

DISCUSSION PAPER / 2007.07



“Does the Truth Pass Across the Fire without Burning?”

Transitional Justice and its
Discontents in Rwanda’s
Gacaca Courts

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of Antwerp



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POLICY AND MANAGEMENT

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ABSTRACT

The modernized tradition of the Gacaca courts has become the key mechanism to deal with the past in Rwanda. Due to the design of the Gacaca tribunals, truth telling is the cornerstone of the transitional justice framework. Nevertheless, popular narratives and survey results reveal a problematic quest for the truth. Based on 18 months of fieldwork in rural Rwandan villages, we demonstrate that the state-sanctioned speaking of the truth goes against established social practices. Our exploration of the truth problem further brings into focus the socio-political environment mediated by a culture of deceit and dominated by a war victor as the context of the truth; the confession and denunciation policy as the source of the truth; the decentralized and 'traditional' setting as the locus of the truth. A concluding section sketches the contours of the truth and questions the possible consequences of the truth.

RÉSUMÉ

La tradition modernisée des tribunaux Gacaca est devenu le mécanisme clé pour répondre aux problèmes du passé au Rwanda. Vu les caractéristiques des tribunaux Gacaca, la recherche de la vérité est la base de l'architecture de la justice transitionnelle. Néanmoins, les narrations populaires et les résultats des sondages révèlent une recherche de vérité problématique. Basé sur un travail de terrain de 18 mois dans plusieurs villages ruraux du Rwanda, nous démontrons que dire la vérité, sanctionnée par l'Etat, ne correspond pas aux pratiques établies. Notre exploration du problème de la vérité focalise sur l'environnement sociopolitique, avec une culture de supercherie et dominé par un vainqueur de guerre comme contexte de la vérité ; les pratiques de confession et la politique de dénonciation comme source de la vérité et le lieu décentralisé et « traditionnel » comme locus de la vérité. Une section de conclusion peint les contours de la vérité et questionne les conséquences de la vérité.

1. INTRODUCTION¹

The plane carrying the then president Habyarimana was shot down over the skies of Rwanda's capital Kigali on 6 April 1994. What followed was a genocidal campaign against the Tutsi minority ethnic group and the so-called 'moderate' Hutu belonging to the majority ethnic group but opposed to the regime in place. Up to 800.000 people died between April and July 1994. It was the violent apex of a country history marked by sporadic eruptions of ethnic violence as a consequence of the struggle over power (and wealth) in the course of time. A struggle grafted on the Hutu-Tutsi ethnic bi-polarity that marks the Rwandan socio-political landscape. The Hutu are the majority ethnic group with approximately 84 % of the population, 14% are Tutsi and 1% of the inhabitants is Twa.

Before independence in 1962, Rwanda was a kingdom and a Tutsi aristocracy ruled the masses. The year 1959 was marked by a social revolution that became known as the 'Hutu revolution'. The republic was installed, the state and its structures became occupied by personnel predominantly of Hutu origin. The idea of the Hutu as the original inhabitants of Rwanda and their *de facto* demographic majority made the new order of things ontologically democratic according to the legitimization strategies of the new power holders. The events surrounding independence were accompanied by violence against the Tutsi rulers and their families and a first wave of Tutsi sought refuge in neighbouring countries. Their descendants would later constitute the bulk and back-bone of the Tutsi-dominated rebel force, the Rwandan Patriotic Front (RPF), demanding a return to their country of origin and a share in power by invading Rwanda from October 1990. It was one of the factors that initiated a political transition in Rwanda that did not instigate liberal reforms or democracy but resulted in massive bloodshed: genocide against the Tutsi minority, massacres against Hutu opponents and large-scale human rights abuses against civilians during the accompanying civil wars. The genocide ended by a military overthrow of the former regime by the RPF. The alternation of power was not the result of an internal reform nor a compromise. Therefore, the RPF managed to assert its dominance in the post-genocide era and the regime brought about is authoritarian in nature and (perceived as) being Tutsi dominated, considering its origin.²

A country evolving from violent conflict needs to deal with the past. Rwanda is no exception. In the years following the 1994 genocide, retributive justice and reconciliation were seen as mutually exclusive objectives by the Rwanda government. Trials and tribunals seemed the only option to come to terms with the problems of the past. Only several years after the genocide, the U.N. Commission on Human Rights observed a shift in the stated objectives: 'After five

¹ A previous version of this article was presented as a paper at the AEGIS European Conference on African Studies, 13 July 2007, Leiden, The Netherlands in the panel on 'The politics of healing and justice in post-conflict societies: global discourses and local realities.' The author would like to thank the panel organizers, Victor Igreja and Annemiek Richters and the participants for their comments. Danielle de Lame, Victor Igreja, Luc Huyse, Marina Rafti, Filip Reyntjens and Stef Vandeginste gave comments on earlier versions of this text or sections of the text. The final result greatly benefited from their remarks. The usual disclaimer applies.

² Filip Reyntjens, 'Rwanda, Ten Years on: From Genocide To Dictatorship', *African Affairs* (2004), N° 103, 177-210.

years of refusing to talk of reconciliation until justice is seen to be done, Rwandans now accept that reconciliation must be a national goal in its own right.³ The objectives of accountability and reconciliation will find their most tangible embodiment for the ordinary Rwandan during the numerous Gacaca meetings in every local community.

Since the idea surfaced to use the Gacaca tradition to deal with the genocide crimes, dozens of works – scholarly or journalistic – have been devoted to this so-called traditional justice and reconciliation mechanism. Waldorf offers a comprehensive overview of the existing literature and an insightful analysis⁴. Early publications provide a critical review of the inception, invention, of the ‘new’ Gacaca system and an analysis of the build—up of the legal and institutional framework⁵. The model of justice emerging in these early stages solicited further reflection, mostly from a normative or purely theoretical point of view, for example related to the assumption that the decentralized nature of the court system would instigate a culture of deliberation and dialogue⁶ or could complement national and international judicial orders⁷. Other studies analyze the feasibility of the introduction of the Gacaca system⁸ or the popular expectations of the Rwandan populace⁹. The framework of international support and domestic (human rights) intervention related to the introduction of the Gacaca system received attention as well¹⁰. However, few studies are based on in-depth field research, with the notable exception of the reports of NGOs monitoring the Gacaca activities¹¹. But these have primarily a policy-oriented finality. A thorough understanding of the nature and functioning of the Gacaca system and the social process it generates only became possible after the nationwide implementation in 2005. Buckley-Zistel, based on fieldwork conducted before this nationwide implementation, already touched upon an important theme that remained largely a blind spot in previous publications on the Gacaca but that would take a prominent place in the popular experience when the Gacaca courts became operational nationwide: the dynamics of truth-telling and social forgetting¹².

In what follows, we firstly offer an analysis of the design of the Rwandan transitional justice architecture (legislation) in general and the Gacaca court system in particular. We argue that other (stated) transitional justice objectives to attain at the local level largely hinge upon the truth established and how it was generated in the Gacaca tribunals¹³. We argue that the surfacing of the truth is not a mere objective among other objectives, but the cornerstone of the entire transitional justice framework in post-genocide Rwanda. Subsequently, we explain that survey results and popular narratives indicate that establishing the truth has become not only the most important, but equally the most problematic aspect of the Gacaca process. This

³ United Nations, Commission on Human Rights, *Report on the situation of Human Rights in Rwanda* (25 February 2000), § 180.

⁴ Lars Waldorf, ‘Mass Justice for Mass Atrocity Rethinking Local Justice as Transitional Justice’, *Temple Law Review*, Vol. 79, No. 1, 2006.

⁵ See for example Stef Vandeginste, ‘Les Juridictions Gacaca et la Poursuite des Prémunis Auteurs du Génocide et des Crimes Contre L’Humanité au Rwanda’, in : *L’Afrique des Grands Lacs. Annuaire 1999-2000*, eds. S. Marysse & F. Reyntjens, Paris, L’Harmattan, 2000.

⁶ See for example: Aneta Wierzyńska, ‘Consolidating Democracy Through Transitional Justice: Rwanda’s Gacaca Courts’, *New York University Law Review*, Vol. 79, 2004, pp. 1934-1969.

⁷ See for example: Alexander Betts, ‘Should Approaches to Post-Conflict Justice and Reconciliation be Determined Globally, Nationally or Locally?’, *The European Journal of Development Research*, Vol.17, No.4, 2005, pp.735 – 752. And: Peter Uvin and Charles Mironko, ‘Western and Local Approaches to Justice in Rwanda’, *Global Governance*, No 9, 2003, 219-231.

⁸ Peter Uvin, *The Introduction of a Modernized Gacaca for Judging Suspects of Participation in the Genocide and the Massacres of 1994 in Rwanda*. A Discussion Paper prepared for the Belgian Secretary of State for Development Cooperation. (On file with the author).

⁹ See for example Timothy Longman et al., ‘Connecting Justice to Human Experience: attitudes toward accountability and reconciliation in Rwanda’; Eric Stover & M. Weinstein (Eds.), *My Neighbour, My Enemy. Justice and Community in the Aftermath of Mass Atrocity*, Cambridge, (Cambridge University Press, 2004), pp.206-225; LIPRODHOR, *Juridictions Gacaca au Rwanda. Résultats de la Recherche sur les Attitudes et Opinions de la Population Rwandaise*, (Kigali, LIPRODHOR, 2000); and S. Gasibibirege & S. Babalola., *Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study*, Baltimore, (Johns Hopkins University School of Public Health, Center for Communication Programs, 2001).

¹⁰ See for example: Barbara Oomen: ‘Donor-Driven Justice and its Discontents: The Case of Rwanda’, *Development and Change* Vol. 36, N° 5, 2005, pp. 887-910. And: Anuradha Chakravarty, ‘Gacaca Courts in Rwanda: Explaining Divisions within the Human Rights Community’, *Yale Journal of International Affairs*, Spring 2006, pp. 132-145.

¹¹ See for example the reports by *Avocats Sans Frontières* (ASF – Lawyers Without Borders) and *Penal Reform International* (PRI).

¹² Susanne Buckley-Zistel, ‘The Truth Heals?’ *Gacaca Jurisdictions and the Consolidation of Peace in Rwanda*’, *Die Friedens-Warte*, N° 80, 2005, pp. 1-17. Susanne Buckley-Zistel, ‘Remembering to Forget. Chosen Amnesia as a Strategy for Local Co-Existence in Post-Genocide Rwanda’, *Africa*, 76, N° 2, 2006, 131-150.

¹³ The Gacaca Courts have been instituted to achieve five goals: 1. Establish the truth about what happened; 2 Accelerate the legal proceedings of those accused of genocide crimes; 3. Eradicate the culture of impunity; 4. Reconcile Rwandans and reinforce their unity; 5. Using the capacities of Rwandan society to deal with its problems through a justice based on Rwandan custom. See: <http://www.inkiko-gacaca.gov.rw> (Last visited on October 6, 2007).

has serious consequences affecting the Gacaca system in its essence and hampering its ultimate objectives. It urges us to explore the scope of the Rwandan proverbial wisdom that ‘the truth passes across the fire without burning,’ (*Ukuli guca mu ziko ntigushya*) signifying that the truth always triumphs¹⁴. We offer a close look at popular practices and narratives and show that previously, before the state-sanctioned installation of the Gacaca courts, the past was primarily tacitly explored without much discursive content. The amnesia discernable in the years preceding the installation of the Gacaca courts was the result of a natural process of co-habitation. The Gacaca courts came to alter this process in substance due to the fact that truth had to be spoken. Truth-telling became an important pre-requisite to re-establish social relationships and evolve towards interpersonal reconciliation. But the specific functioning of the Gacaca courts in the socio-political constellation of post-genocide Rwanda also revealed that amnesia on certain aspects related to the past is not simply chosen, as Buckley-Zistel argues, but imposed top-down. With our focus on popular practices and narratives, we examine the problematic quest for the truth by the Rwandan peasantry¹⁵.

Our exploration starts with an overview of the legal and institutional framework of the Gacaca court system and an identification of the problematic quest for the truth in the ordinary experience. Subsequently we bring into focus the socio-political environment dominated by a war victor and the culturally mediated practices of lying, deceit, dissimulation and trickery as the ‘context’ of the truth; the practice of accusing and confessing as the ‘source’ through which the truth needs to emerge and the ‘traditional’ and ‘decentralized’ setting and orientation of the Gacaca courts as the ‘locus’ of the truth. We conclude with the ‘contours’ of the truth and question the ‘consequences’ of the truth as depicted throughout our text¹⁶.

Our analysis is based on 18 months of fieldwork between 2004 and 2007. The theme explored in this article is primarily related to observations of the first phase of Gacaca process that took place between January 2005 and July 2006 during which information was collected and trials were prepared¹⁷. Actual trial proceedings started from July 2006 onwards and hinge on the activities, primarily the establishment of the truth thus, of the previous phase. We followed Gacaca proceedings in ten villages located in different regions in Rwanda, spoke to numerous ordinary Rwandans (approximately 1300 peasants) through a survey, focus groups discussions (FGD), individual and life story interviews and during informal encounters. We resided in the local communities selected for study for several months in order to understand the Gacaca activities in their economic and socio-political context¹⁸. With ‘communities’ we refer to villages, called sectors

¹⁴ Rwandan President Kagame used this expression during his speech at the 12th commemoration of the genocide on 7 April 2006. See: http://www.gov.rw/government/president/speeches/2006/07-04_06_genocide.html - § 17 (Last accessed on 10 October 2007).

¹⁵ Since the majority of the Rwandan population consists of rural and poor peasants, our research aims to “bring peasants back in to an understanding of the political and social processes of the state.” Catherine Newbury & David Newbury, “Bringing Peasants Back In: Agrarian Themes in the Construction and Corrosion of Statist Historiography in Rwanda”, *American Historical Review*, 2000, 874. An approach equally adopted by de Lame before the 1994 genocide. See for example Danielle de Lame, *A Hill Among a Thousand. Transformations and Ruptures in Rural Rwanda*, (Madison: The University of Wisconsin Press, 2005.)

¹⁶ An interesting comparison can be found in the article by Danielle de Lame who refers to the imposed process of democratization in the beginning of the 90s as creating a ‘crisis of transparency’ in a society where the origins and exercise of power were connected with secrecy and restraint. Danielle de Lame, “Mighty Secrets, Public Commensality and the Crisis of Transparency: Rwanda through the Looking Glass”, *Canadian Journal of African Studies*, 38, N° 2 (2004).

¹⁷ Sometimes this phase is referred to as the ‘preparatory’ or ‘pré-judicial’ phase. In general, this initial Gacaca phase corresponds to the hearings of a classical prosecution procedure.

¹⁸ Although we visited 10 localities, we chose 4 communities for in-depth study. Fieldwork already started in one of these communities in 2004 (before the start of Gacaca). In total, since 2004, we spent 18 months in Rwanda doing fieldwork for several research projects related to the post-conflict nexus justice-governance-development.

in Rwanda. *Sectors* contain several *cells*. A *cell* in Rwandan society coincides with a small face-to-face community, comparable to a neighbourhood in an urban setting. Throughout our text we include some exemplary excerpts from interviews and focus group discussions to support and elucidate our argument.

2. THE 'DESIGN' OF THE GACACA COURTS

The Gacaca court system is defined on the one hand through the fact that the court system is modelled – in general orientation – on the 'traditional' or 'customary' *Gacaca* and on the other hand 'function' through the Organic Laws establishing the organization, competence and functioning of the Gacaca Courts and the guidelines by the *Service National des Juridictions Gacaca* (SNJG) to put this law into operation¹⁹.

The Gacaca courts are based on a traditional conflict resolution mechanism that existed in Rwanda before colonial rule. Conflicts between families were settled by the old and wise men of the community – the *Inyangamugayo* – bringing together the parties in the dispute. The name refers to the place – the lawn – where those meetings were held. These gatherings were meant to restore order and harmony. During the colonial period, a Western-style legal system was introduced in Rwanda but the Gacaca tradition kept its function as customary conflict resolution mechanism at the local level. During independence, Gacaca gradually evolved towards an institution associated with state power as local authorities were also taking up the role of *Inyangamugayo*. Nevertheless, the conciliatory and informal character remained the cornerstone of the institution, since decisions were to a great extent not in correspondence with written state law²⁰. In 1999, after a period of reflection and a round of consultation, a commission established by the (then) Rwandan President Pasteur Bizimungu, proposed to modernize and formalize the 'traditional' dispute resolution mechanism to deal with the approximately 130.000 persons imprisoned for offences related to the genocide at that time; a task the 'ordinary' justice system could not accomplish in a satisfactory way²¹. The legal and institutional framework was set out by three Organic Laws.

Suspects of genocide crimes and crimes against humanity are prosecuted in a system of parallel courts. Those identified as top responsables and orchestrators are tried by the ordinary courts, while other are judged by the Gacaca courts. Therefore, suspects are categorized in 3 categories according to the crime(s) they have committed. The category determines the court that should prosecute and the applicable range of penalties. The penalty not only varies according to the seriousness of the offence, but also according to the fact whether

¹⁹ Official Gazette of the Republic of Rwanda, Organic Law N°40/2000 of 26/01/2001. Official Gazette of the Republic of Rwanda, Organic Law N°33/2001 of 22/6/2001. Official Gazette of the Republic of Rwanda, Organic Law N°16/2004 of 19/6/2004. National Service of the Gacaca Courts, *Process of Collecting Information Required in Gacaca Courts*, (Kigali: SNJG, 2004). National Service of the Gacaca Courts, *Trial Procedures in Gacaca Courts*, (Kigali: SNJG, 2005).

²⁰ Filip Reyntjens, "Le Gacaca ou la Justice du Gazon au Rwanda", *Politique Africaine*, N° 40, 1990, 36.

²¹ This theme of the (re-)invention of the Gacaca courts by a new political elite is discussed in: Bert Ingelaere, "The Gacaca Courts in Rwanda", in: *Traditional Justice and Reconciliation Mechanisms. After Violent Conflict: Learning From African Experiences*, ed. Luc Huyse (Stockholm: International Idea, 2007).

the perpetrator has confessed the crime(s) and at what time he made a confession. This principle of 'plea bargaining' was instituted in order to facilitate the collection of evidence. A defendant must give as much details as possible on the offence (how, where, when, victims, accomplices, damage, etc.) and apologize in public in order to have his confession accepted and his sentence reduced.

Table 1. Court System, Categorization & Sentencing²²

	Cat. 1	Cat. 2, 1st & 2nd	Cat. 2, 3rd	Cat. 3
Crime	1. planners, organizers, supervisors & ringleaders 2. persons who occupied positions of leadership 3. well know murderers 4. torturers 5. rapists 6. persons who committed dehumanizing acts on a dead body	1. 'ordinary killers' 2. those who committed attacks in order to kill but without attaining this goal	3. those who committed attacks against others, without the intention to kill.	Those who committed property offences.
Court	Ordinary Court	Sector Gacaca Court	Sector Gacaca	Cell Gacaca
Sentence				
<i>Without Confession</i>	Death penalty or life imprisonment	25-30 years	5-7 years	Civil Reperation
<i>Confession before appearance on the list of suspects</i>	25-30 years	7-12 years*	1-3 years*	Civil Reparation
<i>Confession after appearance on the list of suspects</i>	25-30 years	12-15 years*	3-5 years*	Civil Reparation
<i>Accessory Sentence</i>	Perpetual and total loss of civil rights	Permanent loss of a listed number of civil rights	/	/

*Commutation of half of sentence to community service on probation
Source: Compiled by the author based on Official Gazette of the Republic of Rwanda, Organic Law N°16/2004 of 19/6/2004.

²² A new organic law modified this legal framework on 1 March 2007. The main modification is related to the fact that those who confessed and the confession was accepted will have to serve part of the sentence in prison, see part their prison sentence provisionally suspended, while greater importance is given to the community service. The criteria for categorization slightly changed in order to decrease the number of accused in the 1st category. The Gacaca proceedings – the information collection phase and the trial phase from July 2006 until March 2007 functioned according to the 2004 Organic Law. Official Gazette of the Republic of Rwanda, Organic Law N°10/2007 of 01/03/2007.

The categorization is done by the 9 lay judges presiding the Gacaca court of the *cell*, the lowest administrative level. These judges were elected among the populace, with no requirements of legal training, experience or other education. The defining characteristic is having the qualities of 'a person of integrity' (*Inyangamugayo*). Their decision to place a person in a certain category is based on information gathered during the initial phase of the Gacaca process that takes place at this lowest unit of society. Although the 9 elected judges take the decision to categorize a person, the information and evidence to do so comes from a confession of a perpetrator and/or through accusations from members of the 'General Assembly' of the court at this level, being the entire population of the *cell*.

Therefore, in order to facilitate the process, two fundamental principles – cornerstones - were incorporated in the genocide legislation. On the one hand there is a popularization or decentrali-

zation of justice by installing numerous courts in every administrative unit of society. This procedure is loosely modelled on the traditional *Gacaca* with lay persons presiding as judges and the (active) involvement of the entire population as 'General Assembly'. On the other hand there is the principle of plea bargaining to increase the evidence and available information. These two cornerstones need to facilitate the surfacing of the truth, that subsequently functions as the basis of the entire transitional justice framework in post-genocide Rwanda. The truth is the source of information available to identify (the nature of) guilt or innocence, to conduct trials of accused, to disclose locations to exhume victims, to identify reparation modalities, to generate knowledge on the past in general and to reconfigure and re-establish social relations.

3. SETTING THE STAGE: THE PROBLEMATIC QUEST FOR THE TRUTH

We argue that establishing the truth at the local level is not only the most important, but equally the most problematic aspect of the *Gacaca* process, both in the functioning of the court system as in popular perception. This could jeopardize the entire process since the determination of the truth at the local level is the cornerstone of the entire transitional justice framework in post-genocide Rwanda.

The peculiar course – opposite to the desired direction – of the *Gacaca* process is discernable in the (preliminary) results of a large-scale survey conducted by the International Rescue Committee (IRC) on behalf of the National Unity and Reconciliation Commission (NURC)²³. The 2006 survey has 8719 respondents all over Rwanda and the sampling procedure also takes the prison population and the group of genocide survivors into account. The survey assesses the level of progress made in the domain of reconciliation since the arrival of the *Gacaca* courts. Interesting is that these results can be compared with a similar survey conducted in 2002 (n = 4813) and 2005 (n = 10185)²⁴. The results are presented in table 2²⁵. Important to take into account is the fact that not only percentages of responses but also the intensity of the response was recorded. The (change in) intensity of response is an indication of how strong an opinion or conviction "lives" in the population²⁶.

²³ Republic of Rwanda, *Cohesion Sociale 2005-2006. Sondage d'Opinion*, (Kigali: National Unity and Reconciliation Commission – NURC, 2007) (Unpublished – On File With the Author)

²⁴ Republic of Rwanda, *Sondage d'Opinion sur La Participation A La Gacaca et la Réconciliation Nationale*, (Kigali : Commission National d'Unité et Réconciliation, 2003).

²⁵ Based on the reports available, it was impossible to compile an exhaustive report both related to percentages and intensity of all questions. We provide an overview of the questions with a minimum of available survey results.

²⁶ The following methodological clarification explains the procedure and guidelines for the interpretation of the intensity scores: "All statements were framed like an observation or an ascription of value and the respondent had to make a comment on each one of them. The respondent had three options: to agree, to disagree, "don't know" or to have no opinion. No dodging was allowed. In the next stage, each respondent was asked to state the intensity of his/her opinion. In this regard, rules required that after reading out the question and obtaining the first positive, negative or neutral answer, the pollster presents a card, always the same, which would enable the respondent to show the "intensity" of his/her opinion without speaking but by touching a given figure with his/her finger. The card has a set of nine full discs whose colour meant agreement, disagreement and neutrality and whose size conveyed maximum, medium and low level of opinion intensity. For the neutral position, figures represent lack of opinion or no trend toward agreement or disagreement. Each disc bears a number, from 1 to 9 that the pollster writes on the individual data card of the surveyed person after obtaining his/her response. The three previous surveys showed that Rwandans do not normally stay in a position of neutrality and that their opinions are not inconsistent. People express what they think through the intensity of their responses. Particular attention will be given to Composite Index (CI). Responses were weighted on the basis of their intensity according to the following scale: +100 for total agreement; +75 for strongly expressed agreement; +50 for simple agreement; +25 neutral tending towards agreement; 0 neutral without any trend; -25, -50, -75 and -100 for the various levels of disagreement intensity. Using these values, one can compute the Composite Index of a group's opinion by adding positive and negative weighted values of individual data and by dividing the total sum by the number of respondents. The result lies somewhere between +100 and -100. If all the respondents hold a unanimous view on a given statement and totally agree among themselves with it, the CI will be +100. If they all totally disagree, it will be -100. If 50% of respondents simply accept a given statement and 50% of them strongly disagree with it, the CI will be -25. Republic of Rwanda, *Cohesion Sociale 2005-2006. Sondage d'Opinion*, (Kigali: National Unity and Reconciliation Commission – NURC, 2007) (Unpublished – On File With the Author), p. 7-8 (translated from French by the author).

Table 2 Impact Gacaca Process (2002-2006)

EFFICIENCY AND EQUITY GENOCIDE SURVIVOR – PRISONER – GENERAL POPULATION						
	PERCENTAGE			INTENSITY		
	2002	2005	2006	2002	2005	2006
Q.1 Gacaca will judge crimes against humanity and crimes related to the genocide more quickly and fairly than other existing judicial institutions.	83%	94%	95%	64.5	83.4	82.2
	81%	88%	80%	73.2	70.7	55.9
	93%	98%	97%	80.0	89.5	89.8
Q.2 The Inyangamugayo will be honest judges who respect truth and individual rights	71%	79%	81%	48	56	57
	78%	60%	48%	69	36	0
	91%	92%	94%	78	81	80
Q.3 Those accused unjustly are relying on Gacaca to redeem them	95%	n/a	n/a	84.6	72.3	70
	95%	n/a	n/a	85.7	67.7	37.7
	96%	96%	96%	85.6	86.7	81.9
Q.4 The Inyangamugayo will earn the trust of the genocide survivors	66%	n/a	n/a	36.4	48.2	48
	79%	n/a	n/a	60.5	41.8	36.2
	79%	88%	92%	59.7	72.7	73.1
Q.5 The Inyangamugayo will earn the trust of the accused.	62%	n/a	n/a	37.2	33.4	24.5
	81%	n/a	n/a	56.6	22.9	-9
	70%	79%	82%	47.6	58.2	57.1
Q.6 The accused who have not confessed will be presumed innocent during the Gacaca process	53%	n/a	n/a	4.9	29.3	33.3
	87%	n/a	n/a	68.7	72.1	68.7
	68%	74%	79%	37.8	48.6	50.2
Q.7 Prosecution witnesses want to participate in Gacaca to eliminate any doubts surrounding crimes of genocide and crimes against humanity	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	91%	95%	95%	n/a	85.1	82.7
Q.8 Defense witnesses will intervene in Gacaca in an attempt to diminish the magnitude of crimes of genocide and crimes against humanity	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	74%	79%	88%	n/a	59.5	68.4
Q.9 Women will have difficulties revealing themselves as victims of sexual violence	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	53%	60%	63%	n/a	22.2	22.6
Q. 10 Gacaca will be less effective if it lasts too long	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	58%	50%	58%	n/a	9.1	14.9
Q.11 Gacaca will eradicate the culture of impunity	70%	n/a	n/a	48.6	62.3	59.9
	85%	n/a	n/a	70.2	61.5	42.3
	84%	91%	93%	67.6	78.5	80.5

TRUTH						
GENOCIDE SURVIVOR – PRISONER - GENERAL POPULATION						
	PERCENTAGE			INTENSITY		
	2002	2005	2006	2002	2005	2006
Q.12 There will be a large amount of false defense testimony (à décharge) during Gacaca	72%	n/a	n/a	45.0	61.2	48.5
	57%	n/a	n/a	18.2	26.7	18.9
	61%	63%	74%	30.6	27.8	46.6
Q.13 There will be a large amount of false accusations (à charge) during Gacaca	44%	n/a	n/a	1.7	33.5	1.8
	74%	84%	84%	45.9	65.6	63.7
	60%	67%	77%	28.7	35.9	42.4
Q.14 The accused who have not confessed are obeying a pact of silence	78%	n/a	n/a	59.9	68.7	66
	40%	n/a	n/a	-8.1	-25.6	-24.1
	56%	60%	66%	25.4	33.9	32.2
Q.15 Nobody will testify against a member of his /her own family	47%	n/a	n/a	6.4	9.1	8.3
	28%	n/a	n/a	-31.6	-44.0	-44.9
	26%	22%	26%	-33.5	-45.5	-43.2
CO-HABITATION AND RECONCILIATION						
GENOCIDE SURVIVOR – PRISONER - GENERAL POPULATION						
	PERCENTAGE			INTENSITY		
	2002	2005	2006	2002	2005	2006
Q.16 Gacaca is a form of amnesty	49%	66%	74%	1.7	34.5	43.8
	36%	49%	59%	-21.2	1.6	16.3
	33%	78%	81%	-25.1	52.6	56.3
Q.17 Gacaca is an essential step towards unity and reconciliation in Rwanda	87%	n/a	n/a	65.8	74.3	64.3
	95%	n/a	n/a	85.2	71.6	48.7
	98%	98%	98%	87.1	90.1	89.5
Q.18 Gacaca will facilitate sustainable peace within Rwandan society	70%	n/a	n/a	46.4	64.0	64.3
	91%	n/a	n/a	79.6	61.5	32.3
	91%	96%	97%	79.5	86.4	85.5
Q.19 Gacaca will be a step towards establishing a citizenry without ethnic categorizations	84%	n/a	n/a	64.4	65.0	71.8
	87%	n/a	n/a	71.6	48.0	42.9
	93%	94%	96%	80.6	82.2	84.1
Q.20 The Inyangamugayo will suffer retaliation following their judgments	58%	n/a	n/a	27.9	31.7	38
	34%	n/a	n/a	-15.7	-0.5	-8.2
	48%	39%	n/a	9.9	-11.6	3.2
Q.21 Accused genocide perpetrators will feel threatened during Gacaca	54%	n/a	n/a	10.4	18.7	15.6
	49%	56%	61%	3.5	13.5	19.9
	59%	54%	n/a	21.9	11.0	23.1

Q.22 The accused who have confessed will be the target of threats and retaliation from their accomplices	70%	n/a	n/a	46.2	50.6	65.3
	50%	48%	59%	9.4	3.8	20.3
	52%	53%	n/a	17.1	17.2	31.9
Q.23 Genocide survivors will feel threatened during Gacaca	88%	90%	93%	71.7	74.2	79.4
	38%	n/a	n/a	-17.2	2.2	5.5
	52%	54%	n/a	11.3	10.8	27.9
Q.24 Once the judgments have been pronounced, the families of the condemned and those of the victims will reconcile with one another	47%	n/a	n/a	4.0	36.9	37.5
	86%	n/a	n/a	71.6	59.4	43.9
	72%	86%	89%	51.6	69.2	71.7
Q.25 Testimony by the population at large during Gacaca will aggravate tensions between families	74%	73%	79%	48.5	47.4	50.4
	49%	64%	70%	5.5	27.4	39.1
	49%	45%	55%	9.1	-3.3	9.3
Q.26 The families of the guilty will be overcome by resentment	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	38%	32%	46%	n/a	-22.8	-5.6
Q.27 The families of the guilty will be subjected to prejudice	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	36%	30%	40%	n/a	-25.8	-17.0
Q.28 It is naive to trust others	n/a	n/a	n/a	n/a	13.6	18.9
	n/a	n/a	n/a	n/a	5.7	14.3
	41%	49%	54%	-11.8	4.8	9.3
Q.29 A community development project cannot be made on the cell level because people are too wary of each other to work together	n/a	n/a	n/a	n/a	-8.5	-10.3
	n/a	n/a	n/a	n/a	2.9	-1.6
	49%	34%	29%	4.0	-22.8	-36.2
Q.30 Those who committed crimes of genocide and crimes against humanity but refuse to confess maintain that they did what had to be done	77%	n/a	n/a	57.3	48.5	52
	30%	n/a	n/a	-27.2	-43.4	-44.4
	46%	47%	53%	5.9	10.4	8.9
Q.31 Genocide survivors want to participate in Gacaca to regain peace of mind (heart).	71%	n/a	n/a	42.3	62.9	64.1
	86%	n/a	n/a	69.8	67.0	68.8
	87%	94%	97%	72.3	82.7	82.4
Q.32 Revelations of rape will hinder the reconciliation process	n/a	n/a	n/a	n/a	n/a	n/a
	n/a	n/a	n/a	n/a	n/a	n/a
	26%	22%	34%	n/a	-39.5	-22.0

Source: Compiled by author based on: Republic of Rwanda, *Cohesion Sociale 2005-2006. Sondage d'Opinion*, (Kigali: National Unity and Reconciliation Commission – NURC, 2007) (Unpublished – On File With the Author) & Republic of Rwanda, *Sondage d'Opinion sur La Participation A La Gacaca et la Réconciliation Nationale*, (Kigali: National Unity and Reconciliation Commission – NURC, 2003).

²⁷ The category 'general population' is the result of a random sampling of respondents, comprising thus all population groups, including genocide survivors and families with members in prison or released prisoners. An additional sampling scheme selected a sub-sample of genocide survivors and prisoners.

Compared to 2002, the results of 2006, indicate some positive evolutions with regard to the perceived efficiency and equity of the Gacaca process (Q. 1-11). This is reflected in, for example, the level of trust in the judges and the satisfaction with the Gacaca courts compared to other judicial institutions. Only prisoners portray a decrease in their level of confidence in the honesty of the judges and the general public has doubts whether sexual crimes can be effectively tackled in the Gacaca context.

A deteriorating trend on some more crucial aspects related to the establishment of the truth and the potential to foster reconciliation is nevertheless remarkable despite the fact that most respondents agree with the most general statements accompanying the Gacaca process (Q.16-19): it is a step towards reconciliation, it will facilitate sustainable peace and establish a citizenry without ethnic categorization. These general statements are propagated during awareness raising campaigns with authorities. The population has very well understood and internalized these discourses. But when asked to reveal opinions on the actual practice, experience or expected outcomes, respondents portray less optimism. The level of fear increased with the introduction of the Gacaca system. 59% of the prisoners are of the opinion that the accused may become victims of retaliation after accusing others, while 61% of those who confess are afraid because of Gacaca. An increase with 9% and 12% compared to 2002. Virtually all genocide survivors (93%) undergo the Gacaca trails with the feeling of insecurity. A question related to the fact whether families of condemned and victims would reconcile after Gacaca is positively appraised by the general population with 89% of positive answers. However, this might be due to the fact that the question refers to better relationships *after* Gacaca, not necessarily *because of* Gacaca since other responses to questions related to social cohesion, interpersonal and –family trust reveal a perceived or experienced decrease in social wellbeing. Especially prisoners are of the opinion that accusatory practices will increase tensions between families (+21% since 2002 – Q. 25) , while the opinion of the general population on prejudice and resentment against families of convicted persons increased compared to 2002 (Q. 26-27).

More people think that those who committed crimes of genocide still harbour those ideas and intentions (Q. 30), the so-called genocide ideology. Prisoners are firmly, with great intensity (-44.4) denying this proposition, while genocide survivors continue to endorse it (52), only slightly less firm than in 2002 (57.3). Revealing – almost shockingly so – is the observation that in 2006 – after more than a year of Gacaca activities – 53 % of the population replies affirmative on the proposition that “it is naïve to trust others” (Q.28), 13% more than in 2002 and a conviction with increasing intensity shared by genocide survivors, prisoners and the general population. Remarkable is

the fact that these high levels of distrust do not affect the willingness to cooperate together (Q. 29). Only 29% of the general population is of the opinion that distrust impedes shared labor activities, while this used to be 49% in 2002. This is partly due to the socio-cultural fact of dissimulation and hypocrisy that has always characterized the Rwandan social universe, but increasingly since the arrival of the denunciation policy in Gacaca. Inner feelings of distrust do not necessarily correspond with outward signs of distrust as we will further argue below. Cooperation in distrust seems possible, even though it makes the social fabric extremely fragile.

Table 3. Nature of Participation in the Gacaca Process

	2002	2005	2006
INYANGAMUGAYO	23%	10.4%	9.6%
PROSECUTION WITNESS (A CHARGE)	11%	17.5%	13.4%
DEFENSE WITNESS (A DECHARGE)	9%	6.9%	2.2%
ACCUSING AND DEFENSE WITNESS	3%	1%	5.6%
SPECTATOR	44%	63.1%	68.1%
NO PARTICIPATION	10%	1.2%	1%

Source: Republic of Rwanda, *Cohesion Sociale 2005-2006. Sondage d'Opinion*, (Kigali: National Unity and Reconciliation Commission – NURC, 2007) (Unpublished – On File With the Author)

Another element that sheds light on the nature of the experience of the Gacaca process is reflected in table 3 on the type of participation. The fact that there are less Inyangamugayo in 2006 (9.6%) than in 2002 (23%) is only due to the changes in the design of Gacaca system over the years with a steady reduction of the number of judges. In general there is a decrease in the active participation visible. More people situate the nature of their participation in the domain of 'spectatorship'. Gacaca is compulsory: attendance is required, but it does not mean that the majority of the population is actively involved. Remarkable is also the decrease in respondents intervening in defense of an accused. This might be partly due to the fact that in an initial stage of Gacaca accusing was the sole possibility of the system, as we will argue below. Later on, social norms reduced the number of potential defense witnesses as we further explain below in our exploration of the truth problem.

Our main argument is that the decline in mutual trust, the distorted experience of reconciliation and the lack of participation in the Gacaca process is mainly the consequence of a problematic quest for the truth. A phenomenon clearly present in the survey results. There is a steady increase in the general opinion that testimonial practices in Gacaca are false, be it false accusations (60%-67%-77%) or false defense testimonies (61%- 63%-74%) when comparing the results of 2002, 2005 and 2006. A great disparity is discernable when

considering the *intensity of the responses* of genocide survivors and prisoners on the questions related to the fact whether their might be a pact of silence (66 vs -24.1) or whether nobody wants to testify against a member of his/her own family (8.3 vs -44.9). This means that the group with a high stake in the Gacaca process – the survivors – experience the nature of the participation of the other mayor stakeholder – the prisoners/accused – as counterproductive.

Results from a survey we fielded in 10 Rwandan communities underscore these observations on the nature of the establishment of the truth in the Gacaca process as a counterproductive force in the reconciliation process²⁸. The open-ended questions ‘what are the greatest obstacles you observe to achieve ‘unity and reconciliation’ in your community’ and ‘what are the negative aspects related to the process of the Gacaca courts in your community’ establish that, for both ethnic groups, the perception/experience of ‘the absence of truth’, ‘partial truth’ or ‘lying’ are the biggest obstacles to reconciliation and the most negative aspects of the Gacaca process.

²⁸ The survey was fielded in 10 Rwandan communities. The selection of communities was guided by the principle of attaining maximum variance. The idea was to select contexts as widely diverging as possible on different levels: demographic and ethnic composition; historical bases of power; conflict history and intensity of violence. Maximizing variance helps to sharpen patterns, make recurring themes emerge and establish findings significant for a wide range of environments. The selection of provinces was based on an extensive literature review and the expertise of informed observers. We selected the (former) provinces Ruhengeri, Kigali-Ngali, Gitarama and Kibungo. The respondents for the survey were selected at random. A list of all households of the community was used to sample 16 respondents. In order to increase the number of rescapé (Tutsi genocide survivors) in the survey – who might have been underrepresented due to the small sample size – we systematically replaced households with an age lower than 30. The respondents needed to have lived through the period of violence in a ‘conscious’ way. When the head of the household or his spouse were absent during our stay in the community, he or she was replaced by a randomly selected Tutsi genocide survivor. Households not living in the community before 1994 were replaced as well, to arrive at 159 respondents (99 Hutu and 60 Tutsi).

Table 4. According to you, what are the greatest obstacles you observe to achieve ‘unity and reconciliation’ in your community?

(Percentages 1st Response / Multiple Responses– Coded Open Question)

	TUTSI	HUTU	TOTAL
No Truth / Lying	33.3 / 30.3	28.3 / 25.5	30.2 / 27.6
Partiality Ibuka / FARG	1.7 / 0.9	1.0 / 0.7	1.3 / 0.8
Partiality Inyangamugayo	0 / 0.9	2.0 / 2.1	1.3 / 1.6
Partiality Gacaca / Judgments (Institutional)	1.7 / 3.7	5.1 / 4.3	3.8 / 4.0
Partiality Local Authorities	3.3 / 3.7	5.1 / 7.8	4.4 / 6.0
Impossibility / Unwillingness Restitution	0 / 2.8	0 / 0.7	0 / 1.6
Request for Restitution Too High	1.7 / 0.9	0 / 2.1	0.6 / 1.6
Unwillingness To Pardon	8.3 / 10.1	4.0 / 4.3	5.7 / 6.8
Unwillingness to Ask Pardon	0 / 0	4.0 / 4.3	2.5 / 2.4
Continued Ethnicity / Genocide Ideology	16.7 / 11.0	3.0 / 3.5	8.2 / 6.8
Mocking / Insults / Threats / Attacks / Social Pressure	5.0 / 11.9	4.0 / 6.4	4.4 / 8.8
Superficial Reconciliation	0 / 1.8	0 / 2.8	0 / 2.4
Unwilling to Participate in Gacaca / General Reunions	5.0 / 4.6	0 / 0	1.9 / 2.0
Poverty	3.3 / 4.6	1.0 / 2.8	1.9 / 3.6
Exclusion From Public Life	0 / 0	2.0 / 1.4	1.3 / 0.8
Threats on the outside of Rwanda	0 / 1.8	0 / 0.7	0 / 1.2
Other	1.7 / 0.9	3.0 / 4.3	2.5 / 2.8
No Obstacles	18.3 / 10.1	37.4 / 26.2	30.2 / 19.2
	N = 60 Total Responses = 109	N = 99 Total Responses = 141	N = 159 Total Responses = 250

Source: Based on fieldwork conducted by the author

Table 5. According to you, what are the *negative aspects* related to the process of the Gacaca Jurisdictions in your community?

(Percentages 1st Response / Multiple Responses– Coded Open Question)

	TUTSI	HUTU	TOTAL
No Truth / Partial Truth / Lying	34.0 / 27.9	20.7 / 16.5	25.8 / 20.9
Partiality Inyangamugayo (Favoritism / Corruption / Ethnic Bias)	6.0 / 7.4	7.3 / 7.3	6.8 / 7.3
Process Takes Too Long	10.0 / 13.2	15.9 / 13.8	13.6 / 13.6
No Due Process (Liberty Expression / Procedures / Ethnic Bias)	10.0 / 10.3	3.7 / 12.8	6.1 / 11.9
Poor Education Inyangamugayo	0 / 1.5	1.2 / 0.9	0.8 / 1.1
No Renumeration Inyangamugayo / No General Support for the Process	4.0 / 7.4	0 / 0	1.5 / 2.8
Favoritism (Within Population)	4.0 / 4.4	3.7 / 6.4	3.8 / 5.6
No Liberation of the Innocent	0 / 1.5	1.2 / 2.8	0.8 / 2.3
Traumatism	0 / 1.5	0 / 0	0 / 0.6
Restitution Unclear /Double /Too High	2.0 / 1.5	3.7 / 5.5	3.0 / 4.0
Waiting for Actual Trials to Voice Opinion	20.0 / 14.7	28.0 / 22.9	25.0 / 19.8
Nothing Negative	6.0 / 4.4	14.6 / 11.0	11.4 / 8.5
Other	4.0 / 4.4	0 / 0	1.5 / 1.7
	N = 60 Total Responses = 109	N = 99 Total Responses = 141	N = 159 Total Responses = 250

Source: Based on fieldwork conducted by the author

These survey results are corroborated when analyzing popular narratives revealing that the aspect of truth-telling has become important in the functioning of the Gacaca system, but is highly problematic:

[Q: How do you experience the Gacaca process?] (1) Gacaca will solve the problems of Rwandans. For everyone. Even if there are people that did not testify as of yet, they will do so in the future. (2) What is even better is the fact that a great number have accepted their role [in the genocide]. A lot of people have been liberated from prison. People are not afraid anymore to testify if others do. It can lead to reconciliation. (All) But if there are no confessions and no truth, it will be a big obstacle to achieve reconciliation. (3) If someone does not accept his role and another accuses him during the trial phase and he is found guilty it will create serious tensions between testifier and the convicted. (4) Yes, the current obstacle [to achieve reconciliation] is the fact that people do not tell the truth. There are hesitations while awaiting the trial phase. It will be an obstacle. (1-4) Peasant, Inyangamugayo, Anonymous, FGD Eastern Rwanda, May 2006.

[Q: What are the positive aspects of the Gacaca proceedings according to you?] (1) Positive is the fact that, and we need to thank the Rwanda state for it, when someone tells the truth the heart is soothed, the heart is calmed down. When someone tells the truth, you can do work together [...] (2) If people tell the truth and ask for forgiveness, one can pardon and afterwards collective labor is possible again. (1) Student, Male, Tutsi, Survivor, 23 years old; (2) Peasant, Male, Tutsi Survivor, Anonymous – FGD Central Rwanda – April 2006.

The reference to the heart in the last interview excerpt brings us to the essence of living together again in the Rwanda hills. We sketch the living situation and daily life in the years following the violence and preceding the installation of the Gacaca courts in the following section. It brings us to the ‘heart of the matter’, that which is at stake for the ordinary Rwandan in the practice of dealing with the past.

4. CO-HABITATION & RECONCILIATION : THE HEART OF THE MATTER – A MATTER OF THE HEART

One of the objectives of Gacaca is to foster reconciliation. Huyse defines three stages in the process of (inter-personal) reconciliation: replacing fear by non-violent co-existence; building confidence and trust; and evolve towards empathy²⁹. In the ten years between the genocide and the start of the Gacaca trials, victims and those who were involved in the violence but had no leading function during the genocide lived together again on their respective hills. Not always as neighbours anymore, since survivors have often been grouped in resettlement sites, but they still live in the same vicinity. They therefore had to develop a way of life, manners to interact with each other in some way. It is important to understand these strategies and tactics employed in daily life in the decade before the state-sanctioned installation of the Gacaca courts. It allows us to verify whether its arrival facilitated or disturbed a natural process of ‘dealing with the past’. Living together was not so much a personal choice, but a simple necessity. This co-habitation was initially marked by mutual fear, diminishing progressively in the course of the years due to the passing of time. Since 2003, this fear intensified from time to time with every wave of liberation of detainees who had confessed in prison. Apart from the dire economic situation, people referred also to the climate of distrust between the inhabitants as a consequence of the genocide. Until 2005 - the start of the Gacaca - the consequences of the genocide were mostly phrased in material and human loss. Distrust between the different ethnic groups was present, but lingered under the surface of social life. Due to necessity life turned to a form of normality and co-habitation. Life in the hills is highly pragmatic. Tensions and conflicts are kept in the dark because neighbours and villagers depend upon each other in their daily activities and their fight for survival in mutual impoverishment. ‘If someone does not want to tell you he hates you, hide for him the fact you are aware of his hatred.’ (*Uguhisha ko akwanga, umuhisha ko ubizi*).

‘Thin’ reconciliation differs from a ‘thick’ version, also in Rwanda. Cohabitation – *kubana* - is a matter of necessity, which might

²⁹ Luc Huyse, ‘The Process of Reconciliation’, in *Reconciliation after Violent Conflict. A Handbook*, ed. David Bloomfield, Theresa Barns & Luc Huyse (Stockholm: International IDEA, 2003), 19.

be less fearful for those directly involved due to the passing of time, while interpersonal reconciliation – *ubwiyunge* - is a matter of the heart and a state of feeling in a social relation. Rwandans, and especially survivors, often refer to the ‘heart’ when talking about the events of the past and expressing the nature and level of trust and confidence they have for their neighbours, fellow villagers or members of the other ethnic group. In the Rwandan context, the heart is the force unifying the human being. It is the centre of reception of outward impulses and the locus of interior movement, the seed of the interior. Emotions, thoughts and will are interconnected and unified in the heart. The heart is inaccessible to others, but is where the truth lies³⁰. Due to the violence experienced in their midst ‘the hearts have changed’, meaning that human beings shifted to a state of being other than normally considered to be human.

People have lost good manners and habits due to the war. The education given to children has changed. I don’t know what one ought to do to restore confidence between people, even on the radio they talk of unity and reconciliation, but I don’t see anything changing, the hearts of people have become like those of animals. *Peasant, Female, Tutsi, Genocide Survivor, 50, Interview South Eastern Rwanda, February 2006.*

[Q: How do you see the Gacaca process?] The Gacaca is equally a road to achieve reconciliation. You have to keep in mind that it is hard to relieve the sorrow of the heart, but on the level of cohesion, Gacaca might be able to do something. The wounded heart can be cured when people tell the truth to each other, when one knows well what happened there is a bit of an ease of mind. *Peasant, Female, Tutsi, Genocide Survivor, 34, Interview South Eastern Rwanda, February 2006,*

The heart has changed because of the crimes committed, the violence experienced or the dehumanizing acts observed. The living conditions, social universe and daily interactions have changed to a form of normality again, but this outward appearance of normality doesn’t reveal a lot about the interior of someone. Outward appearances are deceiving as popular expressions know: ‘the mouth is not always saying what resides in the heart’ (*Utazi icyo umutima uvuze umutwe upfundikira amagambo*). Or: ‘the rancorous stomach, you give it milk and it vomits blood’ (*Inda ili mo urwango uyiha amata ikaruka amaraso*). Daily actions and interactions had become a way of dealing with the past, in a positive or negative sense: the crossing on the pathway to the fields; the offer and sharing of banana beer in the local cabaret (pub); the invitation to a wedding or the helping hand when transporting a sick person to the hospital might have been catalysts in the restructuring of emotions and relationships. But witchcraft accusations; threats or suspicion of poisoning; the (interpretation of) the blink of an eye or the non-invitation to a ceremony were enough to increase distrust. Sometimes alliances were struck between victims and perpetrators. Out of necessity, but also out of choice.

³⁰See also: Pierre Crepeau, *Paroles et Sagesse. Valeurs Sociales dans les Proverbes du Rwanda*, (Tervuren, Musée Royal de l’Afrique Centrale, 1985), 154-155.

Exploring and engaging in these practices was a means of inspecting the humanity of the other, crystallized in the heart. Engaging the past in these daily practices and encounters had developed over the years. What is called truth telling, rendering justice, fostering reconciliation or providing compensation from a western perspective (or flipsides emotions such as vengefulness or distrust) had taken root in the ambiguities of local life. Engaging the past became enmeshed in the web of a tightly knitted face-to-face community, difficult to understand from an outsider perspective that is used to the usual pre-conceived and taken-for-granted categories. In any case, silence on the past was the order of the day. Things 'from before' were known or suspected but not spoken aloud. The heart of the other was only tacitly explored. The arrival of the *Gacaca* courts changed this order of the day significantly. The *Gacaca* courts did not come as catalysts of a natural, but very difficult process of co-habitation that already started, but altered it in substance. As we have argued above speaking, revealing or hearing the truth is the cornerstone of the court system. The general perception by the Rwandan populace of the absence of the truth is one of the most problematic aspects of the court system, as we indicated above. What it facilitated for some, did it disturb or destroy for others.

5. THE CONTEXT OF THE TRUTH: A CULTURE OF DISSIMULATION AND A MILITARY VICTOR

The overall horizon in which the search for the truth takes place is twofold. On the one hand there is a new political regime that came into place after the genocide in 1994. This regime is the outcome of a military overthrow and thus the total defeat of the incumbent regime. It implies that the victor usurped power and thus has all the political space available to manoeuvre its transitional justice policies and vision on the past and the future in place. We identify below the general vectors of the truth emanating from this new power constellation. But contextualizing the truth and the truth-telling activities also implies an exploration of the historical and cultural roots of communication in the Rwandan universe. We start with the latter, but it will become clear that the function of communication and thus truth-telling has an intrinsic link with the former, power and politics.

The Nature and Function of Communication in (Ancient) Rwanda

A 'cult of secrecy' and the 'consensus of the subjects' are two intertwined aspects of Rwandan culture³¹. They function as remnants of the traditional organization of Rwandan society. To better understand the (problematic) nature of the state-sanctioned truth-telling in contemporary Rwanda, we firstly depict the ethics of com-

³¹ de Lame, supra n 6 at 289.

municating in ancient Rwanda³². We use the past tense in the following paragraphs since we describe socio-cultural characteristics in the context of ancient institutions, but they are still informing contemporary practices.

Speech acts did not only, or better, did primarily not correspond with reality. What one said did not necessarily correspond with what one thought. It was the status connection between the interlocutors or the broader relationship with the socio-political environment surrounding the interlocutors that needed to be served in the communication. The word was a means to an end, not so much an end in itself. From a Judeo-Christian and western perspective would the latter be the truth and the former a lie. But in the Rwandan context did truth and lies stand in a dialectical relationship. The moral value of a word did not depend on its correspondence with reality, but on its usefulness in a complex socio-political context. The Rwandan system of communication was (and is) *esoteric*: statements at the same time reveal and conceal. This is paradigmatically captured in the proverbial wisdom: 'That which is in the belly of the drum is only known to the ritualist and the owner.' While the drum's ruffle sends a message to the outside world, the interior of the communication vehicle (its secret) remains unknown. In the first place does this proverb refer to the fact that no one is totally able to gain insight in the interior and motives of someone else. On another level, since the drum symbolizes power in Rwandan custom, the saying equally refers to the fact that communication is used by the ruler(s) to convey and conceal what is useful for him/them to stay in power. The communication system was a function of the social organization in a hierarchic society and supported the power conundrum.

A central element in the Rwandan ethics was (and still is) the concept of *Ubwenge*. It is a complex notion, incorporating a range of elements. In the broadest sense does it refer to intelligence resulting in self-controlled public acts. But it also refers to elements of wisdom and trickery, caution, cleverness, prudence. It is the capacity to gain a clear understanding of situations and the capability to surround oneself with a network of profit generating social relations. An example, and a rare instance of critical self-reflection as well, can be found in the following excerpt from an interview with a prisoner. He appeared – as a free man at the time – before the Gacaca court in his village together with another man accused of similar offences. The other was acquitted, he himself received one year of incarceration although he is apparently convinced of the fact that the other is guilty as well. His statements touch upon the complex connection between intelligence, truth-telling, lying and forging alliances. It is a phenomenon related to the localized setting of the Gacaca tribunals, as we will argue later on, but also a consequence of the specific nature of communication in Rwanda:

³² Apart from the anthropological writings of Danielle de Lame and information gathered during fieldwork (when talking with older informants), we rely on: Crépeau supra n 19; Aloys Rukebesh, *Esotérisme et Communication Sociale*, (Kigali, 1985). Cornelis M. Overdulve, "Fonction de la langue ed de la communication au Rwanda", *NeueZeitschrift für Missionswissenschaft*, 53, N°4, 1997, 271-283. ; Charles Ntampaka, "Vérité et Opinion Dans la Société Rwandaise Traditionnelle" *Dialogue*, N° 221, 3-24. Arthur Lestrade, *Notes D'Ethnographie du Rwanda*, (Tervuren, Musée Royal de L'Afrique Centrale, 1972).

[Q: During your trial, there was also another man who was acquitted although he had been in attacking groups (chasing persons during the genocide). What is the difference between you and him?] Even when he has been declared innocent, he is not innocent before God, maybe in front of human beings. [...] [Q: But why did you receive a prison sentence and was the other man acquitted?] It depends on the approach [of the trial], the intelligence (ubwenge). I could have received a sentence much higher than one year. I looked for people that could give testimonies in my favor. He has done the same. It depends upon the relations. One can ask someone to come and testify in favor of your innocence, but even better is to approach the victims. [Q: So you give them something?] It varies according to the type of relationship; you share something with them in order to make them participate in the debate. [Q: Even if what they come to say is not true?] Well the idea is to diminish the sentence, even if it means deflecting the truth. The people you try to persuade in your favor try to direct the trial, even if it means bending the truth. [...] [Q: So for that other man that was acquitted, did part of the truth related to his case not surface?] The truth between Rwandans is something that is not close [not easily forthcoming]. It is far. No matter what situation you are confronted with: if you end up in the judicial services, on the level of the ordinary justice system, for the unity and reconciliation between families, even within households, there is no truth. [Q: Why?] Between Rwandans, before there can be truth? A Rwandan being satisfied with another Rwandan: impossible and therefore you bend the truth in order to defend your own interests. [Q: So for the case of the person that was tried together with you, has the truth been spoken or not?] Difficult question, I'll think about it. [Silence] ... Ok, he, it is a person that participated [in the genocide], I am absolutely sure. [...] . Peasant, Male, Hutu, Prisoner, 35, Interview Prison, Central Rwanda, April 2007.

The main unit of social organization in ancient Rwanda was the extended lineage or family (*umuryango*). It encompassed several households (*inzu*), the smaller lineages and units of society. Age and sex defined the status within the lineage. Only aged and married men without parents were independent, all others and especially women were dependent upon him. This *inzu* lineage head observed the ancestral cults, arranged marriages, paid or received debts and controlled the collective title on land or cattle³³. The lineage was the primary source of protection and security. Communication – or what in the Judeo-Christian tradition would be truth-telling – served the family, it could not be used against the family. Also in the current Gacaca activities does the idea of the family play an important role. The Gacaca law stipulates that people having family relations with an accused person can not testify during his or her trial. But the notion of family is vague in popular perception, it not only comprises the basic household unit but also the extended lineage or clan and for some it even refers to ethnic affiliation.

[Q: Were the Inyangamugayo suspected of participation in the genocide not replaced?] They have replaced those that pillaged and killed, but those of which the parents [family members] are in prison on suspicion of genocide crimes have stayed. For example, in the cell (...) we [Tutsi genocide survivors] are 2 Inyangamugayo out of 9; how can our speech [point of view] pass? – Peasant, Female, Tutsi, Genocide Survivor, 52, Interview, Central Rwanda, March 2006.

³³ Jan Vansina, *Le Rwanda Ancien, Le Royaume Nyiginya*, (Paris : Editions Karthala, 2001), 44-46.

To speak the truth, it is not easy. People are afraid. A human being is important. So, they are afraid to tell the truth. A person giving testimonies related to members of his family can be threatened by his own family. – *Peasant, Male, Tutsi, Survivor, Anonymous, Interview Northern Rwanda, April 2006.*

Political structures were superimposed over the lineages. Around the 17th century, Rwanda consisted of several smaller territories governed by kings (*mwami*). These chiefs themselves and the ordinary Rwandan had to relate to the (other) chiefs slightly higher-up, or situated somewhere in another pillar of this complex chessboard of positions and statuses. Communication was of utmost importance in this power game. Every Rwandan was socialized in this system and thus learned a specific communication code in order to attune the diversity of interests and the variance of exigencies of the different authority figures. It was a means to maintain one's position or to move up to another level. As a result, language and communication were neither a vehicle to ventilate personal thoughts, opinions and preferences nor was it an instrument to describe reality. The (higher) authority figure possessed the truth, the governed could only accept this truth and they adjusted their communication strategies in order to tap into or align with the truth(s) of the chef(s). Diverging or personal opinions existed, but were not ventilated and thus tolerated.

A contemporary example of the link between communication and the broader organizational structures is the case of Boniface. Boniface used to be a local authority in a remote village in central Rwanda during the Habyarimana regime and also in the genocidal months in 1994. He is considered as one of the ringleaders of the local genocide. He demissioned from his post after the genocide but he still is a wealthy merchant. He influences the Gacaca proceedings. Not many want to testify against him. Although it is unclear whether he also uses overt coercion to manipulate the proceedings, his position as wealthy person controlling food distribution and job employment makes direct pressure not even necessary. Some released prisoners managed to accuse him in the information collection phase but during his actual trial he was acquitted. Simply because nobody testified against him, not even the genocide survivors. One does not (easily) confront the powerful, even if they are only slightly higher up in the social organization. Communication – accusations in the context of Gacaca as we will explain later on – stand in function of usefulness and not necessarily the truth (in the Judeo-Christian sense).

A speech by president Kagame during the 2007 genocide commemoration illustrates the continuing influence of the revealing and concealing dimension of communication and its intricate connection with the circuits of power. Irritated by preceding skirmishes with France related to the shooting down of the plane of former president

Habyarimana did Kagame scorn the international community and blame foreign nations for their involvement in the 1994 tragedy. But he equally send a concealed message to the Rwandan (Hutu) population with the following words:

It is inconceivable that foreigners should judge Rwandans. The only regret is that events evolved so fast that those who committed genocide escaped scot-free. We had neither the opportunity nor the means to effectively bring these criminals to book. We were not able to punish these criminals that were here in “Zone Turquoise” and those who were assisting them to murder Rwandans in this area. Had we had enough opportunity, we would have unleashed enough wrath for them to leave with something to remember Rwanda by. As for those who fled across the border, and have now returned, who we have welcomed and restored to normal life like other Rwandans, we missed the opportunity to stop some of them from escaping and crossing over to the other side from where they continue their destructive work³⁴.

High numbers of Hutu civilians left Rwanda in July 1994 when the genocide came to an end and the RPF to power. Several ordinary Hutu I spoke with in the days after the this speech was broadcasted on the radio interpreted this message as if the current power holders regretted the fact that they had been unable to kill all (Hutu) fleeing the country in 1994 and that the violent use of force promoted in the speech would become a new policy again: no more incarcerations of genocide suspects, nor trials in the Gacaca tribunals. The statement is ambiguous. It makes a clear distinction between in and outside Rwanda, the situation then and now. Nevertheless, the use of force is stressed. This particular interpretation of the speech by (large) parts of the Hutu population partly originated in the fact that the security forces had resorted to a practice of extra-judicial executions to address the increasing number of killings and harassments related to the Gacaca activities in the months preceding the speech. A policy adopted after orders in high places apparently and unknown to outside observers, but very well known to ordinary Rwandans living in the hills³⁵. The communication underscored the nature of power in current Rwanda and the fear resulting from its interpretation supported a docile inclination to the policies emanating from the power household, especially related to that which counts as true and false. For example related to crimes committed by Rwandan Patriotic Army (RPA) soldiers during the years of civil war and after the take over of power. The speech explicitly and exceptionally address this issue, but the overall regime of truth resulting from the power constellation *de facto* and largely implicitly takes the communication related to these elements out of the air, as we will explain below.

The killers finished their murderous work and left. After that, some people came to defend them, claiming that the RPF also killed. I would like to state clearly that had the RPF killed, millions of killers who fled would not have escaped. The RPF had the will and the heart to stop what was happening, but my regret is that we did not have

³⁴ Republic of Rwanda, Remarks by his Excellency Paul Kagame, President of the Republic of Rwanda at the 13th commemoration of genocide of 1994, Murambi, 7 April 2007, Official Website of the President of Rwanda. <http://www.gov.rw/government/president/speeches/> (Last Accessed: 10 October 2007)

³⁵ It became known for outside observers through the following report: Human Rights Watch, “There Will be No Trial”. *Police Killings of Detainees and the Imposition of Collective Punishments*, 19, N° 10, (New York, Human Rights Watch, 2007).

the means to save many more people. RPF should be the one to judge the killers and those that assisted them. Others are trying to distort history by changing the facts of what happened, but they know very well that they have no authority to judge RPF³⁶.

³⁶ Republic of Rwanda supra n 20.

A New Political Regime, A New Regime of Truth

The communication system stemming from ancient times still has its influences in current Rwanda. Cultural sensibilities render communication a service to power holders. This is however not solely a Rwandan phenomenon. Foucault argues that 'each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true'³⁷.

³⁷ Michel Foucault, *Power/Knowledge. Selected Interviews and Other Writings, 1972-1977*, (Sussex: The Harvester Press, 1980,) 131.

We asked several groups of *Inyangamugayo* whether they also discussed the general origins and the context of the events in the past. Most replied that these aspects were already known and that the current government is taking care of the general 'Truth' (with capital) about the past. We briefly identify the vectors of this general 'Truth' based on observations of sensitization campaigns, commemoration ceremonies and speeches and ideological writings by dignitaries³⁸.

³⁸ See for example the writings by Brigade-General Frank Rusagara: Frank Rusagara, "The Ideology of 'Rwandanicity'", *The New Times*, several issues between 14 & 22 February 2005. And: Frank Rusagara, "The Continued Négationisme of the Rwandan Genocide", *The New Times*, 11 & 13 January 2006.

On the one hand there is the idea, ideology of 'Rwandanicity' or 'Rwandanness', meaning that Rwandans were one before the arrival of colonialism³⁹. Colonial powers 'created' ethnic groups out of a harmonious and equal society to rule on the basis of these divisions⁴⁰. The creation of these divisions was the starting point of the genocide culminating in the 1994 mass slaughter of Tutsi. The international community is guilty because it installed divisions in Rwandan society and failed to take action against it, especially in 1994. A second vector of the general 'Truth' is the idea of 'liberation'⁴¹. The RPF stopped this divisionism not only in its deadly manifestation during the actual killings in 1994 but also through its policies in the post-genocide period. The RPF saved the Tutsi inside of Rwanda and made a return of old-case load refugees possible. The RPF further 'liberated' all Rwandan people from the whims of a dictatorial and genocidal regime, created one big 'family' for all Rwandans and installed 'good governance' instead of the 'bad governance' of the past. The 'genocide ideology'-ideology is the third vector and cornerstone of the general 'Truth'. Negative forces are still present in and outside of Rwanda continuing to embrace the old and longstanding genocidal tendencies. People can be consulted on general issues in society, but in the end need some guidance from above and from within the liberation movement of the RPF to fully embrace the new regained order of 'Rwandanicity', free from the perils of ethnicity and bad governance. Not all are ready yet and enlightened control is necessary⁴².

³⁹ Republic of Rwanda, *Genocide Ideology and Strategies for its Eradication*, (Kigali: Government of Rwanda, 2006), 167-185.

⁴⁰ This idea is seriously questioned by researchers. See for example Johan Pottier: *Re-Imagining Rwanda. Conflict, Survival and Disinformation in the Late Twentieth Century*, (Cambridge: Cambridge University Press, 2002).

⁴¹ Also questioned by scholars, see Filip Reyntjens, "Post-1994 Politics in Rwanda: problematising 'liberation' and 'democratisation'", *Third World Quarterly*, 27, N° 6, 1103 – 1117.

⁴² Republic of Rwanda, supra n 25 at 17. Footnote 5 to 8 in the report gives concrete example of instances of 'genocide ideology' and reveals its wide-ranging scope.

This framework is widely propagated in the countryside during awareness campaigns, meetings with authorities and military commanders, and has installed a far reaching degree of self-censorship in the population with regard to elements not fitting in the official 'public transcript'⁴³. De Lame, based on fieldwork conducted end of the 80s, states that meetings in the Rwandan socio-cultural universe - festive communions, ritualized public drinking activities, 'politico-private' gatherings - 'serve to transmit meaning, provide the instruments of memorization, and create *consensus*'.⁴⁴ All utterances and claims not in harmony within this tightly controlled framework are considered as instances of genocide ideology and/or meaningless. As a consequence, especially 'other crimes' and their victims are eclipsed from view in the Gacaca process.

(1) The Gacaca is a problem. The survivors have lost the members of their family, but the Hutu also. And in the Gacaca talk goes only about the genocide survivors. First we had massacres [*Itsembatsemba*] from one side. [*Later*] all lost [*family*] members. (2) When the plane crashed, the Hutu rose up, but after the arrival of the Inkotanyi [*RPA*], we have had reprisals. They also killed. The authorities say only people from one ethnic group were persecuted. The survivors say it as well, they refer to bad governance [...]. (1) In the Gacaca it is impossible to recognize that the Hutu have been victim as well. We asked that question but those in charge of Gacaca don't want to accept. 'The Hutu were killed by the children of the Tutsi. It was vengeance because their parents were killed'. This is what the Inyangamugayo say. (3) They say we can only accept the persons killed because of the massacres [*Itsembatsemba*] against the Tutsi. (1) The problem of the Hutu that were killed does not exist. (1) *Peasant, Female, Hutu, 46*; (2) *Peasant, Female, Hutu, 41*; (3) *Peasant, Female, Hutu, 42* - FGD South Eastern Rwanda, March 2006,

When one says in the Gacaca that someone of your own family has been killed as well, they reply: 'you need to bring it up when you have to right to do so'. You see in what kind of situation we are in for the moment, we are not confident, it's the situation we are living in. *Peasant, Male, Hutu, Liberated Prisoner, Confessed in Gacaca, 41* -- Interview South Eastern Rwanda., March 2006.

Apparently in a lot of locations the question whether these crimes could also be dealt with during the Gacaca sessions has been posed. Government officials and *Inyangamugayo* - instructed beforehand - replied that these crimes cannot be handled during the Gacaca process. As an explanation was given that those people were killed 'because of the war' and that 'those people were not targeted and persecuted because of their identity', but died through a sort of *collateral damage* in a period of chaos and civil war at the time of the bigger event of the genocide directed against the Tutsi.

(1) We are talking now about the genocide, the genocide against the Tutsi. Don't you hear talking about it on the radio all the time. In that period, there were Tutsi killed and Hutu killed. But on the radio there is only talk of the Tutsi killed, the genocide against the Tutsi. Did you hear talking about a Hutu killed? I don't think so. What is ambiguous is the fact that during Gacaca reunions one only talks of the Tutsi that

⁴³ The Kinyarwanda word "kwibwizira" entails this idea of auto-censorship. It expresses the image that people do what authorities want them to do without the latter asking them to do so or without using coercion. Amnesia on certain aspects of the genocide and Rwandan history is therefore not so much 'chosen' as Buckley-Zistel argues, but imposed top-down. And it is not forgotten, but simply not expressed, as aspects related to the genocide and allowed to be uttered were not expressed because of the pragmatic lifestyle of the peasantry. Susanne Buckley-Zistel, "Remembering to Forget. Chosen Amnesia as a Strategy for Local Co-Existence in Post-Genocide Rwanda", *Africa*, 76, N° 2, 2006, 131-150.

⁴⁴ de Lame, supra n 5 at 303. Emphasis added

were killed. (2) When you mention that Hutu were killed as well, they reply that the Hutu were killed because of the war. But the Tutsi as well, they were also killed because of the war! When you here these things, you start doubting: 'are the Hutu not the same human beings as the others?' (1) They say that Tutsi were killed by the Hutu and the Hutu by the war. So, they started the war. Were there two different wars? (1) *Peasant, Male, Hutu, 66*; (2) *Peasant, Male, Hutu, 77* – FGD Northern Rwanda, May 2006.

Dissonance between popular embodied experiences and understandings of the conflict and the government controlled and produced version of the 'Truth' with regard to the past, both on the factual and interpretative level, is one of the main obstacles for legitimizing the current socio-political order. It creates a volume of unexpressed grievance under the surface of daily life and the assiduous Gacaca activities, fermenting in the 'hidden transcript'⁴⁵. These are opinions and experiences that are not forgotten but simply not ventilated because *un-expressible* through the installed transitional justice architecture. These claims turn out to be irrelevant, sometimes even illegal when considered to be genocide ideas, but they remain existential perceptions, seeking refuge in the 'underneath of things'⁴⁶, a second world constituted in relation to the first world of social reality and rooted in the collective social imaginary. Rumors – as for example the idea of a machine accompanying the Gacaca courts to destroy all Hutu⁴⁷ or the idea of a double genocide – do not necessarily need to be interpreted as 'resistance' to power as James Scott would argue, but as a mere existential window on that popular social imagination. Breaking the cycle of violence, one of the objectives of the Gacaca process, needs to be based on a contextualization of the truth, as Mamdani argues: a shared understanding of the origins of Rwandan society incorporating its innate and complex Hutu-Tutsi bi-polarity grafted on the struggle for power over time, while firstly recognizing its culmination point in the nineties with *both* genocide and civil war(s)⁴⁸.

We can't evocate the problems we had afterwards [massacres by the RPA and revenge killings]. Even in prison they told us that. They said we could look for those people afterwards, the people that organized these massacres. It will never happen. We could accuse those military men, but we don't know them. So, what to do? It was the occasion to leave all aside, sit together again and live together. Before, long before, when I was young, people lived together, they shared banana beer during ceremonies. *Peasant, Male, Liberated Prisoner, Hutu, 61, Interview South Eastern Rwanda, July 2006.*

⁴⁵ James Scott, *Domination and the Arts of Resistance. Hidden Transcripts*, (New Haven & London: Yale University Press, 1990).

⁴⁶ Mariane C. Ferme, *The Underneath of Things, Violence, History and the Everyday in Sierra Leone*, (Berkeley University of California Press, 2001).

⁴⁷ "Guillotine machine" rumour leads to exodus, *The New Times*, 27-28 April 2005.

⁴⁸ Mahmood Mamdani, *When Victims Become Killers. Colonialism, Nativism, and the Genocide in Rwanda*, (Princeton, Princeton University Press), 268.

6. THE SOURCES OF THE TRUTH: CONFESSIONS AND ACCUSATIONS

Within the framework identified above, the ‘truth’, without capital, needs to be disclosed through confessions and accusations, two actions functioning as the cornerstone of the Gacaca process and the entire transitional justice framework in Rwanda⁴⁹. Important to note is the fact that confession not only entailed the acknowledgment of the individual wrongdoing but always also the accusation of others, an element that came more into play when the Gacaca courts started their information-gathering phase outside of the prisons on the hills at the *cell* level. To be precise: it almost completely replaced the importance of ‘confessing’ by ‘accusing’. Statistics of the SNJG indicate that during this phase 818 564 persons were accused, while initial estimations indicate that only 5% of them confess before the Gacaca courts⁵⁰. The others are accused/denounced. It created a particular atmosphere at the local level:

A lot of people do not tell the truth, except for those that sincerely confessed and asked forgiveness. They want to hide what they know. They are afraid that they will be questioned on how they obtained the information. I mean, that they will be asked where they were at that moment, that they will be accused of being in the attacking groups. And if they give a sincere testimony, they will also need to accuse members of their own family. They are afraid of being accused in their turn. – Peasant, Male, Hutu, Liberated Prisoner, Interview Central Rwanda, June 2006.

It is, therefore, important to understand the phenomenon of (state-sanctioned) ‘denunciation’ in general. In her book on ‘accusatory practices’, prevalent and most observable in totalitarian regimes such as Nazi Germany or the Soviet Union does Fitzpatrick qualify denunciations as spontaneous communications of individual citizens towards the state or another authority institution⁵¹. One gives information on wrongdoings and diverging thoughts by other citizens or officials, implicitly asking for punishment by referring to the norms, values and ideology ‘en vogue’ to justify the act of denouncing the other. At the same time the existence of personal interests to act in that way is denied. Nevertheless, research shows that denouncers in those authoritarian regimes often have mixed intentions. Sometimes, personal motifs play an important role in accusing friends, neighbours and family members. Denunciations occupy an intermediary space in-between society below and the state or authorities at the top and constitute a crucial ingredient in the perpetuation of terror at the grass-roots in an authoritarian or totalitarian state.

[Q: How do the Gacaca meetings evolve for you?] We are currently in the information gathering phase. People testify. But information is also passed on secretly, in writing and solely to the Inyangamugayo There

⁴⁹ Penal Reform International (PRI) *The Guilty Plea Procedure. Cornerstone of the Rwandan Justice System. Research Report IV*, (Kigali – Paris: PRI, 2003). Penal Reform International (PRI) *Integrated Report on Gacaca Research and Monitoring. Pilot Phase January 2002 – December 2004. Research Report IV*, (Kigali – Paris, PRI, 2005), 21-24. PRI identifies ‘confessions’ and the ‘(request for) pardon’ as the cornerstone of the Gacaca, we argue that it are confessions, but in practice mostly accusations and not so much the element of pardon constituting the cornerstone of the Gacaca process.

⁵⁰ Republic of Rwanda, *Report on Collecting Data in Gacaca Courts*, (Kigali: SNJG, 2006), 5. Numbers and estimations based on information provided by the National Service of the Gacaca Courts. National Service of the Gacaca Courts, *Gacaca Process – A Justice Leading to Unity and Reconciliation in Rwanda*, Kigali: SNJG, 2005. (Document on file with the author.)

⁵¹ Sheila Fitzpatrick, *Accusatory Practices*, (Chicago: University of Chicago Press 1997), 1 & 5.

are things talked about during the reunions and others are not talked about. Information is given, but the source is unknown. It is possible that a person that has a problem with you accuses you in that manner.
 – Peasant, Male, Hutu, 46, Interview Central Rwanda, April 2006.

The information collection phase was marked by a high involvement of local authorities creating an ‘administrativisation’ of a judicial procedure⁵². On the one hand this facilitated somehow the collection of the information, but also increased the perception of a process imposed by the state and primarily owned by the state and not the citizenry and/or the *Inyangamugayo*. Secondly, it also gave the opportunity for local authorities, who have a powerful status as agent of the state, to obstruct the truth generating procedures and bend it into the direction of their own interests.

⁵² Penal Reform International (PRI) (2005), supra n 35.

7. THE LOCUS OF THE TRUTH: AN INVENTED TRADITION IN A LOCAL SETTING

A second cornerstone of the Gacaca courts, apart from the confession/denunciation policy, is the aspect of decentralization. Since March 2005, *Gacaca* meetings are being held in each of Rwanda’s 9,013 cells and 1,545 sectors. In total there are 12,103 *Gacaca* courts established nationwide presided over by 169,442 *Inyangamugayo*, the local judges. As a consequence, the principle of denunciation through which the Gacaca courts operate is embedded in the social constellation of local communities all characterized by their peculiar demographic make-up, power structure and existing conflicts. This creates the possibility to forge alliances or the necessity to follow a certain strategy in the practice of ‘accusing’ or ‘conspiring in silence’, not necessarily reflecting the envisioned procedure. This is firstly linked to the capacities and capabilities of individuals. The power of authority, money or the gun allows some to influence the proceedings. But it is also a result of the power of sheer ‘numbers’, the composition of the collective.

When survivors are few and isolated they tend to keep quiet in order not to be (physically or socially) eliminated in the community or their testimonies are partially ignored. When survivors are numerous, part of the (administrative) power structure and represented in the bench of the Gacaca courts, they have more leverage; a situation that can then create the feeling of powerlessness and arbitrariness on the part of the released prisoners and accused. We often heard the remark that problems over land, money, a cow, women or children motivated the accusatory practices. These are current conflicts, unrelated to the past and thus falling outside of the Gacaca courts competence. But one makes declarations (false testimonies)

during Gacaca sessions concerning the violence of the past in order to settle contemporary conflicts. In general we observed an ‘instrumental’ stance towards the Gacaca courts with ‘groups’ – mostly along ethnic lines – eager in the attempt to get the preferred version of the ‘truth’ gain entrance. Indicative in that regard is the perception that the ethnic make-up of *Inyangamugayo* of the courts is a means to get a viewpoint passed.

[Q: You mention someone is trying to hide the truth, who?] For example, the responsible [local administrator] [...] He participated [in the genocide], but he is against us, the people that accuse him. He participated in the attacking groups chasing and killing people. He tries to deflect the truth and approaches some people to give them something so they will give testimonies contradicting what we, the liberated prisoners, are saying. – Peasant, Male, Hutu, Liberated Prisoner, Interview Central Rwanda, June 2006.

(1) If you are in a reunion with soldiers behind you with a gun, you don't dare to do anything wrong. (2) They are also present during the Gacaca, they say we need to talk or otherwise that they will take us into the forest. It is occasionally that they are present. They occasionally come to terrorize people. – (1) Peasant, Male, Hutu, Liberated Prisoner, 36; (2) Peasant, Male, Hutu, Liberated Prisoner, 71 – FGD Northern Rwanda, March 2006.

(1) All of the Inyangamugayo are Tutsi genocide survivors [it is correct, the Gacaca tribunals in the entire village only contain judges of Tutsi ethnicity] (2) The Hutu who were judges have left because accused themselves. [Q: So, how do you see the judgement phase?] (2) They will give whatever punishments they want without considering our opinion. [Q: Do you think it is a sort of vengeance?] (All) Yes. – (1) Peasant, Male, Hutu, 22; (2) Peasant, Male, Hutu, 25 – Interview Eastern Rwanda, February 2006.

[Q: Why are the others not talking even if they know the truth?] (1) They want to minimize the genocide, because all of them were present, they want to mask their crimes. [Q: The Inyangamugayo aren't helping you?] (2) If I am Inyangamugayo and my family members participated in the genocide, what is the difference between me and those criminals? People died when there was daylight, but it is difficult to know the killers. – (1) Peasant, Female, Tutsi, Genocide Survivor, 52; (2) Peasant, Female, Tutsi, Genocide Survivor, 55 – FGD Central Rwanda, March 2006.

The search for the ‘truth’ does not only take place in a ‘local’ setting, but in the context of a ‘modernized’ tradition as well. I asked – mostly elderly – respondents who knew the ‘traditional’ Gacaca to highlight the differences and similarities with the ‘modern’ Gacaca courts.

(1) The current Gacaca is a necessary means to reconcile Rwandans. In the old Gacaca, there were problems between the families, and the families came together to renew the relations. Even for problems related to killings. One tried to determine the causes of the death, whether the person was killed by accident or not and one tried to avoid that hatred would linger on between the families. There was a sort of punishment, but it was not important. The idea was to re-unite people. (2) There is a resemblance with the old Gacaca, but currently we are dealing with the disaster related to the genocide, a crime that

is not easy to deal with. The acts that were dealt with before were not so complicated. The current problem lies beyond the Gacaca. (3) The old Gacaca tried to solve the problems, to make sure that there was no more hatred between the families. Now, you ought to follow rules. (4) The old Gacaca were quarrels between people. But now, the drama has been prepared long before. – (1) Peasant, Male, Hutu, *Inyangamugayo*, 62; (2) Peasant, Male, Hutu, *Inyangamugayo*, 65; (3) Peasant, Male, Hutu, *Inyangamugayo*, 60; (4) Peasant, Male, Hutu, *Inyangamugayo*, 56 – FGD Northern Rwanda, April 2006.

A significant number of respondents, both Hutu and Tutsi, refer to the Gacaca courts as ‘an instrument of the state’. The narratives reveal the enormous impact of the state on the reconciliation process. But also the ‘request’ and outreach from ordinary Rwandans towards the state in the reconciliation process. While the direction of causality goes probably more from the top towards the bottom, it has become a self-sustaining process. If the other group does not understand nor want to reconcile, the state – ‘Leta’ in Kinyarwanda, French - has to put more pressure. It is the state that defines the rules and regulations to be followed in the Gacaca courts.

Fieldwork in Rwanda reveals the extreme state-driven, state-owned and top-down process of reconciliation with people abiding by the principles, mechanisms and discourses laid out for them. Huyse, quoting South-African scholar Hugo van der Merwe, concludes in his analysis of reconciliation processes: ‘Top-down and bottom-up processes are both essential for a more sustainable long-term reconciliation process. They should, however, be pursued in a complementary fashion rather than at the expense of one another.’⁵³ While Theidon remarks based on anthropological fieldwork in Peru: ‘Reconciliation is forged and lived locally and state policies can either facilitate or hinder these processes.’⁵⁴

The relation between the ‘old’ and the ‘new’ Gacaca is not one of identity and not even of gradual continuity. There is a difference in kind. An essential change marks the installation of the Gacaca courts after the genocide. The resemblance lies in the similar name, a similar orientation in the most general sense and common features. One needs to look beyond these most visible elements of similarity to understand the true nature of the ‘old’ and the ‘new’ institution and capture the rupture with the past. The primary aim of the settlement in the ‘traditional Gacaca’ was the restoration of social harmony and not so much the establishment of the truth about what happened, nor the punishment of the perpetrator and not even the compensation through a gift. Although the latter elements could be part of it, they were subsidiary to the return to harmony between the lineages and a purification of the social order.⁵⁵ The ‘traditional’ Gacaca was not the natural locus to speak the truth, but a means to readjust (power) relations (between families).

⁵³ Huyse, *supra* n 20, at 26.

⁵⁴ Kimberley Theidon, ‘Justice in Transition. The Micropolitics of Reconciliation in Post-War Peru’, *Journal of Conflict Resolution*, 50, No. 3, 2006, 456.

⁵⁵ Charles Ntampaka, ‘Le Gacaca: Une Juridiction Pénale Populaire’, in: *Construire L’Etat de Droit. Le Burundi et la Région des Grands Lacs*, eds. Charles de Lespinay & Emile Mworoha, (Paris : L’Harmattan, 2003), 219-236.

8. THE CONTOURS OF THE TRUTH: FORENSIC PHRASINGS

Although it is difficult to emerge the ‘truth’ in the general context identified above and on the basis of confessions and denunciations in a community setting, the question arises what kind of ‘truth’ surfaces if it does. In the report of the South-African Truth and Reconciliation Commission, four notions of truth are identified.⁵⁶ The ‘forensic truth’ entails answers to the basic questions of who, where, when, how and against whom and possibly the context, causes and patterns of violations. Other dimensions of the truth – narrative, social and restorative – go beyond this factual delineation of actions by incorporating the meaning attached to these facts by victim and perpetrator through interaction, discussion and debate and not as arguments. Factual knowledge is accompanied by acknowledgment of these events and accepting accountability in the context of restoring the dignity of victims and survivors.

Our observations indicate that the actual trial proceedings in the Gacaca tribunals, at best, establish the ‘forensic truth’. The forensic truth *at best*, since it is highly problematic to establish the truth on the basis of denunciations in a localized setting, as we have argued. Often we have heard testimonies indicating who, where, when, against whom and how something happened, almost never ‘why’⁵⁷. This results from the fact that the Gacaca courts function according to the logic of criminal trials and not as small truth commissions. Hayner is very sceptical about truth coming from trials: “The purpose of criminal trials is not to expose the truth, however, but to find whether the criminal standard of proof has been satisfied on specific charges.”⁵⁸ Moreover, trials create an ‘us versus them’ dynamic. We often heard the remark that the own group – Hutu or Tutsi – was ready to embrace the procedures installed by the state to foster reconciliation and live by the principles of unity propagated from above, but that the other party – Hutu or Tutsi – did not understand these ideas or was not ready or willing to do so. The state is in between, facilitating and obstructing the reconciliation process, eradicating and enhancing cleavages through the adopted transitional justice policy and the contradictory practice of governing surrounding the Gacaca tribunals.⁵⁹

(1) The persons liberated from prison underwent a formation [*in re-integration camps*] to tell the truth, but they don’t. (2) They were sanctioned by the state, and now they refuse to speak the truth. So, the state needs to intervene. The state has deployed a lot of effort so that they can acknowledge their wrongdoing, but they do not accept it. That’s a problem. If you have seen them with your own eyes and they don’t accept it. But you have seen them! (1) *Peasant, Female, Tutsi, Survivor*, 45; (2) *Peasant, Female, Tutsi, Survivor*, 40 – FGD Eastern Rwanda, March 2006.

(1) The Gacaca will help to determine the guilty and the innocent. For the moment, on the pathways, words are cried out saying: ‘that one has done this’. (2) There is no truth in the collection of information. There is no truth. Things are added to our testimonies that we haven’t

⁵⁶ Truth and Reconciliation Commission of South-Africa, Report, Vol. 1, (London: Macmillan Publishers Limited, 1998), 110-117.

⁵⁷ Something that is not only from a socio-political perspective important, but - in theory - also from a purely legal-technical viewpoint to establish the ‘genocidal intent’.

⁵⁸ Priscilla B. Hayner, *Unspeakable Truths. Facing the Challenge of Truth Commissions*, (New York & London: Routledge, 2002), 100-101.

⁵⁹ These contradictory tendencies are also highlighted in: Timothy Longman and Théoneste Rutagengwa, “Memory, Identity and Community in Rwanda”, in: *My Neighbor, My Enemy. Justice and Community in the Aftermath of Mass Atrocity*, (eds.) Eric Stover and Harvey M. Weinstein, (Cambridge: Cambridge University Press, 2004), 166.

done. Notes are taken against our will. (1) When someone has lost a family member, that person wants that someone else dies as well, on the condition that it is someone from the other ethnic group. – (1) Peasant, Female, Hutu, 31; (2) Peasant, Peasant, Female, Hutu, 41 – FGD Eastern Rwanda, March 2006.

9. CONCLUSION: THE CONSEQUENCES OF THE TRUTH?

We started our analysis of the Gacaca process by indicating that ‘telling the truth’ has become an existential and important prerequisite in re-establishing social relations. We have dealt extensively with the ‘truth’ in the Gacaca courts in all its dimensions, because it is the cornerstone of the entire transitional justice framework in post-genocide Rwanda. Nevertheless, the search for the ‘truth’ is equally the most difficult and problematic aspect.

We summarize the nature of the truth observed in the Gacaca process, analytically distinguishing features complexly entangled in reality. The ‘truth’ is, in the first place, curtailed by the a priori defining parameters of what the ‘truth’ can be, methodologically and ideologically, but also because of the features of Rwandan culture. The ‘truth’ is mostly ‘forensic’ because derived from a criminal procedure. The ‘truth’ varies according to locality since it surfaces through the dynamic of local constellations idiosyncratically subverting and interpreting the truth-generating procedures. The ‘truth’ has furthermore a high degree of instrumentality as it is sought through confrontation along group-based (mostly ethnic) lines, not deliberation nor dialogue. The ‘truth’ has a certain degree of arbitrariness resulting from the principle of ‘confession and denunciation without verification’. As a result the ‘truth’ is ‘partial’ in the sense of ‘incomplete’ and ‘deformed’ but also meaning ‘one-sided’ and ‘one-dimensional’ lacking a broadly based contextual anchoring.

Our current analysis is primarily based on the first phase of the Gacaca process, that was aimed at establishing the ‘truth’ at the local level. The actual trials started mid-2006 and their proceedings will without any doubt add a new dimension to the experience of establishing the ‘truth’, seeking justice and fostering reconciliation in the aftermath of genocide and war(s). The overarching sentiment of an absence of the truth reveals that factual knowledge on the past largely remains absent, but also that a re-humanization and re-socialization of the other – the healing dimension of truth telling – is not easily forthcoming. The question is then what can this type of ‘truth’ still accomplish in the following stages of the transitional justice process and the post-conflict reconstruction in general? And where does it fail and what are, subsequently, the consequences? Ariel Dorfman raises similar questions in the afterword to *Death and the Maiden*: ‘How to heal a country that has been traumatized by repression if the fear to speak out is still omnipresent everywhere? And how do you reach the truth if lying has become a habit?’⁶⁰

⁶⁰Ariel Dorfman, *Death and the Maiden*, (Middlesex Penguin Books, 1994), 94

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