as a clear reminder that those who wore the sash, representing state power, were people with their own knowledge of the political violence and social dynamics. Lay judges were insiders, part of the social fabric being rebuilt. Their knowledge came from their own experience, as well as from their inquisitorial role, which allowed them to investigate outside of cases. They came into case sessions with prior information about general context, or even about a precise crime or disputed point. Without professional attorneys trained to identify material facts or hire expert witnesses, lay judges used their deep contextual knowledge to evaluate testimony and resolve contested factual issues. Generally, they knew (or believed they knew) the context well enough to assess what testimony was plausible and which witnesses were reliable. Judges did not try to overcome this insider status as reflecting problematic bias, but rather used it in how they evaluated and analyzed evidence presented during trials. This underscores how lay judges' task was embedded in ongoing processes of truth-seeking that lasted over years, bigger than any one case session or trial.

In some situations, lay judges carried information into cases that was directly related to particular participants. In the Ndora *gacaca* example, Vincent and Faustin evaluated testimony based on their own memories of the defendant and the events in the charges.



Faustin presided over several cases where defendants confessed to involvement in attacks on him.<sup>121</sup>

Other judges used knowledge they gained through conversations and experiences since the genocide. For example, an *inyangamugayo* named Immaculé, who lost her brother and father in the genocide, described realizing during the course of one trial that the defendant owned land on which she helped exhume a mass grave:

We asked him to give us the details of what happened at that pit hole, and information on the people who were killed there. He kept denying personal responsibility, and responding that we were asking the wrong person. He said that besides, there were some pit holes that had been dug to dump in Hutu, so why was he even on trial.<sup>122</sup> When he said all this, what came to my mind immediately were the images of the bodies we exhumed in 1995. Some still had bits of their clothes on. There were even a boy and a girl who had been tied up together and dumped in the pit hole, and their bodies were still tied together when we exhumed them. Straight away, I imagined that it was the defendant who had tied up this boy and girl.<sup>123</sup>

Though no forensic evidence was presented in this defendant's trial, Immaculé's vivid memories of decomposing bodies from a decade earlier influenced her perspective that the defendant was deliberately obscuring the truth, in the absence of a plausible explanation on his part. As this quote shows, testimony provided during any given session was layered onto related information acquired over years. Trials were just one step in a much broader, locally-embedded process.

Much of the lay judges' locally-rooted knowledge was more general than Faustin's or Immaculé's, based on living in the area over time. *Inyangamugayo* and *abunzi* all had

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<sup>121</sup> *Gacaca* session. January 10, 2008. Ndora.

<sup>122</sup> Comments like this are typically understood as referring to the double-genocide theory, which, in its most divisive interpretation, suggests that the RPF and genocide planners were equally culpable because Hutu also died in attacks.

<sup>123</sup> Interview, Immaculé. November 16, 2007. Ndora.

basic familiarity with Rwanda, their cell and sector, and dynamics of life there. They knew common family practices, such as whom and when people married, where they lived, and who looked after children when parents died. They knew the general practices and variations in rituals surrounding events like births and deaths. They knew the local landscape and setting of the area under their jurisdiction, including general distances between places, how long it took to walk certain routes, how views could be obscured in the rain, how sound carried between certain hillsides, or what you could see from a given yard.

Lay judges used this general locally-rooted information to identify the key issues at stake, and to assess evidence. For example, to analyze quickly-flowing testimony during family land disputes, *abunzi* drew on their insider knowledge of common practices of land use, partitioning, and inheritance, as well as norms of family relationships, and familiarity with the local population dynamics over decades of recurring violence. They used this information to assess, for example, if an adoption that had not been registered was formal or informal; or if failure to formally partition and bequeath land decades earlier was deliberate or inadvertent. They used general fluency that came from living in the area to assess the evidence people provided—such as, proof that an adoption had been formal because, despite a lack of official paperwork, the uncle helped find his nephew a wife (a task reserved for a father-figure), and the nephew would swear on his uncle's name (in lieu of his father's name). Often *abunzi* or *inyangamugayo* had to clarify these details for other local authorities, underscoring the former's local position and the latter's outside status.

Having preexisting knowledge of people, places, and events helped *inyangamugayo* and *abunzi* to tell if someone was being consistent with his or her testimony over time, or with commonly accepted details. They were able to identify false allegations if people suddenly changed their story, for example, while those who had said the same thing for over a decade, corroborated by others similarly consistent, were likely to be speaking the truth. They could determine the plausibility of testimony because they knew culture, context, and lifestyle well enough to understand what was reasonable. For example, they knew what times of day people were likely to take their cows to graze, and therefore if that was a legitimate alibi. Or they could assess the likelihood of particular crops being ready for harvest at specific times, which related to likely yields of a field that had been looted, and therefore how much someone should repay. Finally, they could assess bias and motivations by learning about social relationships, and what kinds of preexisting enmities or relationships there might be.

Lay judges combined these techniques with other more general techniques of questioning and analysis for weighing contentious testimony. *Inyangamugayo* and *abunzi* all noted that they would never make a judgment based on only one or two witnesses, but sought corroboration to resolve contradictions, both between people and with the same individual, over time. Many judges became adept at identifying patterns and inconsistencies within or across complex testimony, even without sophisticated databases for tracking information.

### *Restoring the social fabric*

Faustin and Vincent's example showed how lay judges were thrust into the center of fragile social dynamics while facilitating trials. They were not above or outside the proceedings as neutral arbiters, but played active roles in ongoing negotiations of social dynamics. Lay judges saw their task of ruling on truth or falsity of specific accusations as directly in the service of rebuilding relationships, and used their state-backed authority to advocate for harmony. Their position embedded in local context—rather than being distant across divides of education, economic status, and experience—was crucial to their efforts to restore the social fabric, of which they were a part. Their attempts were ongoing and were perceived as coming from empathetic peers, rather than being top-down impositions.

*Inyangamugayo* and *abunzi* sometimes used explicit language of unity and forgiveness and mediated directly between participants (see also Clark 2010). In addition, as in the Ndora *gacaca* example above, their efforts to restore the social fabric were more subtle, traceable in how they managed sessions, and how they conducted themselves during and outside cases. For example, many *inyangamugayo* and *abunzi* modeled a willingness to hear both sides of a story and to decide fairly. They reasoned persistently in hopes of convincing people with hardened positions to change their minds. Faustin and Vincent demonstrated the ability to rise above emotion and overcome collective guilt or collective victimhood—their testimony exonerated defendants on specific charges or rebuked fellow victims. During cases that occurred over time, Faustin and Vincent modeled a way that people could transcend divisions to repair the social fabric.

Sometimes lay judges intervened directly between disputing parties. In one Ndora *gacaca* case, for example, a victim wanted reimbursement from Alphonse (whom we met in Chapter 4), who had taken money from her to buy-off her would-be killers. From behind the bench, Faustin repeatedly explained to the victim that she should focus on the fact that Alphonse had in fact done her a favor by protecting her and her children, who all survived.<sup>124</sup> Here, Faustin appealed to the victim from a position of shared victimhood, as someone who had also lived through the events, who could empathize with the struggles she faced at the time—which he had demonstrated through his comments in case after case, including in the example above—and, equally importantly, as someone who, like her, was struggling financially in the present.

Laurence often permitted discussions that, though they might seem like unnecessary digressions allowed by an inattentive judge, rather were directly relevant to restoring relationships. In one case in Ndora, for example, Laurence allowed over an hour of conversation about a bicycle during proceedings against a defendant, Gaspard, accused of locally organizing the genocide as well as committing multiple murders.<sup>125</sup> The bicycle served as a proxy for a discussion of the relationship between the victim and Gaspard. It allowed the victim to reveal that she was upset because Gaspard had mistreated her in the aftermath of the genocide, despite being a friend of her late father. Laurence tried to persuade Gaspard to empathize with the victim's loss without directly addressing liability for the bicycle. Laurence also involved Gaspard's daughter in the discussion, in recognition that the victim and Gaspard were embedded in broader social relationships.

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<sup>124</sup> *Gacaca* session. December 13, 2007. Ndora.

<sup>125</sup> *Gacaca* session. November 29, 2007. Ndora.

Laurence's insider position shaped how he approached this bicycle discussion, and how people responded to him. Laurence saw this conversation as one episode in an ongoing process, and he measured incremental progress over time. He knew, for example, that the victim and Gaspard's daughter often sat next to one another during *gacaca* sessions, suggesting that this relationship between former childhood friends, while uneasy, had not been severed. He used a rhetorical style developed in his role as a pastor, one with which the overwhelmingly Christian participants were familiar and respectful. His good reputation as a pastor buttressed his moral authority to counsel people and make social or moral demands of them, even among those not in his immediate congregation.

Further, Laurence's efforts to rebuild social bonds extended beyond case sessions into ordinary life. For example, in cases where a defendant was released on time served, based on a confession, he typically approached the victims after the trial. He explained:

I tell them I am sorry. I acknowledge that so many people died and I understand their agony. But I try to explain that since they can't bring back their lost relatives, it is no use having perpetrators who have confessed and shown remorse spend their whole lives in prison. Otherwise, the perpetrator's child would always be mad that he is in prison because of you, and that creates a vicious cycle. I help them follow up with the only thing they can get back, which is the property. About 80 percent of the survivors are convinced, and forgive. We advise them to watch the conduct of the reintegrated prisoners, to converse with them to find out if they still have ideological tendencies. See if he will help, for example, by sending his child to fetch water when you are sick. Some survivors come to us and tell us that a given person who was reintegrated has really changed.<sup>126</sup>

The *abunzi* in Ndora felt they helped rebuild social bonds both through the mediation process itself, as well as their verdicts. The presiding mediator in Ndora described his

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<sup>126</sup> Interview, Laurence. December 3, 2007. Ndora.

method, noting “We get the public itself to convince the parties of the right or wrong thing to do. We do it in the open, so people are convinced it is not a decision taken just by one individual.”<sup>127</sup> They aimed to find fair solutions that both parties would accept rather than simply applying the law. For example, in a case where land inheritance was complicated by an informal adoption two generations earlier, they could have simply said that since the adoption had not been formalized, it was not legal and the descendants had no claim to the land. Instead, they sought to learn of the intent of adoption, opting for a more inclusive view of family and shared responsibility. Often they let cases stretch over several weeks, not out of inefficiency, but rather as a deliberate technique to provide time for tempers to settle, and for the disputing parties to change their positions. The *abunzi* made clear that being rooted in local networks was the basis for their moral authority. As one described, “People have trust in you because they know you, and they know that you actually know their problems.”<sup>128</sup>

Lay judges such as Laurence, Faustin, and the *abunzi* saw part of their role as working on relationships—a long-term, ongoing process, based on reasoning rather than imposition—and their insider positioning was crucial to how they did this. Their approach is consistent with a literature on social healing in Central and Southern Africa, which shows that African healers’ authority often derives from their personal experiences of suffering and positions within local networks (Honwana 2005; Reynolds 1996; Werbner 1995). Possessing intimate experience and knowledge of the violence, and being located in the same social circles—without the distance created by vast differences in

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<sup>127</sup> Interview, presiding *umwunzi*. December 14, 2007. Ndora.

<sup>128</sup> Interview, *umwunzi*. February 22, 2008. Ndora.

education, economics, and geographic distance—created empathy that was critical to having moral authority to shape people’s connections. Lay judges’ efforts, whether modeling conduct or directly counseling people to change behaviors or positions, were repeated over time, embedded in the rhythms of daily life. They were delivered among relative peers.

Of course, modeling tolerance and preaching unity did not immediately convince everyone to live in animosity-free harmony. *Comite y’abunzi* cases or *gacaca* sessions were heavily contested, and the disputing parties frequently left with their arms crossed, taking separate directions. Lay judges looked at incremental changes for gauging progress towards restoring the social fabric. Convincing the victim to drop her financial claim against Alphonse did not mean Faustin had restored order in Ndora, but he saw it as a step in the right direction. Laurence noted that the victim accusing Gaspard did not openly forgive him and continued to demand remuneration for the bicycle, but at the same time, she refrained from escalating accusations, either for property or other kinds of complicity in the genocide. Lay judges’ efforts were part of an ongoing process of trying.

Yet, precisely because they were located in the same structural position as the people over whom they presided, lay judges were limited by their inability to change the broader structural issues at the root of many of the conflicts, such as poverty, inequality, and the national imbalance of power. For example, they could not solve the unemployment and land pressures at the base of property and land cases. They could not fix the mounting economic pressures that caused families to struggle over inheritance. Instead, they focused on shaping people’s perception of how to share and look out for their neighbors and relatives.



Further, their state-role could be a liability to trying to reconcile others when it was perceived as compulsory and top-down. That is, when they imposed their solutions forcefully through threat of punishment, rather than relying on reasoning and persuasion based on moral authority people vested in them, participants were more likely to feel coerced. In that case, the effects risked being not just neutral but divisive.

*Professional judges: Using outsider status*

Comparison with other judges adjudicating cases about events in Rwanda—specifically ICTR judges in Arusha and professional domestic judges—underscores the extent to which lay judges used their local position to do their state-backed judicial work. While judges in each court found techniques to assess testimony given their jurisdiction’s rules and procedures, only lay judges embedded in the local context felt they could contribute to restoring relationships in a meaningful way.

Faustin and Vincent’s personal testimony stands in stark contrast to the conduct of judges at the ICTR in Arusha, who used professional knowledge to evaluate contested facts about events, places, and people about which they did not have personal knowledge. Very few ICTR judges, if any, had been to Rwanda before beginning their work at the Tribunal. Consider Judge Fremr, who came to the court in September 2006, after 26 years as a judge in the Czech Republic, most recently on the Supreme Court. Beginning his work at the Tribunal, he had “just rough ideas about the conflict” in Rwanda based on books he read and documentaries he watched in the weeks and months prior to arriving.

<sup>129</sup> He proactively continued to read and learn about Rwanda after his arrival, and when

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<sup>129</sup> Interview, Judge Fremr. March 13, 2008. Arusha.

we spoke in March 2008, he was scheduled to visit Rwanda on an official site visit the following month for one of the cases he was hearing, at the request of the prosecution and defense. This visit would be highly controlled to avoid introduction of evidence against the tribunal's rules.

Judge Fremr's extensive judicial experience made up for his lack of contextual knowledge. In the ICTR's adversarial system, when a particular factual point was in debate—such as whether a witness could have realistically overheard a conversation from where he was standing—judges did not independently assess the accuracy of the witness's comments. Rather, they applied the tenets of international law to make findings of fact on relevant evidence provided in court by attorneys and witnesses from each side. This was consistent with how Western-derived international legal systems valued using objective judges without a stake in the outcome of, or prior knowledge about, cases.

ICTR judges claimed that more important than possessing knowledge of the people or context was having the capacity to be open-minded and analytic in weighing evidence, traits they gained through professional training and judicial experience. Norwegian Judge Erik Møse, who was on the court since its inception and was two-term president of the tribunal, objected strenuously to the idea that as outsiders, ICTR judges were necessarily unable to assess truth. He said:

It is a challenge to establish the facts, twelve years later, through barriers of language and culture. We are not Rwandan, we do not form a part of Rwandan culture. But I have been in twelve trials over nine years. I am humble in finding out the truth, I do it with great respect. We learn how to ask questions, there is a lot of deliberate repetition, we keep an open mind. We know the kinds of ways people testify now. Maybe Rwandans are

better able to determine when people are telling lies. But we are not too bad here.<sup>130</sup>

The elite cadre of international United Nations judges brought different kinds of legal knowledge to their work, and had varying degrees of familiarity with Rwanda and Africa. Overall, judges claimed that the different positions, experiences, and perspectives of judges on each three-judge panel at the ICTR were additive in how they evaluated testimony.

At the same time, the judges at the ICTR felt that because they were geographically distant from Rwanda, and not part of the society being rebuilt, reconciliation and developing trust between people could not realistically be part of their task. They noted that the way the ICTR could contribute to reconciliation in Rwanda was more generally through establishing accountability and countering impunity.

By comparison with ICTR judges, professional judges in Rwanda's domestic courts were insiders to Rwanda. They used their legal education and specific judicial training, combined with implicit knowledge of people, events, and places in Rwanda, to evaluate contested facts. They spoke Kinyarwanda, as well as French or English, and therefore could hear testimony in participants' native language. They knew the general physical landscape and layout of the country. Yet professional judges were distant from the networks in rural areas of which most *inyangamugayo* and *abunzi* were a part. Professional judges were Rwandan, but most of their social and knowledge networks were located in the capital, among economic and political elites, and extending outside the country. Most ordinary Rwandans in rural areas saw professional judges as outsiders.

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<sup>130</sup> Interview, Judge Møse. March 13, 2008. Arusha.

Consider Judge Ndinda, who was a judge on the Superior Court of Nyanza, located a hundred yards from the courtyard where people sat for *gacaca* sessions for Busasamana sector. Judge Ndinda said that whenever possible, he preferred to go on-site to hold trials in the location where events occurred, in front of people who participated or knew about it.<sup>131</sup> He claimed that this was helpful in assessing truth because while case participants might lie before a judge who they thought did not know something, they would be less likely to lie when the case was tried before their neighbors and peers in the audience. These comments underscored that he did not see himself as sharing in the same knowledge bases as the people he was judging, or their neighbors.

Much like the ICTR judges, Rwanda's domestic judges did not see their task as one of rebuilding relationships. They emphasized that their contribution to reconciliation was more broadly through establishing accountability and rule of law through fair judgments. For example, Judge Ndinda emphasized the importance of reading the judgment on-site before the people affected so that they would have full information about it, but he did not talk explicitly about relationships and unity consistent with the mediation discourse. Trials in his court focused on evidence related to the truth or falsity of the charges.

On the other hand, government authorities like mayors and national-level *gacaca* officials clearly saw their task as promoting reconciliation. Mayors held public "reconciliation meetings" to convince people to resolve property disputes amicably. Staff members of the National Service of *Gacaca* Jurisdictions, like Albert in Chapter 4, visited villages and exhorted people to come together to jointly solve outstanding

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<sup>131</sup> Interview, Judge Ndinda. February 27, 2008. Nyanza. Judge Ndinda presided over the case against suspects accused of murdering a *gacaca* judge, discussed in Chapter 3.

problems. Yet, as I discussed, these authorities, like professional judges, conveyed outsider status that distanced them from the people they sought to help, and their efforts often came across as impositions. People were grateful that national-level authorities could expedite a case or resolve a procedural issue, but they typically found the efforts to rebuild relationships to be *pro forma* and superficial. People went through the motions of apologizing and forgiving because they felt they were expected to do so, and the effects were minimal.

Comparison of lay judges with professional domestic and international judges reflected how the post-genocide government's decentralized legal approach privileged Rwandans, as compared with outsiders, as being better able to understand and address their own problems. The various judges served in systems based on different procedures, each with checks in place to balance the assumed knowledge and weaknesses they brought in. Outsider judges like those at the ICTR would likely meet with frustration in *gacaca* courts, while *inyangamugayo* would likely be unable to accomplish their goals in the face of the complex procedures, regulations, and restrictions at the ICTR. Yet each found ways to evaluate testimony; none seemed to have the monopoly on, or inherently closer relationship to, truth. Only the lay judges, rooted in the same networks as the people whose disputes they adjudicated, felt that they could contribute to restoring relationships. Comparison underscores that it was different for government elites to drop in and tell a victim that she should renounce a property claim in the name of neighborly unity than for Faustin to make the same suggestion, in multiple interactions over time, as someone who had been born and raised in the area, and lived at a similar level of economic scarcity.

### *Summary*

Overall, lay judges used their local position as central to the way they did their job. They did not try to overcome their insider status, but rather, used it explicitly as a tool. Lay judges were not abstract observers, but rather bore the scars and weight of local knowledge and experiences. All the *inyangamugayo* and *abunzi* noted that they compared information gained during trials to things they already knew, and this was a crucial part of their assessment of true versus false testimony. Further, lay judges saw their role of rebuilding the social fabric as equally important to, and linked to, deciding contested facts and allocating punishments. They advocated for, and modeled, the mediation discourse in varied ways. Their insider status was considered an asset enabling them to empathize, and therefore to have the moral authority to help in the rebuilding process. I suggest here that what positive effects they had on restoring relationships were due to the combination of their official role with their deep local familiarity and connections. Yet, precisely because they were located in the same structural position as their neighbors, they were limited by their inability to change the structural conditions at the root of the disputes.

### **Lay Judges, Community, and the State**

The government-through-community approach was particularly visible through lay judges, who, from their dual position as intermediaries between the national government and local people, provide insight into how people experienced both “community” and the “state” in Rwanda. Consider, by way of example, a later portion of the same trial day discussed above:

In the late afternoon, Laurence summoned a defendant called Paul, whose charges included preparing genocide and joining groups of killers. This time, when Laurence called for witnesses and victims to come forward, Faustin stood from behind the judges' table, removed his sash, and joined the others who had gathered to provide testimony. When Paul testified, in his comments he refuted allegations that he had participated in attacks against Faustin, saying that in fact he had tried to help him.

When it was Faustin's turn, he took a few steps forward to stand before the panel of judges. He described how one day during the genocide, Paul came for him with a group of killers. Paul brought Faustin out from his hiding place in a latrine, and asked for his identity card. Because the identity card ink was smeared and therefore difficult to read Paul took Faustin to the commune office. On the way, Paul stopped several people from attacking Faustin preemptively, then while Paul was distracted talking to a superior, four men seized Faustin. The men tried to kill him, but Faustin escaped.

After he finished testifying, Faustin immediately walked back around the wooden table and picked up his sash. He carefully placed it across his chest and took his seat, where he remained for the rest of the afternoon's testimony.<sup>132</sup>

### ***Blurring boundaries***

The way *inyangamugayo* and *abunzi* used their sashes provided a particularly vivid manifestation of the shifting, sometimes imprecise boundary between community and state. Though the sashes were intended as a means of delineating a clear boundary between "state" and "non-state," in everyday use, *inyangamugayo* and *abunzi* would take off the sash to testify, as Faustin illustrated, or to answer a ringing cell phone, to have a conversational aside with a member of the general assembly, or to nurse a crying baby. They might testify with the sash on, or conduct judicial investigations with the sash off. Judges' inconsistent use of the sash showed that the boundary between state and non-state realms was in fact collapsed as much as it was clarified. They intertwined state and non-state, showing that the state was not distant, but embodied and enacted by neighbors,

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<sup>132</sup> *Gacaca* session. December 13, 2007. Ndora.

and consequently, community was not apolitical but rather deeply enmeshed with the exercise of state power.

As the Ndora *gacaca* case with Faustin and Vincent showed, there was a thin line between questioning based on prior knowledge, versus testifying based on that same knowledge. There were other examples of the reverse situation, where judges used their official status in the context of everyday life—for example, consistent with the requirements of their inquisitorial role judges often conducted explicit investigations outside of trials to learn more about specific details of cases. In Ndora, for example, the presiding judge, Laurence, did not testify based on personal experience of the events in question, but he nonetheless brought relevant knowledge into the session. He described:

When I have someone's trial scheduled, I talk to people who confessed and were released, then I talk to the survivors asking them about the person in question's conduct during the genocide. Sometimes we even share drinks if necessary. I get down to earth and talk to the layman, for example ask him what he thinks about a given accused person. So I always have information about the accused before the trial.<sup>133</sup>

Lay judges thus routinely blurred the boundary between ordinary life and trials by gathering information in both contexts. In land disputes, which made up the vast majority of the cases before *comite y'abunzi*, the *abunzi* routinely went to the plot in question to better understand, for example, its size, location, what was on it, or where the demarcations were. Often, they sought out elders, who could tell stories about who had lived on the land, when and with whom, and how land had been transferred, officially or unofficially, including before Independence and the decades of ensuing political violence. Lay judges also gained information from outside sessions simply by being a part of everyday life. As one *inyangamugayo* noted, with two small children, she did not have

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<sup>133</sup> Interview, Laurence. December 3, 2007. Ndora.



the time to conduct focused investigations, but nonetheless “I hear stray information when out and about.”<sup>134</sup>

Lay judges also blurred the boundary between their official and unofficial roles by pursuing their task of rebuilding relationships among their neighbors outside as well as inside case sessions. As I described earlier with Laurence, *inyangamugayo* and *abunzi* routinely approached people outside of trials, asking them to have the courage to testify, or explaining the legal justification for particular decisions to help people come to terms with judgments they did not like.

Their moral authority to help resolve conflicts extended beyond the boundaries of sessions and even beyond their formal subject-matter jurisdiction. Either they were already opinion-leaders, which is why they were elected, and/or they came to be seen that way through their work in the trials. Many *inyangamugayo* said that people often approached them for help resolving conflicts over issues not directly related to the genocide—that is, people sought their help in addressing everyday disputes that, in the formal hierarchy, would have come before the local authorities or *abunzi*. Such disputes included, for example, if someone extended the boundary of his property, if a housemaid claimed she had not been properly paid, if a woman thought her husband was mistreating her, or if someone’s livestock destroyed a neighbor’s garden.

Because of their embedded position, lay judges conducted their work adjudicating cases as state delegates in a way that meshed with everyday life, both in gathering information to evaluate testimony, and in attempting to rebuild relationships. Through lay judges, state power was proximate to ordinary people, embodied and enacted by

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<sup>134</sup> Interview, *inyangamugayo*. January 22, 2008. Nyanza.

neighbors in a seamless transition between ordinary life and official trials. Conversely, “local community” was not non-political or absent of power relations, but rather intertwined with them. This is consistent with the previous hundred years, according to historian David Newbury, who illustrated that by the late nineteenth century, the central court’s influence penetrated directly to the lowest levels of society (Newbury 2009:235).

### *Confronting concerns about bias*

The Ndora *gacaca* case with Faustin and Vincent illustrates that lay judges were a lightning rod for concerns about being biased, which underscored that there remained “sides,” divisions, and distrust within so-called communities. Concerns about objectivity and partiality surrounded *inyangamugayo* and *abunzi* because of their dual community-state position. For lay judges to evaluate debated facts in courts where they were so personally connected risked being a liability, because judges could have a stake—emotional or financial—in the outcome of a case. Further, people often feared that without sufficient training, lay judges might be unable to analyze properly which evidence was relevant.

It could be tempting to view the example of Faustin and Vincent as proof that lay judges’ insider status was inherently prejudicial and reinforced the institutional bias and “victor’s justice” in the *gacaca* process, as discussed in Chapter 3 (Thomson 2009; Waldorf 2006). On this particular panel of *inyangamugayo*, four of the five judges were genocide survivors or *repatriés*, consistent with what some see as the Tutsi domination of *gacaca* and of government more broadly, and perhaps enabling Tutsi *inyangamugayo* to wield power arbitrarily over Hutu defendants (Chakravarty 2009; Lemarchand 2009).

When Laurence began the trial by reading Article 10 no one raised a concern, but perhaps defendants did not feel they had the freedom to exercise their right to object to Faustin or Vincent's presence, for fear of self-incrimination or retaliation.

Yet, entering into the details suggests that information and relationships judges brought into sessions did not necessarily translate into hardened positions, and *inyangamugayo* did not always act in parallel with the interest of the institution. The content of Vincent and Faustin's controversial testimony in Ndora was not simply to implicate the accused. They both provided testimony that corroborated the defendants' claims of innocence of specific charges, as well as testimony that suggested guilt on other charges. Ultimately, Nshimye was sentenced to fifteen years in prison, of which he had already served twelve. Paul was sentenced to twelve years, but was released immediately on time served.

Further, lay judges could moderate one another's conduct, could change their approach over time, and could testify across ethnic divisions. Laurence showed that *inyangamugayo* could provide a check on one another's potential for bias by advocating publically, from his position wearing the sash, for his fellow *inyangamugayo* to follow the rules of the process. Laurence saw this role as a central part of his job, describing himself as neutral because he was a returnee and not directly accusing anyone. Vincent appeared shamed by Laurence's comments. Laurence's critique likely convinced Faustin to explicitly remove his sash to testify in Paul's trial (rather than just speaking from behind the bench as he had in Nshimye's trial). This is particularly noteworthy because it suggests Laurence could influence Faustin's behavior, even though Faustin might otherwise be seen as above reproach, since he was a genocide survivor, and, having

recently served eight years in the army, was tightly linked to the RPF. For Laurence, who had no direct connections to the RPF, to be able to influence Faustin's behavior was inconsistent with pervasive perceptions of coercion.

In addition, there was variance in *inyangamugayo*'s and *abunzi*'s behavior over time—that is, this example does not reflect how Vincent and Faustin acted in every trial. Lay judges often self-policed about whether or not to recuse themselves, and their decisions about how and when to testify could be related to procedural and contextual factors. On days when there were enough *inyangamugayo* alternates available to reach a quorum, Faustin and Vincent were more likely to recuse themselves, testifying against a defendant as an ordinary participant, or sitting in the general assembly when a relative testified as a victim.<sup>135</sup> In the case described earlier where Immaculé remembered exhuming bodies from the defendant's property, she found the session so emotionally upsetting that she left the trial early, and did not participate in deliberations—reflecting a careful choice to step aside, for someone who otherwise always arrived early and was the last to leave after deliberations.

In general, people had legitimate concerns about the risks of partiality among lay judges, especially given that they operated to judge defendants without lawyers in such a highly charged political environment. This was particularly true in *gacaca* with its institutionally-engrained view of accusations and culpability. *Comite y'abunzi* as an institution was not seen as favoring one side, so concerns of bias were less intense, though still omnipresent. Yet it is both inaccurate and even distracting to simply dismiss

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<sup>135</sup> *Gacaca* session. November 29, 2007. Ndora.

lay judges' insider position as inherently prejudicial. Lay judges acted differently over time, and across courts, not always parallel with the broader leaning of the court.

Criticisms of lay judges' bias, then, did not simply reflect their inexperience, or their insider knowledge. Even the so-called "objective" international judges at the ICTR, as well as the highly-trained domestic judges in Rwanda's Superior Court, faced accusations and concerns about being biased, whether too sympathetic to the accused or to the victims. The fact that lay judges were a lightning rod for constant accusations of bias tells us not only about the fallibility of the judges, but more importantly, about the context in which people were complaining.

Lay judges bore the brunt of the criticism when people were dissatisfied with the process or outcome of a trial, and the typical complaint was that judges were biased. In *gacaca*, families of defendants blamed judges for their long prison sentence, or victims blamed judges for releasing someone who had admitted to killing their loved ones. People complained (either formally or in public gossip) that certain *inyangamugayo* either had participated in genocide and therefore were likely to exonerate their friends, or that they were survivors and therefore likely to impose collective guilt based on emotion (Longman 2006; Reyntjens & Vandeginste 2005; Waldorf 2006). Disputing parties in *comite y'abunzi* could rarely agree on three *abunzi* to hear the case (Organic Law N.31/2006 of 14/08/2006, Article 18), and case proceedings were filled with participants' objections that the *umwunzi* selected by the other side was negatively predisposed towards them, or that an *umwunzi* they did not trust was participating too assertively. People whispered allegations that *abunzi* or *inyangamugayo* were being bribed, or that they must have been biased due to friendship. Some people suggested that young women

were elected only because they were easily influenced (even controlled) by their husbands or fathers.

Concerns about bias extended into everyday life, given that *abunzi* and *inyangamugayo* lived alongside the participants and moved easily between their official duties and ordinary life. For example, even if an *umwunzi* regularly socialized with a defendant before he came to trial, she might be viewed suspiciously if she did so in the weeks surrounding the case—perhaps suspected of trying to influence testimony, asking for a bribe, or revealing secrets about the deliberations.

Critiques of bias could escalate to the level of threats against lay judges, particularly *inyangamugayo*. Although relatively rare, incidents where threats escalated to violence kept fear of retaliation at the forefront in even the most relaxed judge's mind. For example, in October 2007, less than 50 kilometers from Nyanza and Ndora, the president of a *gacaca* appeals court was killed while walking home from a local bar one night (see Chapter 3). Nine people were arrested and tried, accused of murdering the victim because he had ruled against them in *gacaca* cases. Five perpetrators were convicted and sentenced to life in prison in February 2008, and four were exonerated (Prosecution vs. Nyirakiromba et al 2008). These examples were not frequent, but nonetheless powerful for the intensity of emotion they reflected, and that they in turn provoked.

The deep contextualization of the legal processes, and the lay judges at their center, meant no one was objective. Overall, the goal in addressing bias in *gacaca* and *comite y'abunzi* was not to find judges who were disconnected from local social and knowledge networks, but to find judges who were in fact deeply connected but could set aside their emotions. At the heart of these restorative justice courts was the idea that *all* Rwandans

did, and should, have a stake in the outcome of trials. Everyone had personal experiences to draw on, and emotions that would shape how they thought about the trials. Judges were expected to rise above their own emotions to adjudicate trials, just as participants had to rise above their own emotions to live alongside the people with whom they had disputed.

The concerns about bias, partiality, objectivity, and fairness that lay judges elicited served as a constant reminder that community was contested. That is, discourses of bias and corruption were a key means through which community and the state were imagined and constituted as fraught and contentious (Gupta 1995; Lazar 2008:82,90). Lay judges were embedded in local, situated social networks, but these networks did not create a coherent, cohesive community of which they were uncontested representatives. Critiques about bias revealed deeper divisions, tension, distrust, and pointed to the politicization of social dynamics in Rwanda and the high stakes associated with legal trials.

### *Developing different styles*

Though I began with the example of Faustin, Vincent, and Laurence, it would be a mistake to suggest that all *inyangamugayo* or *abunzi* exercised state authority in the same way. The variance in lay judges' approaches and styles shows that through decentralization and the government-through-community approach, the state ceded power as much as it extended it. Because of their unprofessional status—without years of formal legal education or apprentice-based training—lay judges learned primarily by doing. Over time, judges developed their own styles and systems for questioning and analyzing

evidence, for deliberating amongst themselves, and for advocating the mediation discourse to participants.

Laurence, the presiding judge in Ndora, was likely to take a consensus-based, participatory approach. While presiding, he alternated between directing the questioning and yielding the floor to other judges. He had an even-tempered rapport with witnesses, victims, and defendants. He was willing to correct others' behavior, as the example above showed, but also deliberately solicited feedback from the general assembly to guide the *inyangamugayo*'s decision-making. He had a regular back-and-forth style with participants, asking if everyone agreed with the facts, and soliciting advice about what the next step should be to try to get to the bottom of a disputed issue, whether it was about property liability or raising questions as to who made an alarm to summon killers. He tried to help the general assembly to figure out the logical process for themselves, so it did not all come from the judges. Laurence regularly allowed time for extended interactions between victims and perpetrators in hopes of rebuilding the relationships.

The presiding judge in Nyanza, Elaste, was more likely to dominate the trial proceedings in his court. Elaste had a commanding presence, prone to giving stern lectures to participants and the general assembly, and wielding authority to confiscate ringing cell phones or detain people for false testimony. Elaste presided in every session I attended in Nyanza, and he was typically the only judge on the panel to question participants. Elaste often used the fact that witnesses were not allowed to hear one another's testimony to his advantage in evaluating testimony. He would alter what one had said, and ask another to corroborate or refute it, in hopes of trapping someone in a lie. Elaste was inclined to give speeches consistent with the mediation discourse, combining



pleas for reconciliation with threats of sanction. For example, this is a typical example of how he spoke with the participants:

You'll never be peaceful if you carry someone's blood on your hands. It even hinders your daily actions, if you are hiding something, because it makes you afraid. To be at peace, you must come forward and confess your crimes. Only then, when you are brave enough to tell of your crimes, will you get some relief. You will no longer be suspicious and fearful of people finding out. If you confess, it also helps the relatives of the victims. People are traumatized, and need to know about how their loved ones died. The goal of *gacaca* is to resolve these conflicts here. We need the truth in order to build unity and reconciliation. We are building a better, more peaceful Rwanda.<sup>136</sup>

When there were direct conflicts between participants, or when they became upset, Elaste tended to speak sternly to them, reminding them of their duties, of the goals of the process. He was more likely to lecture than to simply give them time to talk to one another.

By contrast, the presiding judge in Butare had a cerebral, academic style. He questioned people on nuanced points of their arguments. For example, he availed himself of reports written by scholars and human rights researchers about the genocide. During a months-long set of complex cases against dozens of defendants accused of participating in genocide at the hospital in Butare,<sup>137</sup> he regularly thumbed through a copy of a noted book by the NGO African Rights, which included detailed narratives about the dynamics of genocide across Rwanda, including several pages centered on events in the hospital in Butare (1995:984-989). That book was based on interviews conducted in the immediate aftermath of the genocide—the kind of in-the-moment, recorded witness interviews that the *inyangamugayo* typically did not have at their disposal.

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<sup>136</sup> *Gacaca* session. December 4, 2007. Nyanza.

<sup>137</sup> *Gacaca* sessions. August-September 2007. Butare.

The *abunzi* in Ndora shared the participatory approach I discussed earlier, but varied in their individual styles. The presiding mediator, for example, tended to be fairly controlling, imposing his views on the other mediators. Another was typically quiet, interjecting infrequently but with pointed, revealing questions. Yet another was prone to give long monologues to remind participants of customs, practices, norms or local history.

Overall, decentralization in Rwanda put the exercise of state power in the hands of people who were minimally trained and inconsistently inculcated in the regime ideology. This meant that state power was exercised in a variety of different ways, neither uniform nor monolithic. *Inyangamugayo* and *abunzi* did not see themselves simply as proxies for the state (RPF), exercising power to impose collective guilt. Lay judges often chafed against the intervention and oversight of state representatives from the capital, arguing that they knew the local conditions better than the national government delegates. They could influence the actions of professional government delegates. *Gacaca* and *comite y'abunzi* occurring in sites far from Kigali diverged from the central goals of the institution, and showed both the strengths and limits of state power (see also Clark 2010:84,157-159).

Lay judges donned the mantle of state power to facilitate decentralized legal processes, and did so in ways that supported, undermined, and adapted the processes. In general, *inyangamugayo* and *abunzi* developed a variety of strategies to assess truth and to rebuild the social fabric. These techniques varied between judges, within panels, and between courts. Consider the different styles of Laurence in Ndora as compared to Elaste in Nyanza, or differences between Faustin, Vincent and Laurence within the same panel

in Ndora. Even the same judges acted differently across cases, as we saw with Faustin.

Further, lay judges exercised state power in varied ways across *gacaca* and *comite y'abunzi*, even though they had similar formats and goals.

### ***Summary***

Lay judges brought state power into people's lives, primarily through threat of punishment and the mediation discourse, but in so doing, they altered it from the way the national government exercised power from Kigali. In daily practice, lay judges blurred the boundaries between state and community, showing how the two were intimately intertwined. *Inyangamugayo*'s and *abunzi*'s authority was contested and challenged, which reflected ongoing tensions among participants. Further, lay judges developed a variety of different styles, across individuals and courts, showing that the exercise of state power was not uniform.

### **Conclusion**

The Rwandan government created decentralized grassroots legal institutions, most notably *gacaca* and *comite y'abunzi*, based on the premise that local knowledge and authority should be privileged in identifying truth and rebuilding Rwanda, both for genocide-related crimes, as well as ordinary disputes. Lay judges were the lynchpin of these legal systems. They had the dual position of representing community and national government. They had the power to implement state law backed by punishment, based on an insider position rooted in local social and knowledge networks.

Lay judges brought locally-situated information—of context, history, culture, landscape, and people—into trials. Some prior knowledge was based on their own

personal experience, while other aspects came from being part of informal conversations around town, or deliberate investigations. Rather than trying to overcome this knowledge, they specifically used it to evaluate contested testimony. Further, they used their location in shared knowledge and social networks in attempts to repair the social fabric, consistent with the mediation discourse. What success they had in restoring relationships was based on their local positioning, which allowed them to engage in ongoing efforts over time, from a structural position shared with other participants. This is consistent with other time-periods in Rwanda, when, for example local authorities such as lineage heads had more moral authority and social influence to resolve disputes than outside chiefs (Newbury 1978). At the same time, their insider status, which did not correspond with the level of social, political, or economic capital necessary to have influence at the national level, limited their ability to impact the root causes of the conflicts.

Lay judges showed, through the way they managed these legal forums, that “state” and “community” in Rwanda were conflated, and both were internally heterogeneous and contested. They illustrated that the “local community” was not necessarily cohesive, but nor was “the state” only distant and domineering. Critiques of partiality, or of lay judges’ unprofessional status, reflected the very deep divisions and political struggles that remained, including debates over whether local, cultural knowledge or universal, objective knowledge should be privileged in rebuilding Rwanda. Lay judges embodied and reflected the contestation over the process of determining truth and responsibility—with the incumbent access to resources in the present that those conveyed.

## Chapter 8: Conclusion

Consistent with many other post-conflict contexts around the world, the Rwandan government in the aftermath of genocide emphasized rebuilding rule of law as central to restoring order and promoting sustainable peace. Specifically, this study demonstrated how the government mobilized new legal forums in deliberate efforts to rebuild families, communities, and the nation out of a traumatized and distrustful population.

Decentralized grassroots legal forums, including *gacaca*, *comite y'abunzi*, and legal aid clinics, aimed to resolve disputes with the help of a third party according to values of compromise and unity. The institutions were based on restorative justice principles that prioritized collective cohesion over individual rights, combined with state-backed punishment.

Rwanda's emphasis on law as central to social reconstruction is consistent with the growing rise in popularity of using transitional justice mechanisms to help societies cope with political violence. National governments and international actors increasingly create legal forums to help people address the past and restore peace, ranging from prosecutorial courts, to truth commissions, to standardized community-based healing rituals.

Transitional justice has become an industry in itself, with a growing number of international non-government organizations, post-graduate degree programs, scholarly journals, and books. Details are still emerging on the effects of these institutions on people, and how these forums contribute (or do not) to social reconstruction.

Ethnographic work on *gacaca*, *comite y'abunzi*, and the legal aid clinic in Rwanda between 2004 and 2008 provided detail on how people addressed specific aspects of

restoring relationships within these forums. How people build and maintain collective cohesion is an age-old anthropological question. Considering these courts as sites of social healing focuses attention to how they served as spaces in which people created networks of alliances that allowed for mutual support and moral community, as well as divisions that excluded people. Neighbors participating together in public legal forums or prisoners returning to live with their families alongside victims did not inevitably lead to repaired social relationships. More specifically, through discussions in legal forums, people created and restored connections by taking responsibility for one another, sharing resources, and working together. People testified for or against one another, in coalitions and factions sometimes contingent, other times enduring. They shared or withheld resources. They showed willingness to move towards compromise and softened positions over time, or by contrast, demonstrated a hardening of positions. Restoring alliances occurred alongside exclusion from support networks.

Considering decentralized legal processes as sites of social healing shows that societal healing practices provide dynamic processes for recreating shredded social connections, but do not eliminate all weaknesses and tensions, or inoculate against all future threats of violence or disaggregation. Social healing is best understood as a process of patching—rather than restoring—the social fabric, with the understanding that visible scars and weak points linger, even as some connections are strengthened.

Legal disputes in Rwanda revealed a wide range of ongoing divisions and tensions, showing that ethnicity was not the only or most intense division. Through mandatory participation and threat of state-backed punishment, legal forums drew together wide constellations of participants who might not otherwise have voluntarily engaged with one

another. Attention only to conflict between Hutu versus Tutsi erases understandings of conflicts and differences *within* these groups which over time in Rwanda have been crucial to fueling instability (Newbury & Newbury 1999; Newbury 1997:213; 1998b:89; Vansina 2004:163). Cases showed that collective belonging was heavily contested in many forms and levels of scale. People differently positioned with respect to the genocide, and therefore the state, disputed over similar concerns about, for example, how to maintain shelter, land, and medical care to support their families, linked to their structural position in relation to economic and political power (Newbury 1978).

Insights derived from Rwanda are applicable more broadly in understanding the capacity of legal forums to shape the construction of social forms in the aftermath of conflict, particularly when people struggle to come to terms with civilian participation in widespread acts of violence. By foregrounding the role of legal forums, this study emphasized the interrelationships between collective belonging, the state, the past, and material disputes. In particular, as I discuss in turn below, legal forums can provide a powerful site to debate distribution of resources as well as the meaning of exchanges and norms associated with collective belonging, all of which are key to addressing the economic and pragmatic dynamics of reconstruction. Further, legal forums can provide one space in which people can confront the past specifically in terms of how it shapes relationships and obligations in the present. Finally, legal forums can show that state involvement is not necessarily incompatible with healing, as long as processes are embedded in daily life and contextualized.

### **Pragmatics of Daily Survival are Central to Reconciliation**

Grassroots decentralized courts created spaces in which people were required to engage in debates that involved economic and material realities—who was incarcerated versus free, who had access to what material goods—as well as affective solidarities. Legal institutions thus provided a forum for debating and contesting normative duties, rights, and obligations among family, friends, neighbors, colleagues, and fellow citizens. Material and economic aspects of social reconstruction—often discussed in terms of reparations (Minow 1998)—are crucial to our understanding of societal healing, particularly in contexts where survival is tenuous in the face of precarious economic conditions (Bolten 2008:272; Leopold 2005). Attention to how people rebuild alliances as systems for coping and surviving, and how they debate the meaning of material exchanges, complements the emphasis on reconciliation in terms of inter-subjective understanding and forgiveness (Amstutz 2005; Borneman 2002; Derrida 2001).

Exchanges and transactions, long identified as a tool of social integration, were at the core of Rwanda's legal forums. Category Two *gacaca* cases were predicated on the exchange of forgiveness for information in confessions, and exchange of community service work for prison time. Cases before *comite y'abunzi*, the legal aid clinic, and Category Three *gacaca* centered on transactions over land, personal property, or labor, with judgments involving exchange of goods, cash, or work. The mediation discourse asked people to compromise individual interests for the sake of collective unity. Yet, the social meaning of exchange was heavily charged and under debate. Repayments of looted crops, pigs, or fines were not mere economic transactions. The redistribution of livestock,



crops, and other goods had significant impacts on people's life conditions and future obligations, and they were unlikely to concede easily.

Historically in Rwanda much of social cohesion was built around the circulation and exchange of beer, cattle, and women, continuing from the pre-colonial period through the 1980s (De Lame 2005:105). As Ndayisaba, the mediator quoted in Chapter 4 explained, "People used to bring beer to share, or exchange cows, or even intermarry, and these exchanges created strong bonds."<sup>138</sup> Exchanges in the aftermath of genocide had the possibility of being understood as creating enduring and repaired relationships and therefore contributing to social cohesion, but also risked carrying forward unequal or exclusionary meanings from the past.

The pervasive debates about cattle in *gacaca* and *comite y'abunzi* have to be understood against the backdrop where the exchange of cattle historically carried the weight of cementing alliances, whether among families in marriage or between patrons and clients (De Lame 2005; Maquet 1961; Newbury 1988; Vansina 2004). People invoked this idea regularly in *gacaca* and *comite y'abunzi* testimony, for example using proof that "our fathers exchanged cows" as evidence of long-standing relationships between families. To repay a cow, therefore, was not merely about repaying a looting debt in order to provide closure on a wound created by past transgression. It carried a legacy of future-oriented obligations between giver and receiver, with potential power inequalities, about which the participants were ambivalent.

The meaning of exchange of labor was similarly charged. The suggestion that perpetrators could repay debts through work, whether directly for a neighbor whose items

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<sup>138</sup> Interview, Ndayisaba. January 25, 2007. Ndora.

they looted—a common solution before *comite y'abunzi* as well as *gacaca* Category Three cases—or to society more broadly through *T.I.G.* must be understood in a deeper historical context of mandated labor. Clients historically labored for patrons. Peasants were required to supply labor for their chiefs and the king. Most specifically, the practice of *uburetwa* in the late 1800s through the 1940s differentiated based on ethnicity and class, and contributed to forming an ethnicized political consciousness among Hutu, based on a “cohesion of oppression” (Newbury 1988). While the practices of *uburetwa* and *T.I.G.* were not linked in the dominant narrative, the idea of having to work for free for the benefit of a category of people (mostly victims, or *repatriés*) which overlapped with Tutsi remained linked in many people’s minds.

Practices of exchange carried historical meanings that were under renegotiation in the present. People used legal forums to debate not only what they owed to other people, but what it meant to owe, and what enduring obligations would persist from the transaction. These were crucial debates to reestablishing a sense of what it meant to participate in social interactions. This suggests that legal forums have the potential to enable important debates over the meanings of exchange and how they relate to collective belonging.

### **The Past, Broadly Defined, Influences the Present**

Legal forums necessarily brought the past to the foreground, by requiring people to be accountable for specific events and their consequences. People debated and framed the past instrumentally in terms of what it meant for the present. Confronting the past is often understood to be a critical component of social healing, though there remains disagreement as to how to do it (Adorno 1986 (1977); Minow 1998; Werbner 1998;

Wilson 2003). Practices range from narrating specific details through testimonials in truth commissions, to “directed forgetting” wherein people “displace explicit verbal memories of this violence through a range of social and ritual practices –sacrifices, prayer, exorcism, funerals, ritual healing, church services” (Shaw 2007:194-195).

Rwanda’s post-genocide legal forums brought a clear focus on creating history—at decentralized and national levels—into the process of social healing and post-conflict reconstruction (Leopold 2005; Moore 1998). Legal forums were designed to emphasize verbal debates over specific details of what happened to particular people at defined moments, in order to create historical knowledge. The weekly public discussions in *gacaca* over a period of several years, supplemented by conversations in *comite y’abunzi*, drew together circulating stories about past events. In situated weekly debates over a period of many years, people wove together details across cases to create tapestries of what occurred, with some points agreed upon and others contested. These narratives captured more complexity and nuance than the linear dominant version of history, and their development and contestation was equally important to the individual verdicts on guilt or innocence, and to judgments of liability. This suggests that in legal forums with broad participation over an extended period, participants can generate complex and textured public versions of the past, even within a constrained public sphere.

In addition, debates in legal forums in post-genocide Rwanda showed that “the past” that people confronted was broader than the 1994 genocide in and of itself. It included a reckoning with much deeper histories of inclusion and exclusion over decades, even centuries. It involved not just the narrowly-defined political violence and acts of murder, and not only specific criminal accountability. People discussed how norms of social

support, respect, and caretaking eroded through particular acts over time. Disputes pertaining to a wide range of factors were shaped by consequences of political violence over decades, and by people's perceptions of that past. Legal forums provided one crucial space that gave voice to these debates and concerns.

### **Contextualization Can Counter-Balance State Involvement**

Legal forums in Rwanda suggest that top-down processes that are contextualized can contribute to social healing. Many have expressed skepticism about the possibility that compulsory rituals can create community (Colson 1974:91; Nader 2002), especially when imposed by one-sided, often repressive government, as in Rwanda (Thomson & Nagy 2010; Waldorf 2006).<sup>139</sup> Legal processes are politicized, and state-imposed legal forums risk being used to legitimize state authority and reproduce structures of inequality (Moore 1998; Nader 2002). Looking closely at the Rwandan case shows how customary law can be a tool of the state. Most Rwandans perceived the nationwide legal forums to be external, state-driven projects, even though they allegedly derived from participants own local culture. Yet, by looking across three distinct legal forums that combined mediation discourse with punishment in varied ways, we can disaggregate the effects of state involvement to identify which elements were divisive or coercive, in what situations, and for whom. Further, we can identify how embedding processes in social dynamics can counter-balance, if not fully overcome, these limitations, allowing participants creatively and productively to redevelop social networks.

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<sup>139</sup> Personal Communication, John Janzen. April 2010. Philadelphia.

Specifically, in *gacaca*, when state-backed punishment was wielded in an institution that selectively targeted one group (Hutu) based on the dominant narrative in the broader context of a restricted public sphere, the results were most likely to reproduce patterns of political and economic inequality and exclusion, rather than overcome them (Chakravarty 2009; Thomson Forthcoming 2011). *Gacaca* risked increasing division along lines that mirrored the political conflict, even alongside other positive solidarities that were created. But that is only part of the story of government legal forums. This study revealed that the mediation discourse combined with punishment was not unilaterally used to restrict access to justice or disempower the weak. In *comite y'abunzi*, the more minimal link to state-backed punishment and the fact that individuals rather than the state served as plaintiffs meant it was not perceived to have a persecuting agenda. People experienced less coercion so the risk of increasing division was minimized. In the legal aid clinic, mediation discourse was more often used to invert standard power dynamics, serving to support those in lower power positions, and to compel those in higher power positions to acknowledge their responsibilities and compromise with them.

Further, the fact that *gacaca* could reproduce state-backed inequalities was not its only effect. The forums served as sites for social critique. People used them to contest the framings of citizenship and assertions of guilt, innocence, moral authority, and legitimacy in the dominant narrative of history. Conversations in *gacaca* sessions were a constant reminder that the master-narrative was contested, and served as a fight against forgetting. *Comite y'abunzi* sessions showed that legal rules and the nature of authority, even by state-representatives (*abunzi*), were contested. The legal aid clinic allowed people to challenge local authorities and the allocation of rights and resources.

I have argued that legal forums' contextualization was crucial to their ability to rebuild solidarities, when they could. What made *gacaca* and *comite y'abunzi* embedded in daily practices was not primarily the "cultural" familiarity emphasized in the mediation discourse. Rather, my research showed that contextualization meant the forums were part of more expansive, iterative, and multi-dimensional reconstruction efforts occurring within and across a variety of institutional mechanisms, formal and informal, visible and subtle.

The decentralized legal forums were deeply embedded in the context of people's daily lives, in contrast to how the increasing push to law is often experienced as abstract, professionalizing, or standardizing (Reyntjens 1990:40). These forums were continuous with the landscape and routine of everyday life. They placed individuals and their stories at the center. Wide rules of evidence allowed for broad conversations, in lieu of proceedings narrowly restricted by concerns of relevance to specific points of law or distracted by objections and complex rules of procedure.

Courts were managed by local actors, through the work of lay judges. *Inyangamugayo* and *abunzi* derived their moral authority from having experienced the violence and its after-effects themselves, and from being a part of local networks of people and knowledge. They spoke to participants from a common structural position, with a shared experience-base. Their interventions were not restricted to formal case sessions but continued into other dimensions of life.

Decentralizing legal forums so they would "move deep to the places" where events occurred (Karemera 2004) reduced state control over detailed social interactions, though did not eliminate it entirely. This left room for creative and generative processes of social

rebuilding. Participants, including lay judges, were able to adapt the processes to suit their needs and contexts in unanticipated ways. *Inyangamugayo* could overcome the institutional tendencies within *gacaca*. They could, and did, exonerate defendants and release prisoners to go home. They counseled and supported victims to help them adjust to the newly-returned neighbors. *Abunzi* could advocate for solutions based only loosely on formal law.

Paying attention to the workings of government-through-community showed how state involvement never fully disappeared. Community was brought into being through politicized processes, and state power influenced transformations in social solidarities, as in earlier time-periods in Rwanda (Newbury 1988:14; Newbury 2009). Yet, the fact that the legal forums were state-backed should not disqualify them automatically from contributing to social healing. Legal processes in Rwanda may have more power to challenge and alter social relations with less restrictive state involvement, both within the institutions and in the socio-political context more broadly. But valorizing grassroots bottom-up processes as the only repository of real social transformation ignores how even the most locally-rooted civil society movements are typically interconnected with national and transnational discourses that cannot be considered pure from state intervention, and are suffused with power dynamics, hierarchies, and forms of violence (Ferguson & Gupta 2002; Lewis 2002). Even pre-colonial and colonial public healing in Rwanda through *ngoma* drumming was tightly under the king's control (Janzen & Janzen 2000; Janzen 1992b).

The question remains, did the courts have a net positive benefit on restoring relationships? Were they enough a process of social healing to stop cycles of violence

and prevent resurgence of deadly conflict? *Gacaca* proceedings, particularly those in the rural areas at the heart of this study, could not alone insulate Rwanda against further outbreaks of violence. They did not aim to address national-level issues that drove the genocide, which continued to be a problem, such as tight control of political power and economic resources in the hands of few, or economic marginalization. But they were one step in addressing micro-level, situated tensions, which political scientist Severine Autessere (2010), studying the Democratic Republic of Congo, has recently argued is crucial to ultimately ending collective violence on the ground and ensuring stability of regional, national, and transnational settlements. Questions remain about whether nationwide patterns of inequality and exclusion were more often reproduced or challenged through the *gacaca* process, and whether with the closure of the *gacaca* process in 2010, *comite y'abunzi* will take over some of its role as a vibrant, sustainable grassroots dispute resolution forum, and if so, to what effects.

## **Summary**

Transitional justice mechanisms are under debate, or have been recently implemented, in countries adjacent to Rwanda, including Burundi, Uganda, Kenya, and the DRC, as well as in other places stretching around the world, such as Nepal, Afghanistan, the Solomon Islands, Indonesia, Iraq, Lebanon, Cyprus, Colombia, and Mexico. These ongoing discussions have been shaped by Rwanda's legal responses to genocide. The Rwandan government's emphasis on *gacaca* as a culture-based solution helped shift transitional justice towards recognizing the importance of the local context rather than prioritizing universal legal principles. This study illustrated that while

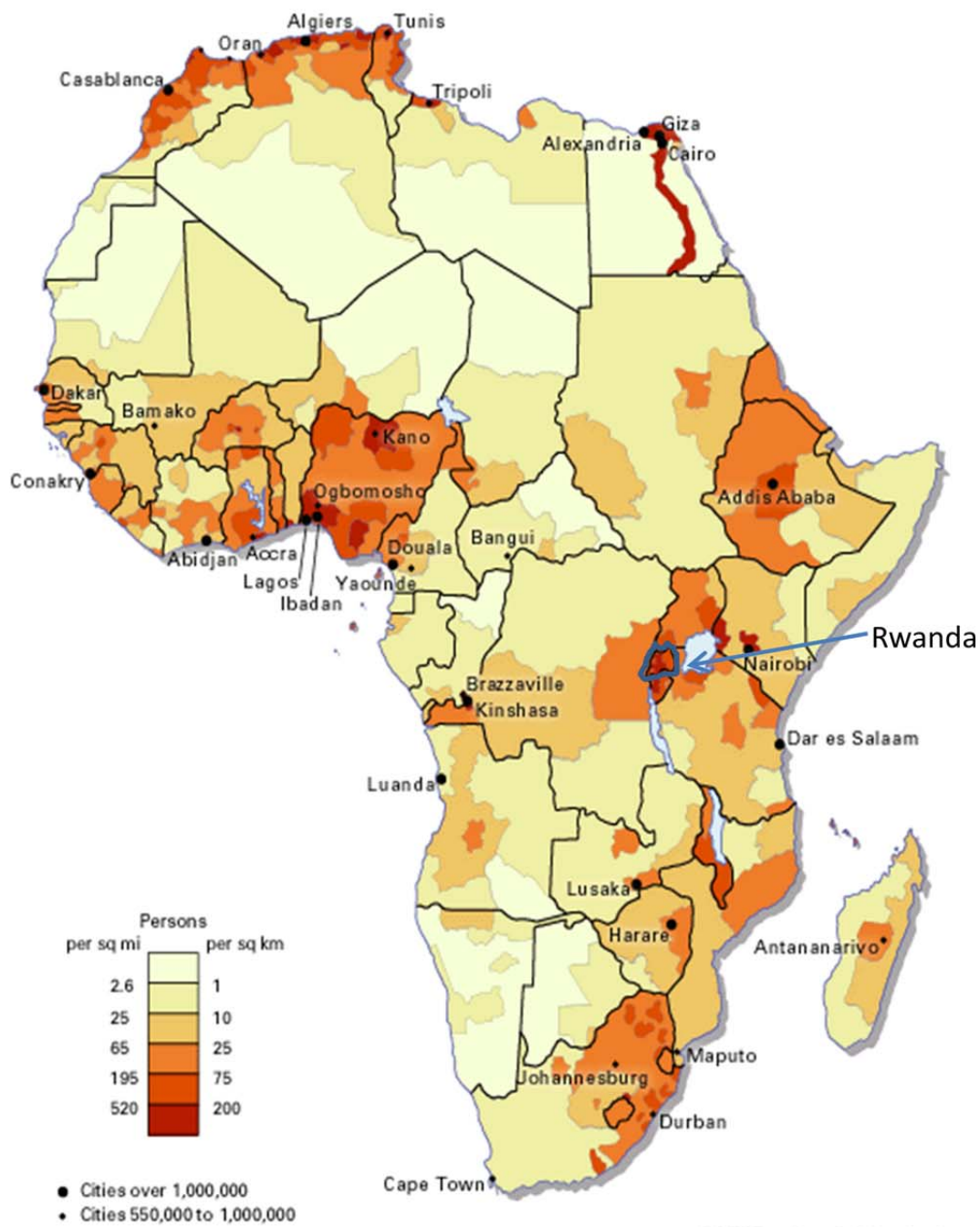


governments use cultural justification for practices that are neither purely cultural nor benign, state-backed processes that are deeply embedded in people's lives, and in which they have an active role, provide spaces for people to confront the past and negotiate the pragmatic realities of mutual support that are central to social reconstruction. Further, it showed that societal rebuilding is not uniform nationwide but depends on people's localized decisions and actions, in the context of broader national and transnational socio-political dynamics. People create exclusions and fractures as they reconstitute solidarities.

Field-based, "on the ground" research is a powerful tool to illustrate how top-down discourses develop and circulate, and how the resulting projects shape the lives of people in specific places, as well as how people in turn reshape these projects. My study showed the Rwandan legal institutions' creative possibilities but also their limitations, the ways legal interventions "may be both repressively top-down *and* locally integrated in creative ways" (Shaw 2007:187; see also Theidon 2009:297). It demonstrated the varied and perhaps unexpected ways that people used state-backed forums as part of their daily efforts to renegotiate collective belonging, as one element of rebuilding their lives and imagining a future in the aftermath of violence.

Appendices

Appendix 1: Map of Population Density in Africa



Source: Encyclopædia Britannica (2002).

## Appendix 2: Map of Rwanda

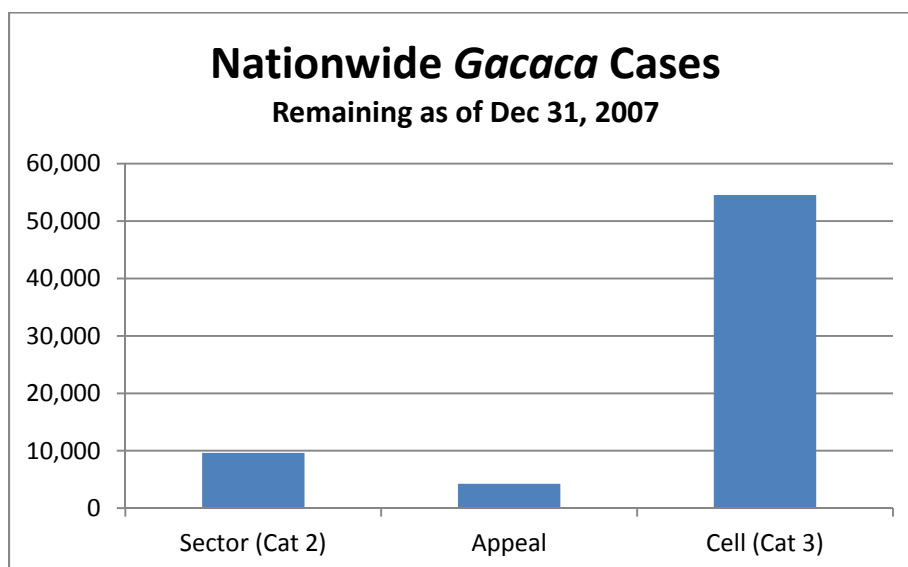
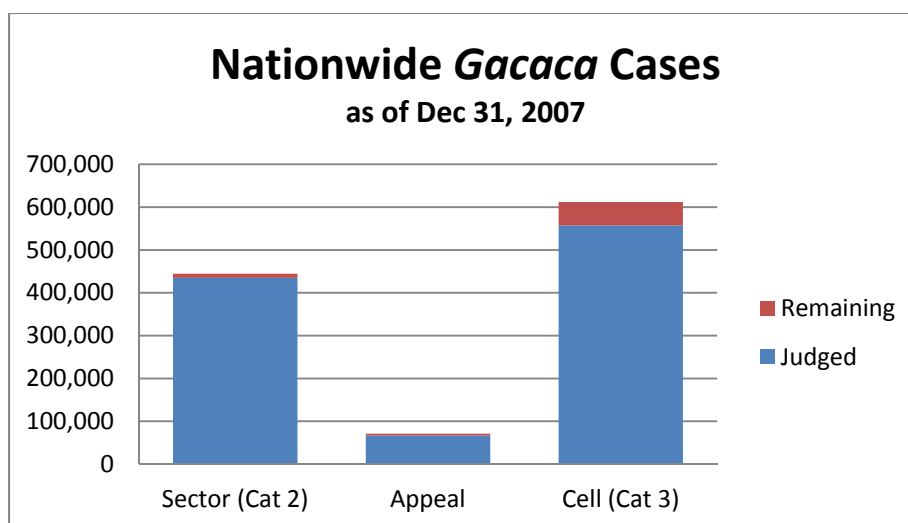


Source: CIA World Factbook  
<https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html#top>

### Appendix 3: *Gacaca* Case Statistics

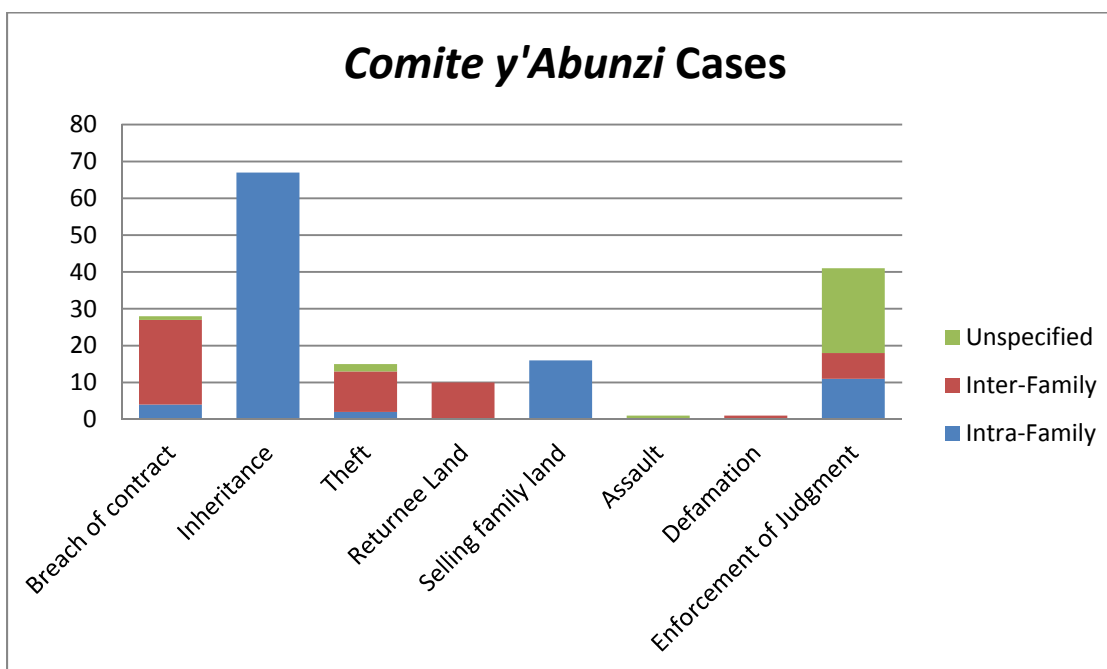
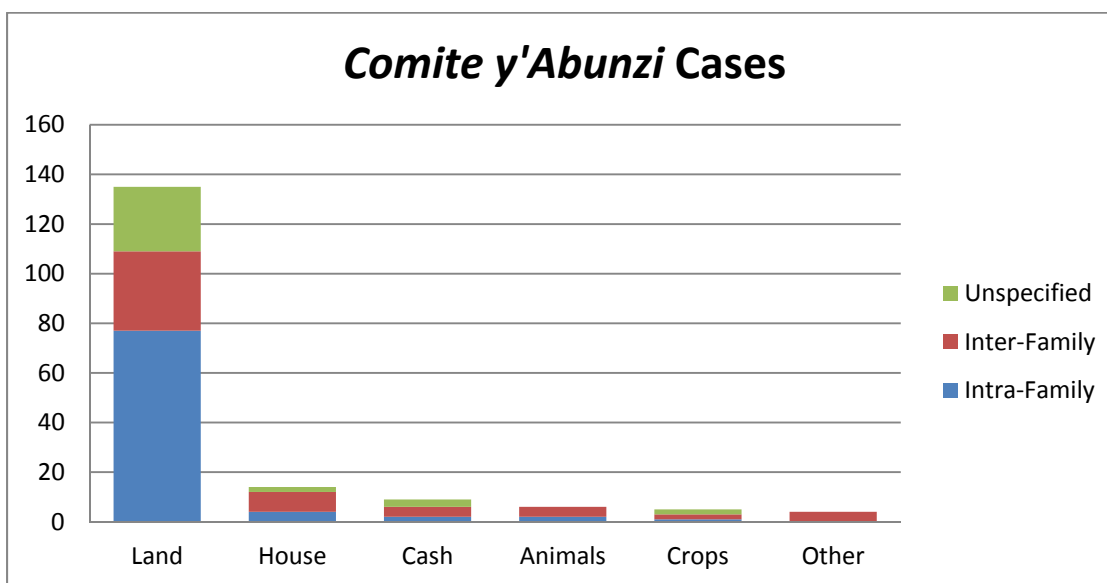
Cases completed nationwide between July 15, 2006 and December 31, 2007<sup>140</sup>

| <i>Gacaca</i> Jurisdiction | Cases Received   | Cases Judged     | Cases Remaining |
|----------------------------|------------------|------------------|-----------------|
| Sector                     | 444,455 (39.4%)  | 434,827          | 9,628           |
| Appeal                     | 71,100 (6.3%)    | 66,864           | 4,236           |
| Cell                       | 612,151 (54.3%)  | 557,607          | 54,544          |
| <b>Total</b>               | <b>1,127,706</b> | <b>1,059,298</b> | <b>68,408</b>   |



<sup>140</sup> National Service of *Gacaca* Jurisdictions office. July 2008. Kigali.

#### Appendix 4: Graphs of *Comite y'Abunzi* Cases



*N.B.:* These graphs reflect a combination of the data from the 20 Ndora *comite y'abunzi* cases I attended and the 175 cases in the Legal Aid Clinic registry (from July 2007 through January 2008) that had already been heard before *comite y'abunzi* elsewhere in the South province. The trends were parallel between the two sources. The Legal Aid Clinic registry often did not specify the relationship between disputants or the content of “enforcement of judgment” requests.

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