

Gacaca Courts and Restorative Justice in Rwanda

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THOMAS HAUSCHILD, JUL 15 2012

Over 100 days from April to July 1994 between 800,000 and 1,000,000 Tutsis and moderate Hutus were killed in Rwanda. The killings were organized by the Rwandan Government and executed by the military, armed militia groups and ordinary men and women who often killed their own relatives, friends and neighbours (Corey & Joiremann, 2004, p.73; Clark and Kaufman, 2008, p.1). The Rwandan Patriotic Army (RPA), the military arm of the Rwanda Patriotic Front (RPF) which consisted of Tutsis living in Ugandan exile, defeated the Rwandan Government Forces and ended the genocide (Graybill and Lanegran, 2004, p.8; Magnarella, 2005, p.811).

At least 250,000 women were victims of sexual violence. Many of the women were subsequently killed and 70% of the survivors were infected with HIV (Amnesty International, 2004, p.3; United Nations, Economic and Social Council, 1996). Half of the population was either internally displaced or had fled Rwanda. The country lost approximately 10% of its population and many of the survivors suffered from the traumatic experience (Moghalu, 2005, p.17).

The perpetrators and victims of the genocide continue to live together and therefore have to engage in a reconciliation process in order to avoid future violence. The challenge of reconciliation focuses on several interrelated issues and attention has to be paid to the suffering of individuals and of the nation as a whole (Richters, Dekkers, De Jonge, 2005, p.203). Moreover, the truth about past atrocities has to be established. It is very important that the basic human emotional needs of justice, empowerment, security and recognition are met in order for the Rwandan society to move forward from the genocide (Shnabel & Nadler, 2008, p.116).

In the past the majority of research related to conflict resolution centred on the realist approach, as conflicts were believed to be based on material interests (Shnabel & Nadler, 2008, p.116). Subsequently, conflict resolution aimed at satisfying the material needs of the conflict parties in order to resolve the conflict. The increase in intra-state protracted social conflicts after World War Two demanded a new approach to conflict resolution, as former adversaries continue to live together within the same area. This points towards the importance of reconciliation rather than merely the satisfaction of material interests. In recent decades it became evident that emotional needs are often at the core of the conflict and have to be addressed in order to resolve the conflict (Shnabel & Nadler, 2008, p.116). The significance of emotional needs is underlined by an increasing number of restorative justice approaches (Shnabel, Nadler, Canetti-Nisim, Ullrich, 2008, p.160) of which the Truth and Reconciliation Commission in South Africa is a well-known example.

The hypothesis of this dissertation argues that in the aftermath of genocide, victims and perpetrators experienced a lack of need fulfilment. The satisfaction of these needs is an elementary requirement to enhance reconciliation in a society divided by a protracted social conflict (Shnabel & Nadler, 2008, p.116).

The research for this dissertation will be of a deductive nature and will be based on a literature review of primary and secondary sources. First, the dissertation will evaluate the origin of the Rwandan conflict and the concept of protracted social conflicts (Clark & Kaufman, 2008; Azar & Moon, 1986). In addition, the significance of conflict resolution and reconciliation will be evaluated in order to assess the subsequent steps from an open conflict to the end of overt and covert violence. In order to test the hypothesis the needs-based model of conflict resolution will then be applied to the case study of post-genocide Rwanda. The focus will be on *gacaca* courts which present a

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traditional and domestic tool of retributive and restorative justice. Due to the nationwide presence of *gacaca* courts it is assumed that a large number of Rwandans participated in the trials, either as victims, perpetrators, witnesses or spectators (Clark, 2008, pp.303-304; Clark, 2010, p.83).

In order to evaluate whether *gacaca* courts were able to contribute to the need fulfilment in Rwanda it is necessary to evaluate the citizens' sentiments towards these courts. The evaluation applied in this dissertation is based on several field studies undertaken by practitioners (Brounéous, 2008; Zorbas, 2009; Burnet, 2008; Rettig, 2008; Cacioppo, 2005) and the National Unity and Reconciliation Commission (NURC) in 2010. The sources will be evaluated according to the fulfilment of the basic human emotional needs of perpetrators and victims. The rationale to choose several sources to evaluate the hypothesis is twofold. First, research undertaken by practitioners focuses merely on certain geographic areas and therefore their results might not represent the nationwide sentiments. However, in many cases practitioners build a close and less formal relationship with respondents and therefore gain a manifold insight into their sentiments. The NURC undertook nationwide research, but a governmental approach is believed to be more formal and it gains less access to respondents. It is hoped that by combining the research results of scholars and the NURC it will be possible to establish an account of the true sentiments on a nationwide scale. This research, however, does not present a universal validation of the needs-based model of conflict resolution across time and space. It is merely applied to the case study of Rwanda and different conclusions may be drawn from other case studies. Nonetheless, it is hoped that this dissertation contributes to a better understanding of contemporary research and the importance of need fulfilment in the field of conflict resolution.

The dissertation is divided into four subsequent chapters.

The first chapter will outline the root causes of the conflict in Rwanda (Magnarella, 2005). As the conflict is based on ethnicity, this concept requires clarification. In addition, the conflict is described as being "socially protracted". The origin and meaning of this kind of conflict has to be clarified in order to account for the non-fulfilment of basic human needs (Azar & Moon, 1986).

The second chapter will assess the basic human needs approach to conflict resolution. In order to understand the social environment in which basic human needs have to be addressed, it is important to assess the challenges of reconciliation (Kelman, 2010). Then the chapter will assess the work of Sites (1973), Burton (1990) and Maslow (1976) as advocates of the needs based model of conflict resolution who claim that the satisfaction of basic human needs at the inter-personal level is elementary to reconcile perpetrators and victims to avoid future conflict.

The third chapter will apply the theoretical approach of the needs-based model of conflict resolution to the case study of Rwanda. The main mechanism for the reconciliation process in Rwanda were the *gacaca* courts (Penal Reform International, 2010). This chapter evaluates the establishment and work of these courts. The focus will be on the concept of truth-telling which was hoped to foster reconciliation (Brounéous, 2008).

The fourth chapter provides the link between the needs-based approach for conflict resolution and the case study of the Rwandan *gacaca* courts. The chapter will evaluate whether the truth-telling process contributed to the fulfilment of basic human needs (Brounéous, 2008; Burnet, 2008; Cacioppo, 2005, NURC, 2010; Rettig, 2008, Zorbas, 2009).

Chapter 1: Ethnicity and protracted social conflicts

In this chapter the terms "ethnic conflict" and "protracted social conflict", central to the dissertation, will be clarified. The clarification of these terms is necessary in order to understand the root causes for the non-fulfilment of needs.

Ethnicity is a polythetic concept that refers to several attributes which include *inter alia* the name of a group, a distinctive language, religion, geographic territory, values and norms, and history (Eltringham, 2004, pp.9-10). In order to be considered as an ethnic group its members have to share some, but not all, of these attributes. Group identities are based on norms of exclusion (de Waal, 1997, p.281), as people form groups to distinguish "us" from

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“them”. Groups and the identities which underpin them and bind their members are socially constructed (Stanton, 1987, pp.4-5). Group formation *per se* is not the source of conflict but rather conflict arises if the groups are extremely exclusive. De Waal (1997, pp.282-283) notes that such exclusionary pressures can be enhanced if the group members perceive their security to be under threat. Conflict may well result then as individuals seek to defend their group identity and all it includes.

The Rwandan population is comprised of three ethnic groups: Hutus (85%), Tutsis (14%) and Twa (1%) (Brouen us, 2008, p.56; Mukherjee, 2011, p.335). The groups differed in terms of their occupation and class rather than ‘ethnicity’ itself (Purdekova, 2008a, p.507). The Tutsi were predominantly herdsman, whilst the majority of Hutus were farmers. Twa, a Pygmy group, were discriminated by Hutus and Tutsis (Brouen us, 2008, p.56). Nonetheless, social mobility between Hutus and Tutsis was possible. Hutus could become Tutsis if they acquired a larger amount of cattle and Tutsis whose number of cattle decreased could become Hutus. Eltringham (2008, p.5) explains that Hutus and Tutsis are often described as belonging to the same ethnic group, as they share several of the identified attributes. Hutus and Tutsis shared a common language and culture. Inter-marriage was possible and the groups shared the same geographic area (Mason, 2003, p.103). Nonetheless, the conflict is often described as one based on ethnic rivalries (Storey, 1999, p.43).

The colonization of Rwanda started with the arrival of the Germans in 1897 and continued under Belgian rule in 1916 (Prunier, 1995, pp.25-26). Early colonialists considered Tutsi as more intelligent and therefore superior to Hutus and ruled Rwanda through the Tutsi monarchy and its chiefs (Mason, 2003, p.104). Tutsis received preferential treatment in education and occupied the majority of influential posts in the state. Moreover, many Hutu chiefs were replaced by Tutsi chiefs (Mason, 2003, p.104). In 1933-1934 the Belgians undertook a census and introduced ID cards which assigned an ethnic identity to each individual. Each person was classified as belonging to the Hutu, the Tutsi or the Twa (Magnarella, 2005, p.808). The criteria were based solely on the number of cattle owned by the card holder. These ID cards established a sub-national identity based on artificially created ethnic groups (Magnarella, 2005, p.808). The identity group of Tutsis was often associated with superiority, domination and exploitation. Whereas, classification as Hutu meant to live an inferior life characterised by subordination and suffering. In 1957, five years before independence, a group of nine Hutu intellectuals published the “Hutu Manifesto” which criticised the Tutsi dominance and described them as invaders (Magnarella, 2005, p.809). ID cards, and therefore the entrenchment of identities, were not abolished when Rwanda moved towards independence (Magnarella, 2005, p.809). The transformation from a society divided into occupational classes into a society divided into artificially created ethnic groups is considered as the root cause for the protracted social conflict that was to follow (Moghalu, 2005, pp.9-11, Mason, 2003, pp.104-105).

Coser (1956), cited by Stewart (1998, p.7), defines conflicts as “the struggle between two or more people over values, or competition for status, power and scarce resources”. In addition to incompatibility two more factors are necessary for a conflict to occur. First, actors prepare themselves for a possible conflict (Wallensteen, 2002, p.15). These preparations are perceived by other actors as a threat and therefore they respond by preparing themselves as well. The conflict becomes self-reinforcing and intensity increases. Herz (2004) coined the term “security dilemma” to describe this spiral of preparation (Collins, 2004, pp.27-28). Second, action can be undertaken in the form of verbal statements, demonstrations and boycotts. However, a conflict does not end if the action ends. The underlying causes for the conflict still exist and action may resume in the future, as the reason for the dissatisfaction of one or more parties has not yet been addressed (Wallensteen, 2002, p.15).

The concept of conflict was further developed by the work of Azar (1978; 1981) and his evaluation of “protracted social conflicts” (Ramsbotham, 2005, p.109). The roots of protracted social conflicts can often be found in underdevelopment based on structural inequality (Azar & Moon, 1986, pp.395-396). Structural inequality is often reflected in political and economical inequality and the domination of one group over another group (Azar & Moon, 1986, pp.396-398). Political inequality results in an asymmetric power distribution amongst the groups which make up the society. Further, differentiated access to political power results in an unequal distribution of income, wealth and status and unequal access to basic needs such as health care, housing, food and education (Azar & Moon, 1986, pp.396-397). This unequal access can lead to malnutrition, illiteracy, unemployment and a lower life expectancy. Subsequently, the basic human needs of the suppressed group become marginalised and a protracted

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social conflict is often the consequence (Azar & Moon, 1986, pp.396-397).

Azar, Jureidini and McLaurin (1978, p.50) cite the work of Rapoport (1974) who argues that conflict amongst members within the same society, which he describes as endogenous conflict, is often based on hatred between two groups. The notion of “us” and “them” is deeply embedded in the conflict and this perception is transmitted through generations. The parties involved consider compromises or solutions suggested by the other side as a way for “them” to gain more power over “us”. Resolution is more difficult to achieve and hostility becomes institutionalised due to the high intensity, long duration, multitude of overlapping issues and the involvement of whole societies. Conflict parties might also be linked to external forces which offer support (Azar & Moon, 1986, p.395). Protracted social conflicts therefore become deeply embedded in the identity of the parties involved. These conflicts cannot be halted by a single decision, for example the signing of a peace treaty. These conflicts can only be solved over a long period, as they are not “specific events”; they are processes instead (Azar *et al.*, 1978, p.50).

German and Belgian colonialists found a ranked, albeit flexible, system when they arrived in Rwanda (Mason, 2003, pp.103-104). The colonialists misused the ranked system for their own purposes and entrenched the power division between Hutus and Tutsis. The introduction of ID cards turned the system into a rigid ranked system characterised by oppression and suppression. The seed for the protracted social conflict was sown. Protracted social conflicts are shaped by structural inequality in all aspects of life (Azar & Moon, 1986, pp.395-398). The challenge of and a possible approach to solve protracted social conflicts will be addressed in the following chapter.

Chapter 2: Reconciliation and the needs-based model of conflict resolution

This chapter addresses the question of how protracted social conflicts can be solved. The differentiation between the terms conflict settlement, conflict resolution and reconciliation will be critically discussed. This discussion will assess the subsequent steps which have to be undertaken in order to end overt and covert violence to establish positive peace. Furthermore, this chapter evaluates the characteristics of the needs-based model of conflict resolution and its significance for the reconciliation process.

Conflict settlement and resolution are processes which may be pursued by internal parties alone or in conjunction with an external actor who may facilitate the negotiations by offering incentives or by threatening parties who are not willing to accept the settlement (Kelman, 2010, p.1). The settlement may be welcomed by the public of both conflict parties, especially after long and devastating conflicts. However, settlements are only designed to halt overt violence. The conflict relationship and attitude between the parties is not improved. Direct violence is halted, but structural violence or indirect violence in the form of social exclusion, discrimination and inequality may still be present. Therefore, the conflict might only become covert for a while and re-emerge as an overt conflict in the future. Galtung (1969, p.183) describes this rather pessimistic form of peace as “negative peace” – that is a peace agreement that lacks roots because it does not stop structural violence.

Positive peace, in contrast, relates to the absence of all forms of violence (Galtung, 1969, p.183). It requires the parties to undertake a process of conflict *resolution* rather than merely a conflict settlement which reflects the power disparities between the parties (Burton, 1990, pp.2-3). Wallensteen (2002, pp.8-9) defines conflict resolution as a process which attempts to solve the root causes of the conflict – that is it addresses both direct and indirect violent conflict behaviour and attitudes. The parties have to accept the right of the other party to exist and all forms of violence have to be halted. In such a process none of the parties gain everything they desire, but none of them lose everything either. It offers the prospect of a sum-sum rather than a zero-sum outcome.

The conflict resolution process has to be advanced to the level of reconciliation in order to avoid the recurrence of antagonism (Kelman, 2010, p.3). However, reconciliation is not only an outcome; it is a process which starts at the beginning of the peace process. Cooperation and trust has to be achieved whilst working together to achieve “instrumental” goals, for example improved medical facilities. Further, the conflict groups have to readjust their identity in order to remove the negative image of the other group. This step advances the reconciliation process from

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the instrumental level to the “socio-emotional” level and enables the groups to establish a positive attitude towards each other (Shnabel *et al.*, 2008, pp.162-163).

The re-evaluation of identities can present a major obstacle in the reconciliation process (Kelman, 2010, p.5). Kelman (2010, p.6) identifies several criteria for this re-evaluation of identities. Most importantly, each group must accept one another’s right to exist and the need for equity and justice in their relationship. The parties must also acknowledge one another’s right to hold contending narratives of the conflict. Finally, each party must pledge loyalty to the establishment of institutions which foster cooperation. These institutions, both those within the public sector and the civic space, help to change inter-group attitudes (Staub, 2006, pp.868-869). The reconstruction of identities involves the reconstruction of the values and norms of an inclusive pluralistic society. Burton (1990, p.37) explains that the emergence and embedding of new societal norms and values is inter-generational and relies on the greater economic and societal integration of the groups. Group interests need to be redefined so that they are not so parochial that they undermine the wider social project (Burton, 1990, pp.38-39). However, interest-based approaches focus merely on material goods, but not on values and needs. Subsequently a focus on interests only is less likely to bring about deep socio-emotional reconciliation. Such reconciliation rather may be achievable only through a focus on human development via the recognition and addressing of human needs (Sites, 1973, pp.36-44).

Pankhurst (1999, pp.240-241) describes reconciliation as the re-establishment of friendly relations and stresses the centrality of forgiveness to reconciliation processes. The challenge of reconciliation focuses on several interrelated issues and attention has to be paid to the suffering of individuals (Richters *et al.*, 2005, p.203). Justice and forgiveness require a transparent acknowledgement of the transgression (Kirkby, 2006, pp.95-96), as, for example, evidenced in the work of the Truth and Reconciliation Commission in South Africa.

In the wake of mass atrocities the basic human needs of victims and perpetrators are obviously unsatisfied (Shnabel *et al.*, 2008, p.159). Victims perceive a loss of power and control and demand justice (Shnabel *et al.*, 2008, p.164). Furthermore, they are likely to experience anger and frustration. Their basic need for security is not fulfilled and they are likely to suffer from posttraumatic stress disorder (Staub, 2006, p.871). In addition, victims consider members of other groups as a threat and may turn into perpetrators themselves to protect their own need fulfilment. Perpetrators who acted violently are also likely to suffer from trauma (Staub, Pearlman, Gubin, Hagemimana, 2005, pp.302-303). They are likely to feel moral inferiority, shame and guilt. Often perpetrators became victimised in the past and their unhealed wounds led them to exercise acts of violence against their former suppressors. Staub *et al.* (2005, p.303) claim that perpetrators may attempt to distance themselves from their actions. Otherwise they might be “overwhelmed by guilt and horror”. Further, perpetrators may defend their actions by blaming their victims or by continuously supporting the motifs which, in their opinion, justified the violence. They may feel the danger of being ostracised by their society after violating the society’s moral norms (Shnabel *et al.*, 2008, p.159). Therefore, their need for recognition as a valuable community member is under threat. Further, their need for security may be threatened due to possible acts of revenge (Kubai, 2007, p.60).

The roots for the needs-based model for conflict resolution can be found in the work of Maslow (1970) and Sites (1973) who defined and evaluated basic human needs. The theoretical approach has been further developed by Burton (1990).

Universal motivations can be found in every single human being and are therefore described as “needs” (Burton, 1990, p.36-39). These universal needs are biological needs, such as food and shelter, and emotional needs which enable human beings to grow and develop in order to establish and shape their identity. The satisfaction of basic human needs is essential to avoid or to end protracted social conflicts respectively (Burton, 1990, p.36; Maslow, 1970, pp.16-17).

Cultural motivations, such as the ideas and customs of a social community, are based on values which vary through time and space (Burton, 1990, pp.37). Values are strongly related to the basic human needs of identity and security since the fulfilment of these needs is often sought after by forming identity groups. Therefore, a threat to values is likely to be opposed in the same way as a threat to the needs themselves.

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Sites (1973, pp.36-44) evaluates eight basic human needs which he considers as essential for human development and growth in order to build and maintain an identity. These include: response, stimulation, security, recognition, justice, rationality, meaning and control. For the purpose of the reconciliation process a further need – the need of empowerment – has to be fulfilled (Shnabel, *et al.*, 2008, p.159). The needs-based model for conflict resolution stresses the requirement to address such emotional needs in order to transform a post-conflict environment. Four of these needs in particular – security, justice, recognition and empowerment – are extremely important to the reconciliation process.

Before victims and perpetrators can engage in any meaningful interaction the precondition of security has to be fulfilled (Maslow, 1970, pp.22-23). Without freedom of speech, freedom of expression or the right of self-defence, basic human needs cannot be satisfied. In addition, fairness and honesty are essential preconditions as these are the very basic requirements for trust, which in turn is essential for cooperation to take place. A threat to these preconditions is often considered as a threat equal to the threat to basic human needs. Subsequently, reconciliation cannot take place in an insecure environment.

Des Forges (1999, pp.568; 575) claims that the exercising of justice in the aftermath of a genocide is not only morally and legally right, it is essential for peace. Reconciliation requires that justice is seen to be inclusive of the victims and perpetrators (Pankhurst, 1999, pp.241-243) and it is important that the defeated party does not perceive the justice process as vindictive, as this might lead to further violence. Similarly, justice needs to recognise the status of the victims, as suggestions of impunity for perpetrators will undermine reconciliation. The exercising of justice means that the society – albeit not necessarily the perpetrator – acknowledges the harm caused to the victim and punishes perpetrators for breaking societal norms (Kirkby, 2006, p.95). Therefore, if the victim's need for justice is fulfilled it contributes to the fulfilment of the need for recognition. Desmond Tutu described retributive justice, that is the focus on vengeance and punishment, as a Western concept which may not best serve reconciliation (Richters *et al.*, 2005, p.207). Tutu underlines the usefulness of *ubuntu*, which is a traditional approach to restorative justice in Southern Africa. *Ubuntu* aims at restoring the dignity of all people involved and focuses on forgiveness in order to restore the "balance" between victim and perpetrator. In order to reconcile victim and perpetrator, justice then may need to be restorative rather than retributive.

Restorative justice after overt conflicts is essential if the society is to successfully move towards positive peace (Arenhövel, 2008, p.577). Transitional justice processes may be supported by international institutions and NGOs. Nonetheless, initiatives and decision-making processes are of a domestic nature and a correct balance needs to be struck between retributive and restorative justice (Arenhövel, 2008, p.580). This raises tensions between the degree of justice which is demanded by victims and the maximum degree of justice which is possible in order to support reconciliation.

The interconnected needs of empowerment and recognition are described as "the core of interpersonal experience" (Bennis & Shepard, 1956, cited by Shnabel & Nadler, 2008, p.117). Victims experience a loss of power and status during the victimisation period. Perpetrators suffer from moral inferiority, shame and guilt (Shnabel & Nadler, 2008, p.117). The perpetrators' feelings invoke anxiety and fears of exclusion from the society. Maslow (1970, p.20) writes that individuals aim to be accepted and loved by their social environment. The exclusion from their social environment would deprive the perpetrators of their sense of belonging which accompanies the group membership. Subsequently, the need for recognition would not be fulfilled. The fear of exclusion leads perpetrators to explain the atrocities they have committed. By doing this they hope that the society understands the root causes for their emotional distress which led to actions outside the moral norms of the society.

Perpetrators can play a vital role in restoring the victims' loss of power. This possibility is provided by the justice process during which the perpetrators can take responsibility for the harm they have caused. This acknowledgement establishes a "moral debt" which can only be cancelled if the victim grants forgiveness (Shnabel *et al.*, 2008, p.165). Therefore, the victim receives the empowerment to forgive the perpetrator which increases the chances of the perpetrator being accepted by the community. In addition, the moral image of perpetrators benefits if victims acknowledge the underlying causes for the violence. Moreover, the offer of friendship and cooperation supports the restoration of the perpetrators' moral image (Shnabel *et al.*, 2008, p.165). Tavuchis (1991), cited by Shnabel and

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Nadler (2008, p.116), describes this connection of empowerment and recognition as the “apology-forgiveness cycle”.

If these needs are not fulfilled victims engage in power-seeking behaviour, such as revenge (Shnabel *et al.*, 2008, p.167). One form of revenge is avoidance which denies the perpetrators the fulfilment of their need for recognition. Perpetrators on the other hand, may seek to justify their violent actions in order to restore their moral image and the chances of recognition. Strategies could include the blaming of external influences, the denial that the actions were immoral or a refusal to recognize the authority of the justice system (Shnabel *et al.*, 2008, p.168). Therefore, it can be argued that victims and perpetrators are able to satisfy their basic human needs of empowerment and recognition without restoring the other party's need. However, this unilateral approach does not lead to reconciliation. Victims who increase their power do so at the expense of the perpetrators' power. Perpetrators who attempt to restore their moral image without accepting responsibility for their actions damage the victims' need for recognition.

This chapter underlined the significance of reconciliation. Conflict settlement halts overt violence, but covert violence may still be present. In order to establish positive peace it is very important that the peace process is advanced to the level of reconciliation. As a precondition security for all members of the society has to be ensured. The judicial element of the reconciliation process has to focus on restorative justice in order to avoid vindictive feelings. Further, perpetrators can empower their victims by asking for forgiveness. Victims, in return, can enhance the chances of the perpetrators' recognition by granting forgiveness. The next chapter will evaluate how the Government of Rwanda attempted to address the basic human needs of the victims and perpetrators of the genocide.

Chapter 3: Gacaca courts: An institutional attempt to address basic human needs

In the aftermath of the genocide, Hutus and Tutsis continued to live together and therefore the Rwandan Government had to make the reconciliation process the centrepiece of their policies. The judicial approach rested on three pillars (Corey & Joireman, 2004, p.80). The international community implemented the International Criminal Tribunal for Rwanda (ICTR) and the Rwandan Government made use of its own domestic judicial system and introduced, at a later stage, traditional *gacaca* courts (Richters, *et al.*, 2005, p.206). These three judicial approaches will be evaluated in the following chapter. The focus will be on the *gacaca* courts since these courts represented a restorative and retributive justice approach which was hoped to address the basic human needs of victims and perpetrators.

At first the Government of Rwanda divided the perpetrators of the genocide according to their responsibility into four categories (Government of Rwanda, Organic Law no. 08/96, 1996). After a pilot phase for *gacaca* courts the original Categories 2 and 3 were merged which led subsequently to three categories of perpetrators (Government of Rwanda, Organic Law no 16/2004, 2004; Clark, 2010, p.72):

Category 1: Planners, organisers, instigators, supervisors, leaders people of higher authority, for example in the army or police, and their accomplices. In addition, notorious murderers who committed crimes with extraordinary brutality and persons who committed acts of torture and rape. The latter includes acts which did not lead to the death of the victim. Moreover, this category included persons who committed degrading acts on dead bodies.

Category 2: Co-authors who caused deliberate homicide or serious attacks which caused death. Moreover, persons who, with the intention of causing death, caused injuries, but from which the victims did not die. In addition this category included persons who caused injuries without the intent to kill.

Category 3: Persons who committed theft and the destruction of goods and properties.

The ICTR was established by the UN in Arusha, Tanzania (UNSC Resolution 955, 1994 & 977, 1995) and its work will cease in 2012. The Court is tasked to investigate and prosecute Category 1 perpetrators of the genocide and is based in Tanzania to ensure impartiality during the proceedings. The fact that the court is based in Tanzania and not in Rwanda makes it difficult for Rwandans to attend the trials or to receive news of its work (Mukherjee, 2011, p.336).

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Further, until 2000 the official languages of the ICTR were English and French. Kinyarwanda, the native language of all Rwandans, was only accepted as the official language for the court proceedings in 2000. The distance and the language barrier removes many Rwandans from the judicial process and therefore the Court is unable to contribute sufficiently to the reconciliation process (Barria and Roper, 2006, p.363). Moreover, the ICTR presents an international approach for reconciliation, though the national reconciliation process has to take place on a domestic level. The representative of the Czech Republic in the UN Security Council argued that the ICTR is not a valid approach for reconciliation since the ICTR only focuses on retributive justice and not on restorative justice (Barria & Roper, 2005, pp.362-363). Moreover, the perpetrators tried by the ICTR served their sentence abroad in permissive Western style prisons and not in Rwandan prisons which are of a much lower standard (Barria & Roper, 2005, p.363, Mukherjee, 2011, p.337). The maximum punishment that may be conferred by the ICTR is life imprisonment (Kirkby, 2006, p.98). This sanction stands in stark contrast to the maximum penalty that may be conferred by Rwandan domestic courts. These courts can only try lower ranking suspects and yet they can sentence them to death (Kirkby, 2006, p.98). However, the death penalty was abolished in 2007 (Amnesty International, 2007). Moreover, many victims criticised the ICTR for providing legal support for the defendants (Pankhurst, 1999, p.253). As a consequence of the "preferential" treatment received by the leaders and organisers of the genocide many victims claim that these perpetrators have not received the punishment which they deserve. Mukherjee (2011, p.337) cites Putnam (2002) who claims that the ICTR may support the retributive justice process since it investigates cases and tries several Category 1 perpetrators, however, due to the above mentioned criticism the need for justice in Rwandan communities is not sufficiently fulfilled by the ICTR.

The capacity of the Rwandan domestic court system was severely affected by the genocide. The Rwandan judicial system had 785 judges before the genocide, but only 20 of them survived (Borland, 2003, cited by Richters *et al.*, 2005, p.208). There were 130,000 suspects to be tried by these national courts and it was estimated that the sheer number of cases could take up to 150 years to process (Burnet, 2008, p.175; Graybill & Lanegran, 2004, p.8). With thousands of individuals in prisons the labour force of Rwanda was severely reduced. Moreover, the administration and maintenance of the prisons placed enormous financial strains on Rwanda (Penal Reform International, 2010, p.14).

Justice in the form of prison sentences was exercised by the ICTR and national courts, but neither court underlined the importance of the apology-forgiveness cycle (Barria & Roper, 2005, pp.362-363). Further, the ICTR and national courts were not present on the hills of Rwanda – the very place where reconciliation had to take place. Moreover, the national courts were unable to deal with the high number of prisoners (Mibenge, 2004, p.412). Subsequently, the Rwandan Government had to re-evaluate its judicial element of the reconciliation strategy. The new judicial approach was to emphasize the traditional Rwandan values of restorative justice rather than merely distributive justice (Mibenge, 2004, p.412).

In 2001 the Rwandan Government decided to establish up to 11,000 *gacaca* courts (Graybill & Lanegran, 2004, p.8). *Gacaca* – literally meaning "grass" – were local community courts in which victims and perpetrators presented their narrative of the case. The courts were headed by the *Inyangamugaya* – "people of integrity" – who were suggested and elected by the local community (Burnet, 2008, p.175; Clark, 2010, p.67). Community members were not only spectators, but also active participants whose accounts and testimonies directly influenced the trial and subsequently the verdict (Corey & Joireman, 2004, pp.83-84).

The Rwandan Government hoped to achieve several objectives by setting up the *gacaca* courts (Kubai, 2007, pp.56-57; Penal Reform International, 2010, p.14). *Gacaca* courts were considered to be the most efficient method to accelerate trials. Due to their nationwide presence it was hoped that *gacaca* courts would serve as a mechanism of deterrence in order to end the culture of impunity. The Rwandan Government also hoped that perpetrators would acknowledge their guilt and provide a narrative of the mass atrocities committed in order to establish the truth about the genocide (Clark, 2008, p.299). Uncovering of the truth was important since victims wanted to hear about the fate of their relatives (Clark, 2008, p.316). In addition, in order to prevent further violence it is essential to understand the root causes of the violence. Only if the motives of perpetrators are known is there a chance of avoiding atrocities in the future (Rotberg, 2000, cited by Clark, 2010, p.34). In addition, the truth-telling of victims would establish a narrative of their experiences and offer them a sense of empowerment, as community members acknowledged the

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victim's suffering (Clark, 2008, p.316). This empowerment is assumed to lead to the healing of psychological wounds (Brounéus, 2008, p.58).

Finally, in many cases the courts would sentence the guilty parties to community work instead of prison. This approach reduced the number of prisoners and supported the re-integration of perpetrators into society. All of these measures were hoped to address the basic human needs of justice, empowerment, security and recognition in order to reach the final objective of reconciliation. *Gacaca* courts were thus not only a tool of retributive justice, but also focused on restorative justice (Kubai, 2007, p.57).

The Rwandan Government began to gradually set up *gacaca* courts from 2002, so they could ensure their 'roll out' was most effective (Penal Reform International, 2010, p.21). In 2005 the Courts started to operate on a nationwide scale and were established in every cell – Rwanda's smallest administrative unit of between 150 and 300 people (Penal Reform International, 2010, p.26). *Gacaca* courts were able to try cases of Category 2 and 3 crimes and could issue sentences ranging from community work to 30 year prison sentences (Kirkby, 2006, p.101). The enormous number of suspects meant that approximately 10% of the population were to be tried in *gacaca* courts. The nationwide presence and the high number of people tried underlines the pervasive effect of the *gacaca* courts on Rwandan society. However, *gacaca* courts were also subject to criticism.

Victims and perpetrators feared that the *gacaca* judges would not be impartial and would show a lack of integrity by favouring either Hutu or Tutsi. Each group tried to influence the elections for their own benefits. The following statements made by Rwandans were quoted by Penal Reform International (2010, p.30) and illustrate the fear that judges may be biased:

"On the hills where all the Tutsis were killed and where only Hutus are left, who will give testimony to convict the detainees? Who will lead the elections? Who will be elected, won't it be those who killed?"

"All the authorities are, in general, Tutsis, and people say they are the ones who are responsible for preparing the population for the election of the judges. How are they not going to corrupt this population, and even these judges?"

Human rights groups argued that the impartiality and professionalism of the judges were not guaranteed (Burnet, 2008, p.176). In addition, paramount rights, such as the defendants' right to legal counsel or the right to call witnesses, were disregarded. Instead the whole process was based on evidence gathered by the local authorities and the participation of the public (Penal Reform International, 2006, p.25). *Gacaca* courts were further criticised for only investigating crimes committed by Hutus during the genocide (Penal Reform International, 2010, p.43). Crimes which were committed by Tutsis as part of the RPF advancement were not subject to trial. This unilateral approach led to severe criticism such as that expressed in the following statement made by a detainee in 2003 cited by Penal Reform International (2010, p.43):

"Somebody asked why there was national mourning for some (Tutsis) but not for other (Hutus). After all, they were all killed, although some were killed in the genocide and others out of revenge. [...] Others asked why genocide killings were considered but not murder in revenge or reprisals..."

The Rwandan Government addressed the issue of the unilateral approach and claimed that revenge killings would be investigated as well (Kagame, 2002, cited by Penal Reform International, 2010, p.44). However, these crimes were *not* addressed by the *gacaca* courts which were the central element of the reconciliation process. This omission presents a key obstacle to the reconciliation process.

In order to fulfil basic human needs the cycle of apology and forgiveness is *sine qua non* and so it had to be set in motion during the *gacaca* trials. The possibility to confess and to apologise for crimes in return for a lighter sentence and the forgiveness of the victims played a major role in the reconciliation process (Corey and Joireman, 2004, p.84). Truth-telling of victims and perpetrators is commonly assumed to support forgiveness, healing and subsequently the reconciliation process (Brounéus, 2008, p.58). This becomes evident when one considers the emerging numbers of Truth and Reconciliation Commissions (TRC) as, for example, that in South Africa. The slogan of the South African

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TRC “Revealing is Healing” and its argument that truth-telling serves as a “therapeutic function” underline this assumption (TRC, 1998, quoted by Brounéous, 2008, p.58). Moreover, theological and psychoanalytical literature considers truth-telling as a mechanism for healing (Brounéous, 2008, p.58). The advocates of truth-telling claim that offering a narrative about atrocities committed enables victims and perpetrators alike to share the pain and to restore dignity (Minow, 2000, cited by Brounéous, 2008, p.58).

The NURC established *Ingando* Camps for prisoners who were about to be released into society (NURC, 2012). These camps were considered as re-education camps and ran a programme which taught the participants about the political and socioeconomic problems of Rwanda, and the history and rights and duties of Rwandans (Purdeková, 2008b, pp.18-19). The camps not only presented a change from the prison environment but also served as a space for the transformation of the thinking and attitudes of the inmates. However, Penal Reform International (2010, p.50) writes that defendants were often pressurised in advance to plead guilty and to ask for forgiveness as soon as they appeared in *gacaca* trials. This, of course, raises the question whether the apologies made during the trials were indeed honest – in the sense of being offered in a genuine spirit of remorse – or if they were merely made in order to receive a lighter sentence. There was also concern that the accused individuals only confessed to crimes for which evidence existed rather than making a full disclosure of their crimes. Moreover, confessions were only accepted if the accused named other individuals who also participated in the crime. In order to protect relatives or friends some confessions and witness statements included accusations against individuals who were either dead or who had fled Rwanda (Penal Reform International, 2010, p.36).

Richters *et al.* (2005, p.214) also write that many victims believed the apologies to be dishonest. Penal Reform International (2010, p.50) cites a survivor’s representative:

“They are afraid of living out their lives in prison if they don’t ask for forgiveness. [...] Once they’ve asked for forgiveness in front of the *gacaca*, they think it’s all over”.

The defendants also feared the false statements of ‘witnesses’ against them. Burnet (2008, p.179) notes that in some communities survivors told untrue stories in order to punish those that they believed to have been involved in the genocide, albeit they did not have any evidence to support this belief.

Such issues raise the question about whether it is not only apologies that may be coerced – forgiveness too might be coerced rather than voluntarily given. Many victims stated that they felt obliged to forgive perpetrators, because the state forgave them when the prisoners were released (Penal Reform International, 2010, pp.50-51). One survivor is quoted as saying: “The government has forgiven you and me, I cannot refuse it to you”. Moreover, in many cases survivors stated that they felt obliged to forgive, because the church asked them to do so.

In light of the decade-long hostility between Hutus and Tutsis and the mass atrocities committed, a state-orchestrated cycle of apology and forgiveness might harm rather than foster reconciliation since the apology-forgiveness cycle is artificially created instead of being based on true sentiments. Notwithstanding the criticism of *gacaca* trials, considering the situation Rwanda found itself in during the years after the genocide, no valuable alternative to *gacaca* courts existed. The ICTR was never designed to try each perpetrator and the domestic courts were not able to address such a high number of court cases. This point of view is well summarised by Uvin & Mironko (2003) cited by Burnet (2008, p.177): “perhaps the strongest element in favour of *gacaca* is the lack of an alternative”.

The next chapter will evaluate whether, despite the criticism raised, the *gacaca* courts could address the basic human needs of victims and perpetrators in order to support the reconciliation process.

Chapter 4: Gacaca trials and the fulfilment of basic human needs

The Rwandan Government claimed that dialogues between victims and perpetrators and dialogues between the

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groups of Hutus and Tutsis about the genocide and its causes were necessary. It was hoped that *Gacaca* courts would take this dialogue to every hill in Rwanda. This chapter assesses whether these attempts can be considered as successful or not. First, this chapter outlines the rationale for large-scale prisoner release in the years after the genocide. Second, this chapter synthesizes the theoretical framework of the needs-based model of conflict resolution and the work of the *gacaca* courts. In order to evaluate whether the basic human needs of victims and perpetrators are fulfilled, this chapter will analyse surveys undertaken by practitioners and the NURC. These surveys will be assessed according to the specified needs of reconciliation: justice, empowerment, security and recognition.

Due to the overcrowded prisons and the slow moving judicial process, in 1998 the Rwandan Government planned to provisionally release 10,000 prisoners who were imprisoned without charges. However, hard-line government supporters and survivor organisations raised fears about security and a lack of justice and protested against the Government's plans. Therefore, the Government reduced the number of released prisoners to 3,365 who were released gradually over a period of ten months. An additional 62,000 prisoners were released between 2003 and 2005 (Penal Reform International, 2010, p.51).

Amongst the released prisoners were the sick and elderly, prisoners who had been between the ages of 14 and 18 during the genocide, those who confessed to their crimes and prisoners who had been detained so long that any further sentence was unnecessary. The prisoners had to take part in *Ingando* solidarity camps before they were able to return home (Cacioppo, 2005, p.6). Upon their arrival in their communities they were to be tried in *gacaca* courts. Therefore, the releases were provisional and not a general amnesty.

During the *gacaca* trials the released prisoners offered an account of the atrocities they had committed. This truth-telling process was a prerequisite for the accused if they hoped for a milder sentence. In addition, *gacaca* courts supported the victims' need of recognition and empowerment, as they could tell their narrative of the atrocities. For many it was the first time that other people had listened to their story. Clark (2008, p.316) writes that the combination of truth-telling and empowerment led to a sense of healing for many survivors. Research projects undertaken in the field, however, have found that, in a significant number of cases, psychological ill-health and insecurity levels increased during and after the trials (Brounéus, 2008, p.59-61). In order to evaluate the effects of *gacaca* trials Brounéus (2008, p.65) undertook research in Rwanda and interviewed 16 women about their experiences. Three of the women had been children during the genocide and 13 of them were widowed.

The women reported that they often fell ill in the days before the *gacaca* hearings and their physical health worsened during and after the trials (Brounéus, 2008, pp.68-70). Women often had to face the perpetrators in court who gave a detailed account of the atrocities committed. One woman is quoted as stating: "... He told everything... I could not hear, because I fainted and fell on the ground". Another woman is quoted as saying:

"When I gave my testimony, I had a psychological crisis ... When you give a testimony surrounded by people who have killed your family ... you feel ill; you feel insane..."

The testimony by the perpetrators led to a severe trauma as the atrocities were relived. This becomes especially clear in the following statement: "I felt very bad. I felt as if it were 1994... I saw the clubs, the machetes. I thought they would come to kill me again..." (Brounéus, 2008, p.70).

The necessity of *gacaca* trials in order to end the culture of impunity was underlined by many respondents as well. Participants in the research project undertaken by Zorbas (2009, p.130) considered the justice process as a deterrent to future conflict and a large majority considered it as essential for reconciliation and therefore long-term peace. Zorbas quoted a prisoner and a survivor who both made similar statements about the necessity of punishment in order to exercise justice:

"To me, what's important is that those that must be punished, be punished" (survivor).

"We should punish all those who are guilty" (prisoner).

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The question of whether it is at all possible to exercise justice is raised by Burnet (2008, pp.181-182) who quotes a participant in the *gacaca* trials:

“We cannot forget the wounds that we have in our hearts. [...] I can't forget that I am left alone. With everything I do, I am reminded that I am alone. That's how it is, we go to *gacaca*, we try to be patient, but forget all that, it will never happen”.

This quotation makes it clear that neither retributive nor restorative justice can exercise meaningful justice for the victims.

The NURC undertook extensive research in 2010 in order to establish a reconciliation barometer. The aim of the NURC was to evaluate how reconciliation measures, such as the *gacaca* courts, were perceived by Rwandans (NURC, 2010, p.9). The research was based on face-to-face interviews with 3000 randomly selected participants in the country.

The results demonstrated that 90% of the participants had a lot of trust in the justice system (NURC, 2010, p.38). Furthermore, over 80% of survivors believed that the perpetrators received a fair punishment from the *gacaca* courts (NURC, 2010, p.68). These findings suggest that the need for justice is largely satisfied. Notwithstanding the positive findings of the research undertaken, one has to consider that the concept of justice might be perceived and defined in many different ways. If one defines justice as the fulfilment of loss, then, justice has not, and will never be, exercised since perished relatives are not replaceable. However, if somebody considers a prison sentence for a murderer as justice, then the participant of the survey may claim that justice was done.

NURC (2010, pp.38; 68) Trust in justice system Perpetrators received fair punishment Total:90% Survivors:80.7%
Rettig (2010, pp.36-37)

Gacaca functions well:

Strongly agree or agree

Survivors:

1. Survey: 62%

2. Survey: 78% Non-survivors:

1. Survey: 77%

2. Survey: 92% **Rettig (2010, pp.36-37)**

Gacaca functions well:

Strongly agree

Gacaca functions well:

Strongly disagree

Total:

1. Survey: 51%

2. Survey: 38%

Survivors:

1. Survey: 17%

2. Survey: 0%

Rettig (2010, pp.36-37)

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Confidence in *gacaca* courts:

Survivors:

1. Survey: 81%

2. Survey: 78% Non-survivors:

1. Survey: 85%

2. Survey: 98%

Rettig's (2008, pp.36-37) research findings support the research result of the NURC. Rettig undertook two surveys in Sovu, a community in Rwanda's South Province. The first survey was conducted during the trial phase of the *gacaca* courts. The second was conducted six months later in order to analyse whether the trials had an impact on the interviewees' perceptions of the work of the *gacaca* courts. The respondents were divided into two groups: "survivors" and "any person who did not identify as a survivor and who lived in Rwanda in 1994" (hereafter "non-survivors").

In the early stages of the *gacaca* trials in Sovu nearly two third of survivors (62%) and over three quarters of non-survivors (77%) either agreed or strongly agreed that *gacaca* "functions well" (Rettig, 2008, pp.36-37). Six months into the trials the same question was asked again and the approval rating increased to 78% amongst the survivors and 92% amongst non-survivors. This indicates a positive development, though the percentage of respondents who replied by stating that they "strongly agree" decreased from 51% to 38%. On the other hand, 17% of survivors strongly disagreed with the statement in the first survey, but 0% disagreed in the second survey. This result indicates that a high degree of hope originally placed in the *gacaca* trials diminished for some respondents, whilst many sceptical survivors started to consider *gacaca* trials as beneficial. Moreover, a large majority of survivors (81%) and non-survivors (85%) expressed their confidence in *gacaca* courts. However, this trust rating among the survivors fell slightly to 78%, whilst it increased to 98% amongst non-survivors.

The difference in these last findings might be explained by several concerns raised by participants of the trials (Rettig, 2008, pp.39-41). A common problem during the *gacaca* trials was the truth-telling. A large majority of survivors (90%) and non-survivors (70%) agreed that "people tell lies at *gacaca*". Further, many prisoners were worried that confessions might lead to them being categorised in a different category of *genocidaires* which would lead to a new trial and perhaps a more severe punishment (Rettig, 2008, p.39). In addition, many Hutus adhered to the practise of *ceceka* (Kinyarwanda for "keep silent"). This practise led to an agreement according to which Hutus would not testify against each other. Nearly three quarters (74%) of survivors and nearly two thirds (65%) of non-survivors consider *ceceka* as hindering the truth-telling process at the trials.

Rettig (2008, pp.39-41)

People tell lies at *gacaca*

Ceceka is hindering the truth-telling process

Survivors: 90%

Non-survivors: 70% Survivors: 74%

Non-survivors: 65%

Rettig (2008, p.38)

Security improved

Survivors:

1. Survey: 85%

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- 2. Survey: 82% Non-survivors:
- 1. Survey: 93%
- 2. Survey: 89% **NURC (2010, pp.46; 65-68)** Genocide will never occur again:83%
- Security increased:94% Not afraid of physical attack:86%
- Survivors afraid of physical attack: 30% **Cacioppo, 2005 (p.12)** Prisoners who fear revenge attacks: 69%

The findings of Rettig (2008, p.38) confirm that 85% of survivors and 93% of non-survivors consider that the security of their environment has improved. In the second survey of Rettig the results decreased to 82% and 89% respectively. This indicates that the *gacaca* trials diminished perceptions of security, albeit only to a small degree. Research by the NURC (2010, pp.65-68) concluded that over 83% of the respondents believed that genocide would not recur in Rwanda since the underlying causes were addressed. Furthermore, over 94% believed that security had increased in Rwanda, with 86% unafraid of any form of physical attack (NURC, 2010, p.46). However, the same research also indicated that 30% of genocide survivors are afraid of revenge attacks (NURC, 2010, p.68). This leads to the conclusion that the large majority of Rwandans do indeed feel safe, but survivors tend to feel much less secure. This is also made clear in the work of Brounéus (2008, p.66). A large majority of the women interviewed thought that the perpetrators had not changed their attitudes and one interviewee was quoted as stating that if perpetrators did not have to fear the justice system the “genocide would start again tomorrow”.

Witnesses in the *gacaca* trials often became victims of harassment and threats before or after they presented their narrative of events in the courts (Brounéus, 2008, p.66-68). Brounéus (2008, p.68) quotes one woman stating: “I thought I would be killed... I do not go to *gacaca* any longer”. Many women experienced shame for presenting strong emotions in front of their community and felt lonely afterwards (Brounéus, 2008, pp.69-70). Loneliness led to a sense of vulnerability and subsequently to a lack of security. There have also been cases where perpetrators killed their own relatives if they were married to Tutsis. When the victims decide to testify against their own relatives at *gacaca* they may also be harassed by their own family members. Subsequently, the impact on their psychological health is enormous and the “security net” often provided by families is severely damaged.

Perpetrators too felt threatened. Cacioppo (2005, p.12) claims that 69% of the self-confessed prisoners fear reprisal attacks when they return home. Kubai (2007, p.60) writes that about 1,000 prisoners voluntarily returned to prison, as they felt so unsafe in their own community where they had to live side by side with the victims and their relatives. Rettig (2008, pp.42-43) differentiates between positive and negative peace and quotes two community members as stating:

“There is a difference between peace and security. Today we have security, not peace. People do not turn violent because they fear the authorities”.

“We live well together, but in the huts it is different. A person who brings food to a family member in prison has anger and pain. And survivors still have pain. They pretend they don’t but it is still in their hearts”

These statements are a stark reminder of Galtung’s work on positive and negative peace (1969, p.183). The Rwandan Government might have achieved an end to the overt conflict, however, a covert conflict remains. The conflict is still present on the hills of Rwanda. The attitude between Hutus and Tutsis has not changed, as both groups still harbour antagonism for the other group. Subsequently, this raises the fear that the present covert conflict might turn into an overt conflict in future.

Cacioppo (2005, p.13) points out that according to the NURC the apologies of prisoners are the most important action to be undertaken on their part in order to support their reintegration. Three out of four Rwandans support a reduction of the sentence if the perpetrator shows remorse and over 94% consider confessions as essential for the reconciliation process. The main issue for victims was based on the sincerity of such apologies (Burnet, 2008, p.181). Many Rwandans distinguish between confessions (*gusaba imbabazi*) and remorse by accepting responsibility (*kwicuza*). *Gusaba imbabazi* focuses on the legal concept of pardon, whereas *kwicuza* describes a

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religious concept of pardon which is made during the confession ceremony. This underlines the concept of the apology-forgiveness cycle by Tavuchis (1991), cited by Shnabel and Nadler (2008, p.116). Perpetrators who have merely shown *gusaba imbabazi* by pleading guilty, but have not shown any signs of *kwicuza* by accepting responsibility and showing remorse, will not be able to set the apology-forgiveness cycle in motion. If the apology is not perceived as being honest, then no sense of forgiveness will be invoked. Richters *et al.* (2005, p.214) cite Hamber (2003) who argues that a dishonest apology will be considered as a strategy to “buy off” survivors which will not lead to reconciliation.

Cacioppo (2005, p.13) Remorse is essential for the reconciliation process: 94% In favour of reduction of sentence if perpetrator shows remorse: 76%

Burnet (2008, p.180) undertook research in Rwanda and interviewed several focus groups that raised worries about the reintegration of released prisoners into the local community. These interviewees frequently replied when asked for their opinion about the release of prisoners: “Once they arrive on the hill, they get along very well”. Burnet writes that participants in the research groups were careful to provide a response along the Government’s official line. However, in private and less formal conversations people often made very different statements, such as: “In general we pretend to get along”.

This discrepancy may be based on the feeling that forgiveness is demanded by the Rwandan Government and the church. Subsequently, publicly many Rwandans might give an answer which suits the official reconciliation process, however, their real sentiments might be very different. A quotation of a respondent offered by Rettig (2008, p.44) supports this argument: “Do not show my answers to the authorities. They would condemn me”.

In order to assess the reintegration of perpetrators into their society it is important to evaluate the level of cooperation between Hutus and Tutsis. The NURC (2010, pp.74-75) argues that over 92% of Rwandans believe that relations between the two groups have improved since the 1994 genocide. Inter-ethnic interactions, for example in the form of financial or material support, has also been widely reported (NURC, 2010, pp.76-79). Approximately three out of four former prisoners claimed to have received support from community members of the other ethnic group. Over 90% said they had either borrowed tools from or lent tools to members of the other ethnic group. This indicates that cooperation between the groups is taking place. Moreover, considering the fact that many Rwandans work in the agricultural sector and are self-reliant, one can assume that the tools in question are farm tools. These tools are vital for the survival of individuals and therefore this kind of cooperation can be considered as recognizing the other groups’ right of existence. Further, over 90% of respondents feel comfortable with inter-ethnic contact in, for example, churches or political parties. Nonetheless, one out of four Rwandans experiences difficulties with trusting members of the other groups. Amongst prisoners more than 21% distrust the other group and amongst survivors 38% have difficulties with trusting members of the other group (NURC, 2010, pp.74-75). Since cooperation is a strong indicator for mutual recognition the need for recognition is fulfilled to a high degree. Nonetheless, due to the lack of trust, the need for recognition is not yet fully achieved.

NURC (2010, pp.74-79) Trust between those on different sides during the conflict has improved: 92% It is difficult to trust members of other ethnic group (Prisoners/Survivors): 21%/38%

Prisoners who have received support from a community member of the other ethnic group: 76%

Prisoners who either borrowed a tool from or lent one to a member of the other ethnic group: 90%

Respondents who are comfortable with inter-ethnic contact: 90% **Rettig (2008, pp.38; 43)**

Trust among neighbours improved

Survivors:

1. Survey: 47%

2. Survey: 39% Non-survivors:

1. Survey: 60%

2. Survey: 54%

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Rettig (2008, p.43) reports a lack of cooperation and social interaction and quotes a student as saying: "I could say that relationships between groups are good, but really we do not meet". This statement is underlined by Rettig's (2008, p.38) research results. Approximately half (47%) of the survivors claimed that the degree of trust increased amongst neighbours. However, the same percentage of survivors disagrees and claims that the degree of trust has decreased. The second survey, six months after the *gacaca* trials started, showed that the degree of trust had declined to 39% among survivors. Non-survivors agreed and considered the degree of trust to be diminished as well. Their approval rate decreased from 60% to 54%. Recognition of other community members as equals cannot be established if trust, as the very basis of cooperation, does not exist. The refusal to fulfil the perpetrators' need for recognition is also made clear in the following quotations cited by Rettig (2008, p.44):

"Reconciliation? Impossible. They killed my husband and ten of my children under my eyes and I am supposed to take them back? I do not want to reconcile with them. I want them to let me die in peace". "When we pass each other on the path, we do not even say hello to each other".

This chapter underlined that truth-telling is not as healing as it is often assumed to be. Some victims feel a sense of empowerment when telling their story, however, victims also relive the experience of the mass atrocities committed and are the subject of harassment and threats. Notwithstanding, *gacaca* courts are perceived as necessary to address the basic human need of justice. A major obstacle during the trials was lies and witnesses who refuse to reveal their knowledge about perpetrators. The basic human need for security is satisfied to a high degree amongst the general population. Nonetheless, especially during the *gacaca* trials, many survivors experience a lack of security. The need for recognition is to a large extent fulfilled since a high degree of cooperation between Hutus and Tutsis is reported. Nonetheless, distrust is still present in the communities. There is also reason to assume that security and recognition might be based on negative rather than positive peace. This becomes especially evident when one considers the discrepancy between official responses and statements made in less formal settings.

Conclusion

The Rwandan Genocide shocked human consciousness. Not only government troops and armed militia, but also neighbours, friends and even relatives turned into murderers. Perpetrators and victims continue to live together and therefore reconciliation is essential to a peaceful future.

Ethnicity has played a vital role in Rwanda ever since its artificial entrenchment by the former colonial powers. Rwanda was shaped by a protracted social conflict which became intergenerational and involved the whole society. Conflict settlement alone would not have advanced the Rwandan society to the level of reconciliation, as the attitudes between Hutus and Tutsis have remained the same. Socio-emotional reconciliation requires the addressing of basic human needs. As a consequence, retributive justice alone did not serve these needs and a restorative approach had to be established. Subsequently, the Rwandan Government invoked a traditional approach of restorative justice – the *gacaca* courts. These courts were present in every Rwandan community and were hoped to deliver, or help to deliver the basic human needs for justice, empowerment, security and recognition. These courts were not free from criticism, but considering the circumstances in Rwanda no other viable option was available. The Rwandan Government emphasized the importance of the apology-forgiveness cycle and hoped that the *gacaca* trials would invoke truth-telling which could set this cycle in motion. It has been reported that victims experienced a sense of empowerment since they could represent their narrative of the atrocities. Moreover, they were able to hear what happened to their deceased relatives. However, the truth and telling-process also led to retraumatization and a sense of vulnerability. Further, many accused and witnesses are believed to have lied or to have revealed only parts of what they witnessed during the genocide. In addition, witnesses were often intimidated and feared for their security. Overall, the degree of security in Rwanda is high, nonetheless, surveys showed that many survivors and perpetrators alike fear revenge attacks.

However, it has also become evident that responses to the NURC survey might not represent the real sentiments on the hills of Rwanda since individuals offered very different accounts in a less formal setting. Therefore, it is safe to

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assume that the survey results offered by the NURC do not reveal the true feelings of many Rwandans. Based on these discrepancies a definite answer about the success of *gacaca* courts cannot be provided. This, however, does not indicate a failure of the *gacaca* courts. The courts addressed several issues and without this approach the large numbers of prisoners could not have been dealt with. Justice has been exercised as well as possible in a post-genocidal society. The *gacaca* courts have also empowered victims by listening to their narratives. Further, victims had the power to grant forgiveness which increased the likelihood of recognition of the perpetrators by their societies. In addition, the culture of impunity has been eradicated which decreases the risk of long-term security threats. According to surveys the degree of cooperation and therefore the need for recognition enjoys a high degree of fulfilment. However, many Hutus and Tutsis still distrust each other.

The results of this dissertation point towards a limited fulfilment of the basic human needs of Rwandans. Undoubtedly, negative peace is still preferable to open violence, however, positive peace is necessary for a stable future for all Rwandans. Finally, one should remember that the genocide happened only 18 years ago – less than a generation – and reconciliation takes place in the hearts and minds of individuals and cannot be orchestrated or even dictated. *Gacaca* courts have led the Rwandans on the right path, but there is still a long way to go.

Bibliography

- Amnesty International (2004). *Rwanda: "Marked for Death", Rape survivors living with HIV/AIDS in Rwanda*. Retrieved 28th August 2011, from <http://www.amnesty.org/en/library/info/AFR47/007/2004>
- Amnesty International (2007). *Rwanda abolishes death penalty*. Retrieved 4th March 2012, from <http://www.amnesty.org/en/news-and-updates/good-news/rwanda-abolishes-death-penalty-2007080>
- Arenhövel, M. (2008). Democratization and Transitional Justice. *Democratization*, 15 (3), 570-587.
- Azar, E., Jureidini, P. and McLaurin, R. (1978). Protracted Social Conflict: Theory and Practice in the Middle East *Journal of Palestine Studies*, 8 (1), 41-60.
- Azar, E. and Moon, C.I. (1986). Managing Protracted Social Conflicts in the Third World: Facilitation and Development Diplomacy. *Millennium – Journal of International Studies*, 15, 393-406.
- Barria, L. and Roper, S. (2006). How effective are international criminal tribunals? An analysis of the ICTY and ICTR. *The International Journal of Human Rights* 9 (3), 349-368.
- Brounéus, K. (2008). Truth-Telling as a Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts. *Security Dialogue*, 2008, 39 (1), 55-76.
- Burnet, J. (2008). The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda. *Genocide Studies and Prevention* 3 (2), 173-193.
- Burton, J. (1990). *Conflict: Resolution and Provention*. Basingstoke: MacMillan Press Ltd.
- Cacioppo, C. (2005). Report on Education and Reintegration of Former Prisoners in Rwanda. The attempt of ingando and viewing reconciliation as a duty instead of a choice. *Ligue des droits de la personne dans la rgion des Grands Lacs*. Retrieved, 22nd February 2012, from <http://www.christinacacioppo.com/content/publications/EducationAndReintegrationOfFormerPrisoners.pdf>
- Clark, P. and Kaufman, Z. (Eds) (2008). *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*. London: Hurst.

Gacaca Courts and Restorative Justice in Rwanda

Written by Thomas Hauschildt

- Clark, P. (2008). Establishing a Conceptual Framework: Six Key Transitional Justice Themes. In Clark, P. and Kaufman, Z. (Eds) (2008). *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (pp.191-206). London: Hurst.
- Clark, P. (2008). The Rules (and Politics) of Engagement: The Gacaca Courts and Post-Genocide Justice, Healing and Reconciliation in Rwanda. In Clark, P. and Kaufman, Z. (Eds) (2008). *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (pp.297-320). London: Hurst.
- Clark, P. (2010). *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda. Justice without Lawyers*. Cambridge: Cambridge University Press.
- Collins, A. (2004). State-induced Security Dilemma. Maintaining the Tragedy. *Cooperation and Conflict*, 39 (1), 27-44.
- Corey, A. and Joiremann, S. (2004). Retributive Justice: The Gacaca Courts in Rwanda. *African Affairs*, 103, 73-89.
- De Waal, A. (1997). Group identity, rationality, and the state. *Critical Review*, 11 (2), 279-289.
- Des Forges (1999). *Leave None to Tell the Story. Genocide in Rwanda*. Human Rights Watch.
- Eltringham, N. (2004). *Accounting for horror*. Post-Genocide Debates in Rwanda. London: Pluto Press.
- Galtung, J. (1969). Violence, Peace, and Peace Research. *Journal of Peace Research*, 6 (3), 167-191.
- Government of Rwanda (1996). *Organic Law 08/96 on the Organisation of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since 1st October 1990*. Retrieved 5th March 2009, from <http://www.preventgenocide.org/law/domestic/rwanda.htm>
- Government of Rwanda (2004). *Organic Law 16/2004 establishing the Organisation, competence and functioning of gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between 1st October 1990 and 31st December 1994*. Retrieved 5th March 2012, from <http://www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf>
- Graybill, L. and Lanegran, K. (2004). Truth, Justice, and Reconciliation in Africa: Issues and Cases. *African Studies Quarterly*, 8 (1), 1-18. Retrieved 6th November 2010, from <http://www.africa.ufl.edu/asq/v8/v8i1a1.pdf>
- Haws, C. (2009). Suffering, hope and forgiveness; the ubuntu theology of Desmond Tutu. *Scottish Journal of Theology*, 62 (4), 477-489.
- Kelman, H. (2010). Conflict Resolution and Reconciliation: A social psychological perspective on ending violent conflict between identity groups. *Landscapes of Violence*, 1 (1), 1-9.
- Kirkby, C. (2006). Rwanda's Gacaca Courts: A Preliminary Critique. *Journal of African Law*, 50 (2), 94-117.
- Kubai, A. (2007). Between justice and reconciliation: The survivors of Rwanda. *African Security Review*, 16 (1), 53-66.
- Magnarella, P. (2005). The Background and Causes of the Genocide in Rwanda. *Journal of International Criminal Justice*, 3 (4), 801-822.
- Maslow, A. H. (1987) *Motivation and Personality (3rd ed.)*. New York: Longman.
- Mason, D. (2003). Structures of Ethnic Conflict: Revolution versus secession in Rwanda and Sri Lanka. *Terrorism*

Gacaca Courts and Restorative Justice in Rwanda

Written by Thomas Hauschildt

and *Political Violence*, 15 (4), 83-113.

Moghalu, K. (2005). *Rwanda's Genocide. The Politics of Global Justice*. Basingstoke: Palgrave Macmillan.

Mukherjee, G. (2011). Achieving Reconciliation through Prosecution in the Courts: Lessons from Rwanda. *Conflict Resolution Quarterly*, 28 (3), 331-348.

National Unity and Reconciliation Commission (2010). *Rwanda Reconciliation Barometer*. Retrieved 2nd January 2012, from http://www.nurc.gov.rw/fileadmin/templates/Documents/RWANDA_RECONCILIATION_BAROMETER.pdf

National Unity and Reconciliation Commission (2012). *Reconciliation tools*. Retrieved 5th February 2012, from <http://www.nurc.gov.rw/reconciliation-tools/itorero.html>

Pankhurst, D. (1999). Issues of justice and reconciliation in complex political emergencies: conceptualising reconciliation, justice and peace. *Third World Quarterly*, 20 (1), 239-256.

Penal Reform International (2010). *Eight years on... . A Record of Gacaca Monitoring in Rwanda*. London: Bell and Bain.

Prunier, G. (1995). *The Rwandan Crisis. History of a Genocide*. London: C. Hurst & Co.

Purdeková, A. (2008a). Building a Nation in Rwanda? De-ethnicisation and its Discontents. *Studies in Ethnicity and Nationalism*, 8 (3), 502-523.

Purdeková, A. (2008b). *RSC Working Paper No. 43. Repatriation and Reconciliation in Divided Societies: The Case of Rwanda's 'Ingando'*. Oxford: University of Oxford: Refugee Studies Centre.

Ramsbotham, O. (2005). The analysis of protracted social conflict: attribute to Edward Azar. *Review of International Studies*, 31, 109-126.

Rettig, M. (2008). Gacaca: Truth, Justice, and Reconciliation in Post-conflict Rwanda? *African Studies Review*, 51 (3), 25-50.

Richters, A., Dekker, C., de Jonge, K. (2005). Reconciliation in the aftermath of violent conflict in Rwanda. *Intervention*, 3, 203-221.

Shnabel, N., Nadler, A., Canetti-Nisim, D. and Ullrich, J. (2008). The Role of Acceptance and Empowerment in promoting Reconciliation from the Perspective of the Needs-Based Model. *Social Issues and Policy Reviews*, 2 (1), 159-186.

Shnabel, N. & Nadler, A. (2008). A Needs-Based Model of Reconciliation: Satisfying the Differential Emotional Needs of Victim and Perpetrator as a Key to Promoting Reconciliation. *Journal of Personality and Social Psychology*, 94 (1), 116-132.

Sites, P. (1973). *Control of the Basic Order*. London: Dunellen Publishing Company.

Staub, E. (2006). Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory. *Political Psychology*, 27 (6), 867-894.

Staub, E., Pearlman, L.A. and Miller, V. (2003). *Healing the roots of genocide in Rwanda*. *Peace Review*, 15 (3), 287-294.

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Written by Thomas Hauschildt

Staub, E., Pearlman, L.A., Gubin, A. and Hagengimana, A. (2005). Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killings: An Intervention and its experimental evaluation in Rwanda. *Journal of Social and Clinical Psychology*, 24, (3), 297-334.

Stewart, S. (1998). *Conflict Resolution. A Foundation Guide*. Winchester: Waterside Press.

Storey, A. (1999). Economics and Ethnic Conflict: Structural Adjustment in Rwanda. *Development Policy Review*, 17, 43-63.

United Nations Security Council (1994). *Resolution 955 on establishment of an International Tribunal and adoption of the Statute of the Tribunal*. Retrieved 3rd March 2012, from <http://daccess-ods.un.org/TMP/3871833.08601379.html>

United Nations Security Council (1995). *Resolution 977 on the decision to designate Arusha as the seat of the International Tribunal for Rwanda*. Retrieved 3rd March 2012, from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N95/050/66/PDF/N9505066.pdf?OpenElement>

United Nations Economics and Social Council (1996). *Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission of Human Rights*. Retrieved 17th March 2012, from <http://www.wfirt.org/humanrts/commission/country51/7.htm>

Wallensteen, P. (2002). *Understanding Conflict Resolution. War, Peace, and the Global System*. London: Sage Publications.

Zorbas, E. (2009). What does reconciliation after genocide mean? Public transcripts and hidden transcripts in post-genocide Rwanda. *Journal of Genocide Research*, 11 (1), 127-147.